

07/18/2024

Chad Finke, Executive Officer / Clerk of the Court

By: D. Drew Deputy

Edwin Aiwazian (SBN 232943)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, CA 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

AARON C. GUNDZIK (State Bar No. 132137)
REBECCA G. GUNDZIK (State Bar No. 138446)
GUNDZIK GUNDZIK HEEGER LLP
14011 Ventura Blvd., Suite 206E
Sherman Oaks, CA 91423
Tel: (818) 290-7461

Attorneys for Plaintiff Romello Sheppard

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

ROMELLO SHEPPARD, individually and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the California
Private Attorneys General Act;

Plaintiff,

vs.

GHIRARDELLI CHOCOLATE COMPANY,
a California corporation; and DOES 1 through
100,

Defendants.

Case No.: 22CV020713

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES &
ENFORCEMENT UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT, CALIFORNIA LABOR CODE
§ 2698, ET SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);

(9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
(10) Violation of California Business & Professions Code §§ 17200, et seq.
(11) Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General Act of 2004)
(12) Violation of California Labor Code § 227.3 (Unpaid Vacation at Separation)
(13) Failure to Provide Suitable Seating (IWC Order 1-2001)

DEMAND FOR JURY TRIAL

Complaint Filed: October 27, 2022

COMES NOW, Plaintiff ROMELLO SHEPPARD (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorney General Act, and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play

1|| and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of Alameda. The majority of acts and omissions alleged herein relating to Plaintiff and the other class members took place in the State of California, including the County of Alameda. At all relevant times, Defendant maintained its headquarters/“nerve center” within the State of California, County of Alameda.

PARTIES

9 5. Plaintiff ROMELLO SHEPPARD is an individual residing in the State of
10 California, County of Alameda.

11 6. Defendant GHIRARDELLI CHOCOLATE COMPANY, at all times herein
12 mentioned, was and is, upon information and belief, a California corporation, and at all
13 times herein mentioned, an employer whose employees are engaged throughout the State
14 of California, including the County of Alameda.

15 7. At all relevant times, Defendant GHIRARDELLI CHOCOLATE
16 COMPANY was the “employer” of Plaintiff within the meaning of all applicable
17 California laws and statutes.

8. At all times herein relevant, Defendants GHIRARDELLI CHOCOLATE COMPANY and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant designated as a DOE herein.

9. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who

1 sues said defendants by such fictitious names. Plaintiff is informed and believes, and
2 based on that information and belief alleges, that each of the defendants designated as a
3 DOE is legally responsible for the events and happenings referred to in this Complaint,
4 and unlawfully caused the injuries and damages to Plaintiff and the other class members as
5 alleged in this Complaint. Plaintiff will seek leave of court to amend this Complaint to
6 show the true names and capacities when the same have been ascertained.

7 10. Defendant GHIRARDELLI CHOCOLATE COMPANY and DOES 1
8 through 100 will hereinafter collectively be referred to as “Defendants.”

9 11. Plaintiff further alleges that Defendants, directly or indirectly controlled or
10 affected the working conditions, wages, working hours, and conditions of employment of
11 Plaintiff and the other class members and aggrieved employees so as to make each of said
12 Defendants employers and employers liable under the statutory provisions set forth herein.

13 **CLASS ACTION ALLEGATIONS**

14 12. Plaintiff brings this action on his own behalf and on behalf of all other
15 members of the general public similarly situated, and, thus, seeks class certification under
16 California Code of Civil Procedure section 382.

17 13. The proposed class is defined as follows:

18 All current and former hourly-paid or non-exempt employees who worked
19 for any of the Defendants within the State of California at any time during
20 the period from four years preceding the filing of this Complaint to final
21 judgment and who reside in California.

22 14. Plaintiff reserves the right to establish subclasses as appropriate.

23 15. The class is ascertainable and there is a well-defined community of interest
24 in the litigation:

25 a. Numerosity: The class members are so numerous that joinder of all class
26 members is impracticable. The membership of the entire class is
27 unknown to Plaintiff at this time; however, the class is estimated to be
28 greater than fifty (50) individuals and the identity of such membership is

readily ascertainable by inspection of Defendants' records.

b. Typicality: Plaintiff's claims are typical of all other class members' as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom he has a well-defined community of interest.

c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.

e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

16. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the

1 class:

- 2 a. Whether Defendants' failure to pay wages, without abatement or
3 reduction, in accordance with the California Labor Code, was willful;
4 b. Whether Defendants had a corporate policy and practice of failing to
5 pay their hourly-paid or non-exempt employees within the State of
6 California for all hours worked and missed (short, late, interrupted,
7 and/or missed altogether) meal periods and rest breaks in violation of
8 California law;
9 c. Whether Defendants required Plaintiff and the other class members to
10 work over eight (8) hours per day and/or over forty (40) hours per week
11 and failed to pay the legally required overtime compensation to Plaintiff
12 and the other class members;
13 d. Whether Defendants deprived Plaintiff and the other class members of
14 meal and/or rest periods or required Plaintiff and the other class
15 members to work during meal and/or rest periods without
16 compensation;
17 e. Whether Defendants failed to pay minimum wages to Plaintiff and the
18 other class members for all hours worked;
19 f. Whether Defendants failed to pay all wages due to Plaintiff and the
20 other class members within the required time upon their discharge or
21 resignation;
22 g. Whether Defendants failed to timely pay all wages due to Plaintiff and
23 the other class members during their employment;
24 h. Whether Defendants complied with wage reporting as required by the
25 California Labor Code; including, *inter alia*, section 226;
26 i. Whether Defendants kept complete and accurate payroll records as
27 required by the California Labor Code, including, *inter alia*, section
28 1174(d);

- 1 j. Whether Defendants failed to reimburse Plaintiff and the other class
2 members for necessary business-related expenses and costs;
- 3 k. Whether Defendants' conduct was willful or reckless;
- 4 l. Whether Defendants engaged in unfair business practices in violation of
5 California Business & Professions Code section 17200, et seq.;
- 6 m. The appropriate amount of damages, restitution, and/or monetary
7 penalties resulting from Defendants' violation of California law; and
- 8 n. Whether Plaintiff and the other class members are entitled to
9 compensatory damages pursuant to the California Labor Code.

10 **PAGA ALLEGATIONS**

11 17. At all times herein set forth, PAGA was applicable to Plaintiff's employment
12 by Defendants.

13 18. At all times herein set forth, PAGA provides that any provision of law under
14 the California Labor Code that provides for a civil penalty, including unpaid wages and
15 premium wages, to be assessed and collected by the LWDA for violations of the California
16 Labor Code may, as an alternative, be recovered through a civil action brought by an
17 aggrieved employee on behalf of himself and other current or former employees pursuant to
18 procedures outlined in California Labor Code section 2699.3.

19 19. Pursuant to PAGA, a civil action under PAGA may be brought by an
20 "aggrieved employee," who is any person that was employed by the alleged violator and
21 against whom one or more of the alleged violations was committed.

22 20. Plaintiff was employed by Defendants and the alleged violations were
23 committed against him during his time of employment and he is, therefore, an aggrieved
24 employee. Plaintiff and the other employees are "aggrieved employees" as defined by
25 California Labor Code section 2699(c) in that they are current or former employees of
26 Defendants, and one or more of the alleged violations were committed against them.

27 21. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
28 employee, including Plaintiff, may pursue a civil action arising under PAGA after the

1 following requirements have been met:

- 2 a. The aggrieved employee shall give written notice by online submission
3 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail to
4 the employer of the specific provisions of the California Labor Code
5 alleged to have been violated, including the facts and theories to support
6 the alleged violations.
- 7 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
8 employer and the aggrieved employee by certified mail that it does not
9 intend to investigate the alleged violation within sixty (60) calendar days
10 of the postmark date of the Employee’s Notice. Upon receipt of the
11 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
12 (65) calendar days of the postmark date of the Employee’s Notice, the
13 aggrieved employee may commence a civil action pursuant to California
14 Labor Code section 2699 to recover civil penalties in addition to any
15 other penalties to which the employee may be entitled.

16 22. On August 23, 2022, Plaintiff provided written notice by online submission
17 to the LWDA and by certified mail to Defendant GHIRARDELLI CHOCOLATE
18 COMPANY of the specific provisions of the California Labor Code alleged to have been
19 violated, including the facts and theories to support the alleged violations. Plaintiff did not
20 receive an LWDA Notice within sixty-five (65) days of the date of the submission of
21 Plaintiff’s Notice.

22 23. On September 5, 2023, Plaintiff provided an amended written notice by
23 online submission to the LWDA and by certified mail to Defendant GHIRARDELLI
24 CHOCOLATE COMPANY of the specific provisions of the California Labor Code alleged
25 to have been violated, including the facts and theories to support the alleged violations.
26 Plaintiff did not receive an LWDA Notice within sixty-five (65) days of the date of the
27 submission of Plaintiff’s Notice.

28 24. Therefore, the administrative prerequisites under California Labor Code

1 section 2699.3(a) to recover civil penalties, including unpaid wages and premium wages per
2 California Labor Code section 558 against Defendants, in addition to other remedies, for
3 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510,
4 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, as well as IWC Wage Order 1-
5 2001, have been satisfied.

6 **GENERAL ALLEGATIONS**

7 25. At all relevant times set forth herein, Defendants employed Plaintiff and
8 other persons as hourly-paid or non-exempt employees within the State of California,
9 County of Alameda.

10 26. Defendants, jointly and severally, employed Plaintiff as an hourly-paid,
11 non-exempt employee, in February 2022, in the State of California, County of Alameda.

12 27. Defendants hired Plaintiff and the other class members and classified them
13 as hourly-paid or non-exempt employees, and failed to compensate them for all hours
14 worked and missed meal periods and/or rest breaks.

15 28. Defendants had the authority to hire and terminate Plaintiff and the other
16 class members, to set work rules and conditions governing Plaintiff's and the other class
17 members' employment, and to supervise their daily employment activities.

18 29. Defendants exercised sufficient authority over the terms and conditions of
19 Plaintiff's and the other class members' employment for them to be joint employers of
20 Plaintiff and the other class members.

21 30. Defendants directly hired and paid wages and benefits to Plaintiff and the
22 other class members.

23 31. Defendants continue to employ hourly-paid or non-exempt employees
24 within the State of California.

25 32. Plaintiff and the other class members worked over eight (8) hours in a day,
26 and/or forty (40) hours in a week during their employment with Defendants.

27 33. Plaintiff is informed and believes, and based thereon alleges, that
28 Defendants engaged in a pattern and practice of wage abuse against their hourly-paid or

1 non-exempt employees within the State of California. This pattern and practice involved,
2 *inter alia*, failing to pay them for all regular and/or overtime wages earned and for missed
3 meal periods and rest breaks in violation of California law.

4 34. Plaintiff is informed and believes, and based thereon alleges, that
5 Defendants knew or should have known that Plaintiff and the other class members were
6 entitled to receive certain wages for overtime compensation and that they were not
7 receiving accurate overtime compensation for all overtime hours worked.

8 35. Plaintiff is informed and believes, and based thereon alleges, that
9 Defendants failed to provide Plaintiff and the other class members all required rest and
10 meal periods during the relevant time period as required under the Industrial Welfare
11 Commission Wage Orders and thus they are entitled to any and all applicable penalties.

12 36. Plaintiff is informed and believes, and based thereon alleges, that
13 Defendants knew or should have known that Plaintiff and the other class members were
14 entitled to receive all meal periods or payment of one additional hour of pay at Plaintiff's
15 and the other class member's regular rate of pay when a meal period was missed, and they
16 did not receive all meal periods or payment of one additional hour of pay at Plaintiff's and
17 the other class member's regular rate of pay when a meal period was missed.

18 37. Plaintiff is informed and believes, and based thereon alleges, that
19 Defendants knew or should have known that Plaintiff and the other class members were
20 entitled to receive all rest periods or payment of one additional hour of pay at Plaintiff's
21 and the other class member's regular rate of pay when a rest period was missed, and they
22 did not receive all rest periods or payment of one additional hour of pay at Plaintiff's and
23 the other class members' regular rate of pay when a rest period was missed.

24 38. Plaintiff is informed and believes, and based thereon alleges, that
25 Defendants knew or should have known that Plaintiff and the other class members were
26 entitled to receive at least minimum wages for compensation and that they were not
27 receiving at least minimum wages for all hours worked.

28 39. Plaintiff is informed and believes, and based thereon alleges, that

1 Defendants knew or should have known that Plaintiff and the other class members were
2 entitled to receive all wages owed to them upon discharge or resignation, including
3 overtime and minimum wages and meal and rest period premiums, and they did not, in
4 fact, receive all such wages owed to them at the time of their discharge or resignation.

5 40. Plaintiff is informed and believes, and based thereon alleges, that
6 Defendants knew or should have known that Plaintiff and the other class members were
7 entitled to receive all wages owed to them during their employment. Plaintiff and the
8 other class members did not receive payment of all wages, including overtime and
9 minimum wages and meal and rest period premiums, within any time permissible under
10 California Labor Code section 204.

11 41. Plaintiff is informed and believes, and based thereon alleges, that
12 Defendants knew or should have known that Plaintiff and the other class members were
13 entitled to receive complete and accurate wage statements in accordance with California
14 law, but, in fact, they did not receive complete and accurate wage statements from
15 Defendants. The deficiencies included, *inter alia*, the failure to include the total number
16 of hours worked by Plaintiff and the other class members.

17 42. Plaintiff is informed and believes, and based thereon alleges, that
18 Defendants knew or should have known that Defendants had to keep complete and
19 accurate payroll records for Plaintiff and the other class members in accordance with
20 California law, but, in fact, did not keep complete and accurate payroll records.

21 43. Plaintiff is informed and believes, and based thereon alleges, that
22 Defendants knew or should have known that Plaintiff and the other class members were
23 entitled to reimbursement for necessary business-related expenses.

24 44. Plaintiff is informed and believes, and based thereon alleges, that
25 Defendants knew or should have known that they had a duty to compensate Plaintiff and
26 the other class members pursuant to California law, and that Defendants had the financial
27 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do
28 so, and falsely represented to Plaintiff and the other class members that they were properly

1 denied wages, all in order to increase Defendants' profits.

2 45. During the relevant time period, Defendants failed to pay overtime wages to
3 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the
4 other class members were required to work more than eight (8) hours per day and/or forty
5 (40) hours per week without overtime compensation for all overtime hours worked.

6 46. During the relevant time period, Defendants failed to provide all requisite
7 uninterrupted meal and rest periods to Plaintiff and the other class members.

8 47. During the relevant time period, Defendants failed to pay Plaintiff and the
9 other class members at least minimum wages for all hours worked

10 48. During the relevant time period, Defendants failed to pay Plaintiff and the
11 other class members all wages owed to them upon discharge or resignation.

12 49. During the relevant time period, Defendants failed to pay Plaintiff and the
13 other class members all wages within any time permissible under California law,
14 including, *inter alia*, California Labor Code section 204.

15 50. During the relevant time period, Defendants failed to provide complete or
16 accurate wage statements to Plaintiff and the other class members.

17 51. During the relevant time period, Defendants failed to keep complete or
18 accurate payroll records for Plaintiff and the other class members.

19 52. During the relevant time period, Defendants failed to reimburse Plaintiff
20 and the other class members for all necessary business-related expenses and costs.

21 53. During the relevant time period, Defendants failed to properly compensate
22 Plaintiff and the other class members pursuant to California law in order to increase
23 Defendants' profits.

24 54. California Labor Code section 218 states that nothing in Article 1 of the
25 Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages or
26 penalty due to him [or her] under this article."

27 //

28 //

1 **FIRST CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 510 and 1198)**

3 **(Against GHIRARDELLI CHOCOLATE COMPANY and DOES 1 through 100)**

4 55. Plaintiff incorporates by reference the allegations contained in Paragraphs 1
5 through 54, and each and every part thereof with the same force and effect as though fully
6 set forth herein.

7 56. California Labor Code section 1198 and the applicable Industrial Welfare
8 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
9 compensating them at a rate of pay either time-and-one-half or two-times that person’s
10 regular rate of pay, depending on the number of hours worked by the person on a daily or
11 weekly basis.

12 57. Specifically, the applicable IWC Wage Order provides that Defendants are
13 and were required to pay Plaintiff and the other class members employed by Defendants,
14 and working more than eight (8) hours in a day or more than forty (40) hours in a
15 workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8)
16 hours in a day or more than forty (40) hours in a workweek.

17 58. The applicable IWC Wage Order further provides that Defendants are and
18 were required to pay Plaintiff and the other class members overtime compensation at a rate
19 of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in
20 a day.

21 59. California Labor Code section 510 codifies the right to overtime
22 compensation at one-and-one-half times the regular hourly rate for hours worked in excess
23 of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours
24 worked on the seventh day of work, and to overtime compensation at twice the regular
25 hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight
26 (8) hours in a day on the seventh day of work.

27 60. During the relevant time period, Plaintiff and the other class members
28 worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a

1 week.

2 61. During the relevant time period, Defendants intentionally and willfully
3 failed to pay overtime wages owed to Plaintiff and the other class members.

4 62. Defendants' failure to pay Plaintiff and the other class members the unpaid
5 balance of overtime compensation, as required by California laws, violates the provisions
6 of California Labor Code sections 510 and 1198, and is therefore unlawful.

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

10 **SECOND CAUSE OF ACTION**

11 **(Violation of California Labor Code §§ 226.7 and 512(a))**

12 **(Against GHIRARDELLI CHOCOLATE COMPANY and DOES 1 through 100)**

13 64. Plaintiff incorporates by reference the allegations contained in paragraphs 1
14 through 63, and each and every part thereof with the same force and effect as though fully
15 set forth herein.

16 65. At all relevant times, the IWC Order and California Labor Code sections
17 226.7 and 512(a) were applicable to Plaintiff's and the other class members' employment
18 by Defendants.

19 66. At all relevant times, California Labor Code section 226.7 provides that no
20 employer shall require an employee to work during any meal or rest period mandated by
21 an applicable order of the California IWC.

22 67. At all relevant times, the applicable IWC Wage Order and California Labor
23 Code section 512(a) provide that an employer may not require, cause or permit an
24 employee to work for a work period of more than five (5) hours per day without providing
25 the employee with a meal period of not less than thirty (30) minutes, except that if the total
26 work period per day of the employee is no more than six (6) hours, the meal period may be
27 waived by mutual consent of both the employer and employee.

28 68. At all relevant times, the applicable IWC Wage Order and California Labor

1 Code section 512(a) further provide that an employer may not require, cause or permit an
2 employee to work for a work period of more than ten (10) hours per day without providing
3 the employee with a second uninterrupted meal period of not less than thirty (30) minutes,
4 except that if the total hours worked is no more than twelve (12) hours, the second meal
5 period may be waived by mutual consent of the employer and the employee only if the
6 first meal period was not waived.

7 69. During the relevant time period, Plaintiff and the other class members who
8 were scheduled to work for a period of time no longer than six (6) hours, and who did not
9 waive their legally-mandated meal periods by mutual consent, were required to work for
10 periods longer than five (5) hours without an uninterrupted meal period of not less than
11 thirty (30) minutes and/or rest period.

12 70. During the relevant time period, Plaintiff and the other class members who
13 were scheduled to work for a period of time in excess of six (6) hours were required to
14 work for periods longer than five (5) hours without an uninterrupted meal period of not
15 less than thirty (30) minutes and/or rest period.

16 71. During the relevant time period, Defendants intentionally and willfully
17 required Plaintiff and the other class members to work during meal periods and failed to
18 compensate Plaintiff and the other class members the full meal period premium for work
19 performed during meal periods.

20 72. During the relevant time period, Defendants failed to pay Plaintiff and the
21 other class members the full meal period premium due pursuant to California Labor Code
22 section 226.7.

23 73. Defendants' conduct violates applicable IWC Wage Order and California
24 Labor Code sections 226.7 and 512(a).

25 74. Pursuant to applicable IWC Wage Order and California Labor Code section
26 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one
27 additional hour of pay at the employee's regular rate of compensation for each work day
28 that the meal or rest period is not provided.

- 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

2

3

4
5
6

789

10
11
12

13
14
15
16
17
18

19
20
21

22
23
24

25
26
27

28

1 Labor Code section 226.7.

2 83. Pursuant to the applicable IWC Wage Orders and California Labor Code
3 section 226.7(c), Plaintiff and the other class members are entitled to recover from
4 Defendants one additional hour of pay at the employees' regular hourly rate of
5 compensation for each work day that the rest period was not provided.

6 **FOURTH CAUSE OF ACTION**

7 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

8 **(Against GHIRARDELLI CHOCOLATE COMPANY and DOES 1 through 100)**

9 84. Plaintiff incorporates by reference the allegations contained in paragraphs 1
10 through 83, and each and every part thereof with the same force and effect as though fully
11 set forth herein.

12 85. At all relevant times, California Labor Code sections 1194, 1197, and
13 1197.1 provide that the minimum wage to be paid to employees, and the payment of a
14 lesser wage than the minimum so fixed is unlawful.

15 86. During the relevant time period, Defendants failed to pay minimum wage to
16 Plaintiff and the other class members as required, pursuant to California Labor Code
17 sections 1194, 1197, and 1197.1.

18 87. Defendants' failure to pay Plaintiff and the other class members the
19 minimum wage as required violates California Labor Code sections 1194, 1197, and
20 1197.1. Pursuant to those sections Plaintiff and the other class members are entitled to
21 recover the unpaid balance of their minimum wage compensation as well as interest, costs,
22 and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully
23 unpaid and interest thereon.

24 88. Pursuant to California Labor Code section 1197.1, Plaintiff and the other
25 class members are entitled to recover a penalty of \$100.00 for the initial failure to timely
26 pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each
27 employee minimum wages.

28 89. Pursuant to California Labor Code section 1194.2, Plaintiff and the other

1 class members are entitled to recover liquidated damages in an amount equal to the wages
2 unlawfully unpaid and interest thereon.

3 **FIFTH CAUSE OF ACTION**

4 **(Violation of California Labor Code §§ 201 and 202)**

5 **(Against GHIRARDELLI CHOCOLATE COMPANY and DOES 1 through 100)**

6 90. Plaintiff incorporates by reference the allegations contained in paragraphs 1
7 through 89, and each and every part thereof with the same force and effect as though fully
8 set forth herein.

9 91. At all relevant times herein set forth, California Labor Code sections 201
10 and 202 provide that if an employer discharges an employee, the wages earned and unpaid
11 at the time of discharge are due and payable immediately, and if an employee quits his or
12 her employment, his or her wages shall become due and payable not later than seventy-two
13 (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his
14 or her intention to quit, in which case the employee is entitled to his or her wages at the
15 time of quitting.

16 92. During the relevant time period, Defendants intentionally and willfully
17 failed to pay Plaintiff and the other class members who are no longer employed by
18 Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving
19 Defendants' employ.

20 93. Defendants' failure to pay Plaintiff and the other class members who are no
21 longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72)
22 hours of their leaving Defendants' employ, is in violation of California Labor Code
23 sections 201 and 202.

24 94. California Labor Code section 203 provides that if an employer willfully
25 fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the
26 employee shall continue as a penalty from the due date thereof at the same rate until paid
27 or until an action is commenced; but the wages shall not continue for more than thirty (30)
28 days.

1 95. Plaintiff and the other class members are entitled to recover from
2 Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30)
3 day maximum pursuant to California Labor Code section 203.

4 **SIXTH CAUSE OF ACTION**

5 **(Violation of California Labor Code § 204)**

6 **(Against GHIRARDELLI CHOCOLATE COMPANY and DOES 1 through 100)**

7 96. Plaintiff incorporates by reference the allegations contained in paragraphs 1
8 through 95, and each and every part thereof with the same force and effect as though fully
9 set forth herein.

10 97. At all times herein set forth, California Labor Code section 204 provides
11 that all wages earned by any person in any employment between the 1st and 15th days,
12 inclusive, of any calendar month, other than those wages due upon termination of an
13 employee, are due and payable between the 16th and the 26th day of the month during
14 which the labor was performed.

15 98. At all times herein set forth, California Labor Code section 204 provides
16 that all wages earned by any person in any employment between the 16th and the last day,
17 inclusive, of any calendar month, other than those wages due upon termination of an
18 employee, are due and payable between the 1st and the 10th day of the following month.

19 99. At all times herein set forth, California Labor Code section 204 provides
20 that all wages earned for labor in excess of the normal work period shall be paid no later
21 than the payday for the next regular payroll period

22 100. During the relevant time period, Defendants intentionally and willfully
23 failed to pay Plaintiff and the other class members all wages due to them, within any time
24 period permissible under California Labor Code section 204.

25 101. Plaintiff and the other class members are entitled to recover all remedies
26 available for violations of California Labor Code section 204.

27 //

28 //

1 **SEVENTH CAUSE OF ACTION**

2 **(Violation of California Labor Code § 226(a))**

3 **(Against GHIRARDELLI CHOCOLATE COMPANY and DOES 1 through 100)**

4 102. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 101, and each and every part thereof with the same force and effect as though
6 fully set forth herein.

7 103. At all material times set forth herein, California Labor Code section 226(a)
8 provides that every employer shall furnish each of his or her employees an accurate
9 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
10 the employee, (3) the number of piece-rate units earned and any applicable piece rate if the
11 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions
12 made on written orders of the employee may be aggregated and shown as one item, (5) net
13 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
14 name of the employee and his or her social security number, (8) the name and address of
15 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the
16 pay period and the corresponding number of hours worked at each hourly rate by the
17 employee. The deductions made from payments of wages shall be recorded in ink or other
18 indelible form, properly dated, showing the month, day, and year, and a copy of the
19 statement or a record of the deductions shall be kept on file by the employer for at least
20 three years at the place of employment or at a central location within the State of
21 California.

22 104. Defendants have intentionally and willfully failed to provide Plaintiff and
23 the other class members with complete and accurate wage statements. The deficiencies
24 include, but are not limited to: the failure to include the total number of hours worked by
25 Plaintiff and the other class members.

26 105. As a result of Defendants' violation of California Labor Code section
27 226(a), Plaintiff and the other class members have suffered injury and damage to their
28 statutorily-protected rights.

1 106. More specifically, Plaintiff and the other class members have been injured
2 by Defendants' intentional and willful violation of California Labor Code section 226(a)
3 because they were denied both their legal right to receive, and their protected interest in
4 receiving, accurate and itemized wage statements pursuant to California Labor Code
5 section 226(a).

6 107. Plaintiff and the other class members are entitled to recover from
7 Defendants the greater of their actual damages caused by Defendants' failure to comply
8 with California Labor Code section 226(a), or an aggregate penalty not exceeding four
9 thousand dollars per employee.

10 108. Plaintiff and the other class members are also entitled to injunctive relief to
11 ensure compliance with this section, pursuant to California Labor Code section 226(h).

12 **EIGHTH CAUSE OF ACTION**

13 **(Violation of California Labor Code § 1174(d))**

14 **(Against GHIRARDELLI CHOCOLATE COMPANY and DOES 1 through 100)**

15 109. Plaintiff incorporates by reference the allegations contained in paragraphs 1
16 through 108, and each and every part thereof with the same force and effect as though
17 fully set forth herein.

18 110. Pursuant to California Labor Code section 1174(d), an employer shall keep,
19 at a central location in the state or at the plants or establishments at which employees are
20 employed, payroll records showing the hours worked daily by and the wages paid to, and
21 the number of piece-rate units earned by and any applicable piece rate paid to, employees
22 employed at the respective plants or establishments. These records shall be kept in
23 accordance with rules established for this purpose by the commission, but in any case shall
24 be kept on file for not less than two years.

25 111. Defendants have intentionally and willfully failed to keep accurate and
26 complete payroll records showing the hours worked daily and the wages paid, to Plaintiff
27 and the other class members.

28 112. As a result of Defendants' violation of California Labor Code section

1 1174(d), Plaintiff and the other class members have suffered injury and damage to their
2 statutorily-protected rights.

3 113. More specifically, Plaintiff and the other class members have been injured
4 by Defendants' intentional and willful violation of California Labor Code section 1174(d)
5 because they were denied both their legal right and protected interest, in having available,
6 accurate and complete payroll records pursuant to California Labor Code section 1174(d).

7 **NINTH CAUSE OF ACTION**

8 **(Violation of California Labor Code §§ 2800 and 2802)**

9 **(Against GHIRARDELLI CHOCOLATE COMPANY and DOES 1 through 100)**

10 114. Plaintiff incorporates by reference the allegations contained in paragraphs 1
11 through 113, and each and every part thereof with the same force and effect as though
12 fully set forth herein.

13 115. Pursuant to California Labor Code sections 2800 and 2802, an employer
14 must reimburse its employee for all necessary expenditures incurred by the employee in
15 direct consequence of the discharge of his or her job duties or in direct consequence of his
16 or her obedience to the directions of the employer.

17 116. Plaintiff and the other class members incurred necessary business-related
18 expenses and costs that were not fully reimbursed by Defendants.

19 117. Defendants have intentionally and willfully failed to reimburse Plaintiff and
20 the other class members for all necessary business-related expenses and costs.

21 118. Plaintiff and the other class members are entitled to recover from
22 Defendants their business-related expenses and costs incurred during the course and scope
23 of their employment, plus interest accrued from the date on which the employee incurred
24 the necessary expenditures at the same rate as judgments in civil actions in the State of
25 California.

26 ///

27 ///

28 ///

1 **TENTH CAUSE OF ACTION**

2 **(Violation of California Business & Professions Code §§ 17200, et seq.)**

3 **(Against GHIRARDELLI CHOCOLATE COMPANY and DOES 1 through 100)**

4 119. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 118, and each and every part thereof with the same force and effect as though
6 fully set forth herein.

7 120. Defendants' conduct, as alleged herein, has been, and continues to be,
8 unfair, unlawful and harmful to Plaintiff, other class members, to the general public, and
9 Defendants' competitors. Accordingly, Plaintiff seeks to enforce important rights
10 affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

11 121. Defendants' activities as alleged herein are violations of California law, and
12 constitute unlawful business acts and practices in violation of California Business &
13 Professions Code section 17200, *et seq.*

14 122. A violation of California Business & Professions Code section 17200, et
15 seq. may be predicated on the violation of any state or federal law. In this instant case,
16 Defendants' policies and practices of requiring employees, including Plaintiff and the
17 other class members, to work overtime without paying them proper compensation violate
18 California Labor Code sections 510 and 1198. Additionally, Defendants' policies and
19 practices of requiring employees, including Plaintiff and the other class members, to work
20 through their meal and rest periods without paying them proper compensation violate
21 California Labor Code sections 226.7 and 512(a). Defendants' policies and practices of
22 failing to pay minimum wages violate California Labor Code sections 1194, 1197, and
23 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to
24 Plaintiff and the other class members violate California Labor Code sections 201, 202 and
25 204. Defendants also violated California Labor Code sections 226(a), 1174(d), 2800 and
26 2802.

27 123. As a result of the herein described violations of California law, Defendants
28 unlawfully gained an unfair advantage over other businesses.

1 124. Plaintiff and the other class members have been personally injured by
2 Defendants' unlawful business acts and practices as alleged herein, including but not
3 necessarily limited to the loss of money and/or property.

4 125. Pursuant to California Business & Professions Code sections 17200, et seq.,
5 Plaintiff and the other class members are entitled to restitution of the wages withheld and
6 retained by Defendants during a period that commences four years prior to the filing of
7 this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure
8 section 1021.5 and other applicable laws; and an award of costs.

9 **ELEVENTH CAUSE OF ACTION**

10 **(Violation of California Labor Code §§ 2698, et seq.)**

11 **(Against GHIRARDELLI CHOCOLATE COMPANY and DOES 1 through 100)**

12 126. Plaintiff incorporates by reference the allegations contained in paragraphs 1
13 through 125, and each and every part thereof with the same force and effect as though
14 fully set forth herein.

15 127. PAGA expressly establishes that any provision of the California Labor
16 Code which provides for a civil penalty to be assessed and collected by the LWDA, or any
17 of its departments, divisions, commissions, boards, agencies or employees for a violation
18 of the California Labor Code, may be recovered through a civil action brought by an
19 aggrieved employee on behalf of himself or herself, and other current or former
20 employees.

21 128. Whenever the LWDA, or any of its departments, divisions, commissions,
22 boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil
23 action is authorized to exercise the same discretion, subject to the same limitations and
24 conditions, to assess a civil penalty.

25 129. Plaintiff and the other hourly-paid or non-exempt employees are "aggrieved
26 employees" as defined by California Labor Code section 2699(c) in that they are all
27 current or former employees of Defendants, and one or more of the alleged violations was
28 committed against them.

1 **Failure to Pay Overtime**

2 130. Defendants' failure to pay legally required overtime wages to Plaintiff and
3 the other aggrieved employees is in violation of the Wage Orders and constitutes a
4 violation of California Labor Code sections 510 and 1198.

5 **Failure to Provide Meal Periods**

6 131. Defendants' failure to provide legally required meal periods to Plaintiff and
7 the other aggrieved employees is in violation of the Wage Orders and constitutes a
8 violation of California Labor Code sections 226.7 and 512(a).

9 **Failure to Provide Rest Periods**

10 132. Defendants' failure to provide legally required rest periods to Plaintiff and
11 the other aggrieved employees is in violation of the Wage Orders and constitutes a
12 violation of California Labor Code section 226.7.

13 **Failure to Pay Minimum Wages**

14 133. Defendants' failure to pay legally required minimum wages to Plaintiff and
15 the other aggrieved employees is in violation of the Wage Orders and constitutes a
16 violation of California Labor Code sections 1194, 1197 and 1197.1.

17 **Failure to Timely Pay Wages Upon Termination**

18 134. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved
19 employees upon termination in accordance with Labor Code sections 201 and 202
20 constitutes a violation of California Labor Code sections 201 and 202.

21 **Failure to Timely Pay Wages During Employment**

22 135. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved
23 employees during employment in accordance with Labor Code section 204 constitutes a
24 violation of California Labor Code section 204.

25 **Failure to Provide Complete and Accurate Wage Statements**

26 136. Defendants' failure to provide complete and accurate wage statements to
27 Plaintiff and the other aggrieved employees in accordance with Labor Code section 226(a)
28 constitutes a violation of California Labor Code section 226(a).

1 **Failure to Keep Complete and Accurate Payroll Records**

2 137. Defendants' failure to keep complete and accurate payroll records relating
3 to Plaintiff and the other aggrieved employees in accordance with California Labor Code
4 section 1174(d) constitutes a violation of California Labor Code section 1174(d).

5 **Failure to Reimburse Necessary Business-Related Expenses and Costs**

6 138. Defendants' failure to reimburse Plaintiff and the other aggrieved
7 employees for necessary business-related expenses and costs in accordance with California
8 Labor Code sections 2800 and 2802 constitutes a violation of California Labor Code
9 sections 2800 and 2802.

10 **Failure to Pay All Vested Vacation Pay**

11 139. Defendants' failure to pay Plaintiff and the other aggrieved employees for
12 their vested vacation pay upon separation in accordance with California Labor Code
13 section 227.3 constitutes a violation of California Labor Code section 227.3.

14 **Failure to Provide Suitable Seating**

15 140. Defendants' failure to provide suitable seating to Plaintiff and the other
16 aggrieved employees constitutes a violation of California IWC Wage Order 1-2001.

17 141. Pursuant to California Labor Code section 2699, Plaintiff, individually, and
18 on behalf of all aggrieved employees, requests and is entitled to recover from Defendants
19 and each of them, business expenses, unpaid wages, and/or untimely wages according to
20 proof, interest, attorneys' fees and costs pursuant to California Labor Code section 218.5,
21 as well as all statutory penalties against Defendants, and each of them, including but not
22 limited to:

- 23 a. Penalties under California Labor Code section 2699 in the amount of
24 a hundred dollars (\$100) for each aggrieved employee per pay period
25 for the initial violation, and two hundred dollars (\$200) for each
26 aggrieved employee per pay period for each subsequent violation;
27 b. Penalties under California Code of Regulations Title 8 section 11010,
28 et seq. in the amount of fifty dollars (\$50) for each aggrieved

1 employee per pay period for the initial violation, and one hundred
2 dollars (\$100) for each aggrieved employee per pay period for each
3 subsequent violation;

4 c. Penalties under California Labor Code section 210 in addition to, and
5 entirely independent and apart from, any other penalty provided in the
6 California Labor Code in the amount of a hundred dollars (\$100) for
7 each aggrieved employee per pay period for the initial violation, and
8 two hundred dollars (\$200) for each aggrieved employee per pay
9 period for each subsequent violation; and

10 d. Any and all additional penalties and sums as provided by the
11 California Labor Code and/or other statutes.

12 142. Pursuant to California Labor Code section 2699(i), civil penalties recovered
13 by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the
14 Labor and Workforce Development Agency for the enforcement of labor laws and
15 education of employers and employees about their rights and responsibilities and twenty-
16 five percent (25%) to the aggrieved employees.

17 143. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees
18 and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other
19 applicable statute.

20 **TWELFTH CAUSE OF ACTION**

21 **(Violation of California Labor Code § 227.3)**

22 **(Against GHIRARDELLI CHOCOLATE COMPANY and DOES 1 through 100)**

23 144. Plaintiff incorporates by reference the allegations contained in paragraphs 1
24 through 125, and each and every part thereof with the same force and effect as though
25 fully set forth herein.

26 145. Pursuant to California Labor Code section 227.3, whenever a contract of
27 employment or employer policy provides for paid vacations, and an employee is
28 terminated without having taken off his vested vacation time, all vested vacation shall be

1 paid to him as wages at his final rate in accordance with such contract of employment or
2 employer policy respecting eligibility or time served. An employment contract or
3 employer policy may not provide for forfeiture of vested vacation time upon termination.

4 146. Defendants maintained a policy that provided hourly, non-exempt employees
5 with paid vacation.

6 147. Defendants have intentionally and willfully failed to pay Plaintiff and the
7 other class members for their vested vacation pay at separation.

8 148. Plaintiff and the other class members are entitled to recover from
9 Defendants their vested vacation pay incurred during the course and scope of their
10 employment, plus interest thereon at the same rate as judgments in civil actions in the
11 State of California.

12 **THIRTEENTH CAUSE OF ACTION**

13 **(Failure to Provide Suitable Seating)**

14 **(Against GHIRARDELLI CHOCOLATE COMPANY and DOES 1 through 100)**

15 149. Plaintiff incorporates by reference the allegations contained in paragraphs 1
16 through 125 and paragraphs 145 through 148, and each and every part thereof, with the
17 same force and effect as though fully set forth herein.

18 150. Wage Order 1-2001 states that “[a]ll working employees shall be provided
19 with suitable seats when the nature of the work reasonably permits the use of seats.”

20 151. The nature of the worked performed by Plaintiff and the other class members
21 reasonably permitted the use of seats in accordance with Wage Order 1-2001.

22 152. Defendants intentionally and willfully failed to provide Plaintiff and the class
23 members the suitable seating to which they were entitled.

24 153. Plaintiff and the other class members are entitled to recover from
25 Defendants the damages they incurred during the course and scope of their employment as
26 a result of not being provided suitable seating, plus interest thereon at the same rate as
27 judgments in civil actions in the State of California.

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff, individually, and on behalf of other members of the general public
3 similarly situated and on behalf of other aggrieved employees pursuant to the California
4 Private Attorney General Act, requests a trial by jury.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, individually and on behalf of all other members of the
7 general public similarly situated and on behalf of other aggrieved employees pursuant to
8 the California Private Attorney General Act, prays for relief and judgment against
9 Defendants, jointly and severally, as follows:

10 **Class Certification**

- 11 1. That this action be certified as a class action;
12 2. That Plaintiff be appointed as the representative of the Class;
13 3. That counsel for Plaintiff be appointed as Class Counsel; and
14 4. That Defendants provide to Class Counsel immediately the names and most
15 current/last known contact information (address, e-mail and telephone numbers)
16 of all class members.

17 **As to the First Cause of Action**

18 5. That the Court declare, adjudge and decree that Defendants violated
19 California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully
20 failing to pay all overtime wages due to Plaintiff and the other class members;

21 6. For general unpaid wages at overtime wage rates and such general and
22 special damages as may be appropriate;

23 7. For pre-judgment interest on any unpaid overtime compensation commencing
24 from the date such amounts were due;

25 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
26 California Labor Code section 1194;

27 9. For civil penalties pursuant to California Labor Code sections 2699(a), (f),
28 and (g); and

10. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

11. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

12. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

13. For all actual, consequential, and incidental losses and damages, according to proof;

14. For premium wages pursuant to California Labor Code section 226.7(c);

15. For pre-judgment interest on any unpaid wages from the date such amounts were due;

16. For reasonable attorneys' fees and costs of suit incurred herein;

17. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and (g); and

18. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action

19. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

20. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

21. For all actual, consequential, and incidental losses and damages, according to proof;

22. For premium wages pursuant to California Labor Code section 226.7(c);

1 23. For pre-judgment interest on any unpaid wages from the date such amounts
2 were due;

3 24. For civil penalties pursuant to California Labor Code sections 2699(a), (f),
4 and (g); and

5 25. For such other and further relief as the Court may deem just and proper.

6 **As to the Fourth Cause of Action**

7 26. That the Court declare, adjudge and decree that Defendants violated
8 California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum
9 wages to Plaintiff and the other class members;

10 27. For general unpaid wages and such general and special damages as may be
11 appropriate;

12 28. For statutory wage penalties pursuant to California Labor Code section
13 1197.1 for Plaintiff and the other class members in the amount as may be established
14 according to proof at trial;

15 29. For pre-judgment interest on any unpaid compensation from the date such
16 amounts were due;

17 30. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
18 California Labor Code section 1194(a);

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

20 32. For civil penalties pursuant to California Labor Code sections 2699(a), (f),
21 and (g); and

22 33. For such other and further relief as the Court may deem just and proper.

23 **As to the Fifth Cause of Action**

24 34. That the Court declare, adjudge and decree that Defendants violated
25 California Labor Code sections 201, 202, and 203 by willfully failing to pay all
26 compensation owed at the time of termination of the employment of Plaintiff and the other
27 class members no longer employed by Defendants;

28 35. For all actual, consequential, and incidental losses and damages, according to

1 proof;

2 36. For statutory wage penalties pursuant to California Labor Code section 203
3 for Plaintiff and the other class members who have left Defendants' employ;

4 37. For pre-judgment interest on any unpaid compensation from the date such
5 amounts were due;

6 38. For civil penalties pursuant to California Labor Code sections 2699(a), (f),
7 and (g); and

8 39. For such other and further relief as the Court may deem just and proper.

9 **As to the Sixth Cause of Action**

10 40. That the Court declare, adjudge and decree that Defendants violated
11 California Labor Code section 204 by willfully failing to pay all compensation owed at the
12 time required by California Labor Code section 204 to Plaintiff and the other class members;

13 41. For all actual, consequential, and incidental losses and damages, according to
14 proof;

15 42. For pre-judgment interest on any unpaid compensation from the date such
16 amounts were due;

17 43. For civil penalties pursuant to California Labor Code sections 2699(a), (f),
18 and (g); and

19 44. For such other and further relief as the Court may deem just and proper.

20 **As to the Seventh Cause of Action**

21 45. That the Court declare, adjudge and decree that Defendants violated the
22 record keeping provisions of California Labor Code section 226(a) and applicable IWC
23 Wage Orders as to Plaintiff and the other class members, and willfully failed to provide
24 accurate itemized wage statements thereto;

25 46. For actual, consequential and incidental losses and damages, according to
26 proof;

27 47. For statutory penalties pursuant to California Labor Code section 226(e);

28 48. For injunctive relief to ensure compliance with this section, pursuant to

1 California Labor Code section 226(h);

2 49. For civil penalties pursuant to California Labor Code sections 2699(a), (f),
3 and (g); and

4 50. For such other and further relief as the Court may deem just and proper.

5 **As to the Eighth Cause of Action**

6 51. That the Court declare, adjudge and decree that Defendants violated
7 California Labor Code section 1174(d) by willfully failing to keep accurate and complete
8 payroll records for Plaintiff and the other class members as required by California Labor
9 Code section 1174(d);

10 52. For actual, consequential and incidental losses and damages, according to
11 proof;

12 53. For statutory penalties pursuant to California Labor Code section 1174.5;

13 54. For civil penalties pursuant to California Labor Code sections 2699(a), (f),
14 and (g); and

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

16 **As to the Ninth Cause of Action**

17 56. That the Court declare, adjudge and decree that Defendants violated
18 California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and
19 the other class members for all necessary business-related expenses as required by
20 California Labor Code sections 2800 and 2802;

21 57. For actual, consequential and incidental losses and damages, according to
22 proof;

23 58. For the imposition of civil penalties and/or statutory penalties;

24 59. For reasonable attorneys' fees and costs of suit incurred herein;

25 60. For civil penalties pursuant to California Labor Code sections 2699(a), (f),
26 and (g); and

27 61. For such other and further relief as the Court may deem just and proper.

28

- 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

62. That the Court decree, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the other class members, failing to pay Plaintiff's and the other class members' wages timely as required by California Labor Code section 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800 and 2802.

63. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-judgment interest from the day such amounts were due and payable;

64. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, *et seq.*;

65. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

66. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, *et seq.*; and

67. For such other and further relief as the Court may deem just and proper.

21
22
23
24
25
26
27
28

68. For civil penalties and wages pursuant to California Labor Code sections 2699(a), (f) and (g) and 558 plus costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802; and

69. For such other and further relief as the Court may deem equitable and appropriate.

As to the Twelfth Cause of Action

70. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 227.3 by willfully failing to pay Plaintiff and the other class members for their vested vacation pay at separation;

71. For actual, consequential and incidental losses and damages, according to proof;

72. For the imposition of civil penalties and/or statutory penalties;

73. For reasonable attorneys' fees and costs of suit incurred herein;

74. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and (g); and

75. For such other and further relief as the Court may deem just and proper.

As to the Thirteenth Cause of Action

76. That the Court declare, adjudge and decree that Defendants violated California IWC Wage Order 1-2001 by willfully failing to provide Plaintiff and the other class members with suitable seating during the course of their employment;

77. For actual, consequential and incidental losses and damages, according to proof;

78. For the imposition of civil penalties and/or statutory penalties;

79. For reasonable attorneys' fees and costs of suit incurred herein;

80. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and (g); and

81. For such other and further relief as the Court may deem just and proper.

Dated: _____

GUNDZIK GUNDZIK HEEGER LLP

By: 

Aaron C. Gundzik
Attorney for Plaintiff Romello Sheppard,
individually and on behalf of all others situated
similarly

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 eighteen (18) and not a party to the within action. My business address is 14011 Ventura Blvd., Suite 206E, Sherman Oaks, CA 91423.

On July 18, 2024, I served the following document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES & ENFORCEMENT UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE § 2698, ET SEQ.

on the interested parties in this action:

(X) by serving () the original **(X)** true copies thereof as follows:

Please see attached service list

() BY MAIL I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.	() BY FACSIMILE TRANSMISSION I caused said document(s) to be transmitted by facsimile transmission to the name(s) and facsimile telephone number(s) of the person(s) named on the attached service list. The facsimile machine telephone number of the sending facsimile machine was (818) 918-2316. A transmission report was issued by the sending facsimile machine confirming that the transmission was completed without error. A true and correct copy of said transmission report is attached hereto.
() BY OVERNIGHT DELIVERY Said document was placed in an envelope designated by the express service center and placed for collection in a box regularly maintained by said carrier with whom we have a direct billing account, to be delivered to the office of the addressee listed above on the next business day.	(XX) BY ELECTRONIC TRANSMISSION I caused the above-described document to be electronically served via email to the names and email addresses listed on the Service List attached hereto.

(X) STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

() FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

(X) EXECUTED on July 18, 2024, at Sherman Oaks, California.



Aaron Gundzik

SERVICE LIST

MICHAEL J. NADER
ALEXANDRA M. ASTERLIN
**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**
500 Capitol Mall, Suite 2500
Sacramento, CA 95814
Email: michael.nader@ogletree.com
alexandra.asterlin@ogletree.com

Attorneys for Defendants

JOANNA GHOSH
ELIZABETH PARKER-FAWLEY
EDWIN AIWAZIAN
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020
Fax: (818) 265-1021
Email: joanna@calljustice.com
elizabeth@calljustice.com
edwin@calljustice.com
ss@calljustice.com
lindsey@calljustice.com
e-service@calljustice.com

Attorneys for Plaintiff