

MIRZAYAN LAW, APLC
Natalie Mirzayan, Esq., SBN 272217
26632 Towne Centre Drive, Suite 300
Foothill Ranch, California 92610
Telephone: (949) 285-3550
mirzayanlaw@outlook.com

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CASE NO.: 23STCV01758

ASSIGNED FOR ALL PURPOSES TO:

**CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, AND
RESTITUTION:**

- 1. FAILURE TO PAY MINIMUM
WAGE (VIOLATION OF CAL.
LABOR CODE §§ 1197, 1194, 1194.2,
1197.1);**
- 2. FAILURE TO PAY OVERTIME
WAGES (VIOLATION OF CAL.
LABOR CODE §§ 510, 1194, 1198;
IWC WAGE ORDER NO.5.)**
- 3. FAILURE TO PAY FOR
REPORTING TIME PAY;**
- 4. FAILURE TO PROVIDE MEAL
PERIODS (VIOLATION OF IWC
WAGE ORDER 5-2001, CAL. LAB.
CODE §§ 226.7, 512);**
- 5. FAILURE TO AUTHORIZE AND
PERMIT REST BREAKS
(VIOLATION OF IWC WAGE
ORDER 5-2001, CAL. LABOR
CODE § 226.7);**

-) 6. WAITING TIME PENALTIES
(VIOLATION OF CAL. LABOR
CODE § § 201, 202, 203);
) 7. FAILURE TO PROVIDE
) ACCURATE ITEMIZED WAGE
) STATEMENTS (VIOLATION OF
) CAL. LABOR CODE § 226);
) 8. FAILURE TO PROVIDE
) PERSONNEL RECORDS (CAL. LAB
CODE § 1198.5);
) 9. GENDER DISCRIMINATION IN
) VIOLATION OF FEHA;
) 10. FAILURE TO PREVENT
) DISCRIMINATION IN VIOLATION
) OF FEHA;
) 11. WRONGFUL DISCHARGE IN
) VIOLATION OF PUBLIC POLICY;
) 12. INJUNCTIVE RELIEF;
) 13. VIOLATION OF BUSINESS &
) PROFESSIONS CODE §17200;
) 14. PENALTIES, PURSUANT TO
) LABOR CODE § 2699 FOR
) VIOLATIONS OF LABOR CODE §§
) 1182.12, 1197, 1194, 1194.2, 1197.1,
) 510, 1198, 558, 226.7, 512, 201, 202,
) 203, 204, 226, 226.3, 245.5, 246, 246.5,
) 247, 247.5, 248.5, 249, 2810.5, and
) 1198.5.
)
) [UNLIMITED JURISDICTION]
)
) DEMAND FOR JURY TRIAL

INTRODUCTION

1. This is a class action and Representative Action, pursuant to California Code of Civil Procedure § 382 and the Labor Code Private Attorney General Act 2004 (“PAGA”), California Labor Code § 2698 *et seq.* brought by Plaintiff DANIEL MITCHELL, (“PLAINTIFF”) on behalf of himself and all others similarly situated current and former employees in the State of California, and the general public (hereinafter the “CLASS” or “PLAINTIFFS”) hereby alleges and complaints against defendants BELLA SERA TRATTORIA, INC., (“BSTI”); JULIE LYNN GENTILE-SOLDO; (“GENTILE”); JOSEPH VINCENT BORRELLI (“BORRELLI”); and DOES 1 to 50, inclusive (collectively referred to as “DEFENDANTS”) to recover, damages, restitution, injunctive relief, civil and statutory penalties for failure to comply with various California Labor Code sections and the

1 Industrial Welfare Commission Wage Orders 5-2001, (“IWO Wage Order 5”), interest, attorneys’
2 fees, and costs and any other appropriate relief for DEFENDANTS’ violations of laws.

3 **THE PARTIES**

4 **A. Plaintiff**

5 2. PLAINTIFF is an individual and is a resident of the State of California. PLAINTIFF is a
6 former employee of DEFENDANTS who began his employment with DEFENDANTS from
7 approximately December 2, 2021, until approximately March 7, 2022 and held the position of a
8 Server at 422 S Myrtle Ave, Monrovia, CA 91016.

9 3. PLAINTIFF and the CLASS suffered various violations of California Labor Code during
10 their employment with DEFENDANTS as alleged herein. PLAINTIFF reserves the right to name
11 additional class representatives.

12 4. PLAINTIFF brings this action on behalf of himself and all current and former employees
13 of DEFENDANTS, who hold the position(s) of Server and/or similar positions for a period of time
14 within the four (4) years preceding the filing of this action who were “non-exempt” hourly paid
15 employees of DEFENDANTS in the state of California.

16 **B. Defendants**

17 5. At all relevant times alleged herein, PLAINTIFFS are informed and believe, and based
18 thereon allege that Defendant BELLA SERA TRATTORIA, INC., (“BSTI”), is a corporation
19 organized and existing under the laws of the State of California and is and was at all times mentioned
20 herein qualified and registered to do business throughout California.

21 6. At all relevant times alleged herein, PLAINTIFFS are informed and believe, and based
22 thereon allege that Defendant JULIE LYNN GENTILE-SOLDO (“GENTILE”) is a resident of the
23 State of California, County of Los Angeles. PLAINTIFFS are informed and believe, and based
24 thereon allege, that Defendant GENTILE is the Chief Financial Officer (“CFO”) that directly
25 oversees and controls BSTI’s operation that exercised significant control over DEFENDANTS’
26 employees overall working conditions.

1 7. PLAINTIFFS are informed and believe, and based thereon allege, that GENTILE
2 permitted, authorized, approved, and ratified the wrongful acts and practices against the PLAINTIFF
3 and the CLASS overseeing BSTI' operation.

4 8. GENTILE had the authority to hire, write-up, and terminate the PLAINTIFF and the other
5 CLASS members; to set work rules and conditions governing PLAINTIFF and the other CLASS
6 members' employment; and to supervise their daily employment activities.

7 9. At all relevant times alleged herein, PLAINTIFFS are informed and believe, and based
8 thereon allege that Defendant JOSEPH VINCENT BORRELLI ("BORRELLI") is a resident of the
9 State of California, County of Los Angeles. PLAINTIFFS are informed and believe, and based
10 thereon allege, that Defendant BORRELLI is the Chief Executive Officer ("CEO") that directly
11 oversees and controls BSTI's operation that exercised significant control over DEFENDANTS'
12 employees overall working conditions.

13 10. PLAINTIFFS are informed and believe, and based thereon allege, that BORRELLI
14 permitted, authorized, approved, and ratified the wrongful acts and practices against the PLAINTIFF
15 and the CLASS overseeing BSTI's operation.

16 11. BORRELLI had the authority to hire, write-up, and terminate the PLAINTIFF and the
17 other CLASS members; to set work rules and conditions governing PLAINTIFF and the other
18 CLASS members' employment; and to supervise their daily employment activities.

19 12. PLAINTIFFS are unaware of the true names and capacities, whether individual,
20 corporate, associate, or otherwise of the defendants sued herein as DOES 1 through 50, inclusive,
21 and for that reason PLAINTIFFS sue said defendants by such fictitious names pursuant to § 474 of
22 the California Code of Civil Procedure. PLAINTIFF will file and serve an amendment to this
23 Complaint alleging the true names and capacities of these fictitiously named defendants when
24 PLAINTIFF knows such true names and capacities. PLAINTIFFS are informed and believe, and
25 based thereon allege, that each of the DOE Defendants are in some manner liable to PLAINTIFFS
26 for the events and actions alleged herein. BSTI, GENTILE, BORRELLI, and DOES 1 through 50,
27 inclusive, are referred to collectively herein as "DEFENDANTS".
28

1 13. PLAINTIFFS are informed and believe, and based thereon allege that at all times herein
2 mentioned, each of the DEFENDANTS, whether named or fictitious, exercised sufficient authority
3 over the terms and conditions of PLAINTIFFS' employment for them to be liable as the "employer"
4 and/or "person" for the claims asserted in this Complaint, including but not limited to, under Labor
5 Code § 558.1 and §18, who violated or caused to be violated California Labor Code or any provision
6 regulating hours and days of work in any order of the Industrial Welfare Commissions, as such are
7 subject to penalties for each underpaid employee, which includes an amount equal to the underpaid
8 wages, which shall be paid to each affected employee, as set forth in Labor Code § 558.

9 14. Labor Code section 1182.12 defines "employer" as: "any person who directly or
10 indirectly, or through an agent or any other person, employs or exercises control over the wages,
11 hours, or working conditions of any person [and] includes the state, political subdivisions of the state,
12 and municipalities."

13 15. Specifically, each of the Defendants BSTI, GENTILE, and BORRELLI was an
14 "employer" as the term is expressly defined by the IWC Order 5-2001 [8CCR § 11050], subdivision
15 2(H) "any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through
16 an agent or any other person, employs or exercises control over the wages, hours, or working
17 conditions of any person." A "person" as defined by California Labor Code § 18 "means any person,
18 association, organization, partnership, business trust, limited liability company, or corporation.

19 16. DEFENDANTS, including but not limited to, GENTILE, and BORRELLI's conduct
20 forms significant basis for the PLAINTIFFS' claims alleged herein. GENTILE, and BORRELLI are
21 sued individually pursuant to Cal. Labor Code § 558, and 588.1 which defines "employer or other
22 person acting on behalf of an employer" to include a "natural person who is an owner, director,
23 officer, or managing agent of the employer." Each of the Defendants GENTILE, and BORRELLI
24 is "director, officer or managing agent of the employer."

25 17. Each of the defendants, BSTI, GENTILE, and BORRELLI is a "person" as defined in
26 California Labor Code § 2699(b), which is defined having "the same meaning as defined in Section
27 18."
28

1 18. Each of the defendants, GENTILE, and BORRELLI, in performing their duties, knew
2 that their actions were unlawful and intentionally acted anyway denying PLAINTIFFS their rights
3 under California law.

4 19. Furthermore, GENTILE, and BORRELLI are sued and liable individually for their own
5 unlawful conduct under Unfair Completion Law (“UCL”) wherein the individual need not be an
6 agent of an employer (or of the corporate defendants specifically) to be liable for conversion, or for
7 unfair competition. *See Manser v. Sierra Foothills Pub. Util. Dist.*, No. 1:08-cv-1250-LJO-SMS,
8 2008 WL 5114619, at *8 (E.D. Cal. Dec. 4, 2008) (“An individual may be liable for his or her own
9 conduct under the UCL.”)

10 20. Defendants GENTILE, and BORRELLI each violated or caused the violations alleged
11 herein because each created, implemented, directed and/or enforced DEFENDANTS’ employment
12 practices and policies.

13 21. Defendants GENTILE, and BORRELLI each created, set and/or implemented
14 DEFENDANTS’ policies, practices, and procedures, including but not limited to, payment of wages,
15 and meal and rest periods that resulted in the failure to pay PLAINTIFFS proper wages.

16 22. Defendants GENTILE, and BORRELLI each exercised day-to-day control over
17 PLAINTIFFS’ employment, controlled and authorized payroll transactions, and supervised BSTI’s
18 current and former employees.

19 23. Defendants GENTILE, and BORRELLI and each of them was responsible for creating,
20 implementing, and/or enforcing DEFENDANTS’ policies, practices, and procedures that caused the
21 violations described in this Complaint against PLAINTIFFS, including failing to pay and refusing to
22 authorize the payment of wages for all hours worked, the payment of overtime wages, meal and rest
23 premiums, and all wages due upon separation of employment.

24 24. PLAINTIFFS are informed and believe, and based thereon allege that at all times
25 relevant herein, each of the DEFENDANTS, whether named or fictitious, was an employer, was the
26 principle, agent, co-conspirator, partner, joint venturer, officer, director, controlling shareholder,
27 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of each
28 of the other DEFENDANTS named herein, and, in doing the acts and in carrying out the wrongful

1 conduct alleged herein, was engaged with some or all of the other DEFENDANTS in a joint
2 enterprise for profit, and bore such other relationships to some or all of the other DEFENDANTS so
3 as to be liable for their conduct with respect to the matters alleged in this Complaint.

4 25. At all times mentioned herein, PLAINTIFFS are further informed and believe and
5 thereon allege that each and every of the acts and omissions alleged herein were performed by, and/or
6 attributable to each of the DEFENDANTS, whether named or fictitious, each acting as agents and/or
7 employees, and/or under the directions and control of each of the other DEFENDANTS and acting
8 pursuant to and within the course and scope of the relationships alleged above, and that all relevant
9 times, each of the DEFENDANTS knew or should have known about, authorized, ratified, adopted,
10 approved, controlled, aided and abetted the conduct of all other DEFENDANTS.

11 26. PLAINTIFFS are informed and believe and thereupon allege that DEFENDANTS, and
12 each of them, exercised sufficient degree of control over PLAINTIFF and the CLASS to render each
13 of the DEFENDANTS the employer or joint employers of PLAINTIFF and the CLASS. Throughout
14 PLAINTIFFS employment, the DEFENDANTS assigned work to PLAINTIFFS and directed each
15 in the performance thereof, to which end PLAINTIFFS were required to report to each of the
16 DEFENDANTS on a regular basis and did so report. DEFENDANTS each had the authority to
17 control the terms and condition of PLAINTIFFS' employment; set work rules and conditions
18 governing PLAINTIFFS' employment; and to supervise their daily employment activities. As result
19 of sufficient authority and exercise of control over the terms and conditions of PLAINTIFFS
20 employment, DEFENDANTS, and each of them, are joint employers of PLAINTIFFS, and each of
21 them, is jointly and severally liable to PLAINTIFFS for the damages alleged herein.

22 27. As a direct and proximate result of the unlawful actions of DEFENDANTS,
23 PLAINTIFFS have suffered and continue to suffer from loss of earnings in amounts as yet
24 unascertained, but subject to proof at trial and within the jurisdiction of this Court.

25 28. At all relevant times herein, PLAINTIFFS were employed by DEFENDANTS under
26 employment agreements that were partly written, partly oral, and partly implied. In perpetrating the
27 acts and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant to and in
28 furtherance of their policies and practices of discriminating against employees on the basis of their

1 gender; not paying PLAINTIFFS for all hours worked, including overtime; failing to provide
2 compliant meal and rest periods; failing to provide accurate itemized wage statements; failure to
3 timely pay wages due upon termination of employment; and failing to properly maintain records and
4 produce them upon employees request.

5 29. By doing the unlawful acts alleged herein, DEFENDANTS decreased their
6 employment-related costs by systematically and intentionally refusing to comply with California law
7 and IWC Orders.

8 30. PLAINTIFF brings this lawsuit seeking injunction, restitution, and monetary relief
9 against DEFENDANTS on behalf of himself and all other current and former employees of
10 DEFENDANTS to recover, among other things, restitution, unpaid wages, interest, penalties,
11 liquidated damages, attorney's fees and costs pursuant to California Labor Code 201, 202, 203, 218.6,
12 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1194.2, 1197.1 and the Business and Professions Code
13 § 17200 *et seq.*

14 **JURISDICTION**

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

19 32. Venue is proper in this Court because, upon information and belief, DEFENDANTS
20 maintain offices, have agents, and/or transact business in the State of California, county of Los
21 Angeles. DEFENDANTS' illegal policies and practices which are the subject of this action were
22 also applied in the State of California, including the county of Los Angeles, and because records
23 relevant and related to this action are maintained in this county.

24 **PLAINTIFF EXHAUSTED HIS ADMINISTRATIVE REMEDIES**

25 33. PLAINTIFF met all the jurisdictional requirements of proceeding with claims for civil
26 penalties under the Labor Code Private Attorney's General Act ("PAGA"), codified at Labor Code,
27 Section 2698 *et seq.* by timely giving written notice in the manner required by Labor Code § 2699.3
28 at the time of filing. Specifically, on September 28, 2022, PLAINTIFF exhausted his administrative
remedies by notifying DEFENDANTS via certified U. S. Mail, and by online filing to Labor and

1 Workforce Development Agency (“LWDA”) (a true and correct copy is attached and incorporated
2 herein as Exhibit “1” and incorporated by reference). More than sixty-five days (65) days elapsed
3 after PLAINTIFF’S notification and PLAINTIFF’S counsel received no notice from LAWD stating
4 their intention to investigate or prosecute the claims. PLAINTIFF will amend the complaint to add
5 a cause of action for PAGA.

6 34. Therefore, PLAINTIFF alleges the right to proceed with all remedies provided by law
7 on PLAINTIFF’S Complaint herein, with civil and all statutory penalties which are collectible by
8 PLAINTIFFS under the provisions of Labor Code §§ 2698-2699.5, PAGA.

9 35. Additionally, on January 10, 2023, PLAINTIFF exhausted his administrative remedies
10 by filing a complaint with the California Department of Fair Employment and Housing (“DFEH”).
11 Notice of the Right to Sue letter was issued by the DFEH on January 10, 2023, a true and correct
12 copy is attached hereto as Exhibit “2” and incorporated by reference. Therefore, PLAINTIFF alleges
13 the right to proceed with all remedies provided by law on PLAINTIFF’S Complaint herein.

14 **FACTUAL BACKGROUND**

15 1. This is a Class Action brought pursuant to California Code of Civil Procedure §382,
16 California Business and Professions Code § 17200 et seq., and the PAGA, California Labor Code §
17 2698 et seq.; *Aris v. Superior Court* (2009) 46 Cal.4th 969, 980-981. PAGA permits an “aggrieved
18 employee” to bring a lawsuit on behalf of himself/herself and other current and former employees to
19 address an employer’s violations of the California Labor Code. PLAINTIFF is an aggrieved
20 employee, within the meaning of the statute, who brings this action on behalf of himself and other
21 current and former employees of DEFENDANTS to address DEFENDANTS’ violations of the
22 California Labor Code.

23 36. PLAINTIFF makes the allegations in this Complaint without any admission to any
24 particular allegation, PLAINTIFF bears the burden of pleading, proving, or persuading and
25 PLAINTIFF reserves all of PLAINTIFF’S rights to plead the alternative.

26 37. On or about December 2, 2021, DEFENDANTS jointly and severally, employed
27 PLAINTIFF as a Server, and paid him on hourly basis until his unlawful termination on March 7,
28 2022.

38. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS
engaged and continue to engage in a uniform policy and systematic scheme of wage abuse against

1 PLAINTIFFS. This scheme involved, *inter alia*, failing to pay PLAINTIFF and the CLASS
2 minimum and overtime wages, and failing to pay reporting time pay according to California Law.

3 39. DEFENDANTS also denied PLAINTIFF and the CLASS meal and rest breaks through
4 the imposition of work schedules that did not permit meal and rest breaks and/or the imposition of
5 work demands that did not permit meal or rest breaks. PLAINTIFF and the CLASS were unable to
6 complete their job requirements without working through meal and rest breaks and/or working before
7 and after their scheduled shifts. Additionally, PLAINTIFF and the CLASS' meal and rest breaks, if
8 taken, were frequently interrupted by DEFENDANTS' practice.

9 40. As a direct result of DEFENDANTS' work demands, policies, and procedures, and
10 directives, PLAINTIFF and the CLASS did not have the ability to regularly take a daily meal break,
11 much less a daily one-half hour uninterrupted meal period as is required by California law.
12 PLAINTIFF and the CLASS also did not take any rest breaks throughout the workday.

13 41. DEFENDANTS knew or should have known that PLAINTIFF and the CLASS routinely
14 worked through their meal and rest breaks, and before and after their scheduled shifts without
15 compensation.

16 42. DEFENDANTS knew or should have known that PLAINTIFF and the CLASS were
17 entitled to receive certain wages for overtime compensation, and that they were not receiving
18 overtime compensation.

19 43. DEFENDANTS knew or should have known that PLAINTIFF and the CLASS were
20 entitled to receive minimum wage, and that they were not receiving such compensation.

21 44. DEFENDANTS failed to compensate PLAINTIFF and the CLASS premium pay for
22 missed meal and rest break periods, equal to one additional hour of pay at PLAINTIFF'S and the
23 CLASS' regular rate of pay when a meal and/or a rest period was missed.

24 45. DEFENDANTS failed to pay PLAINTIFF and the CLASS their earned wages in timely
25 manner in accordance with California law.

26 **CLASS ACTION DESIGNATION**

27 46. PLAINTIFF brings this lawsuit as a class action under Cal. Code Civ. Proc. Section 382,
28 California Business and Professions Code § 17200 et seq., and the PAGA, California Labor Code §
2698 et seq., on behalf of himself and all persons within the class ("CLASS") as follows:

THE CLASS

47. All current and former employees, who were employed by DEFENDANTS in the State of California for a period of time within the four (4) years preceding the filing of this action until the time of trial, "THE RELEVANT TIME PERIOD," in the position of Server, or similar positions, who were subjected to DEFENDANTS' unlawful acts as stated herein.

48. PLAINTIFF reserves the right under Rule 3.765, California Rules of Court, to amend or modify the CLASS description with greater specificity or further division into subclasses or limitations to particular issues.

49. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed CLASS is easily ascertainable. This action is appropriately suited for a Class Action because:

50. **Ascertainable Class:** The CLASS is ascertainable in that its members may be identified and located using information contained in DEFENDANTS' personnel records.

51. **Numerosity:** The potential members of the CLASS as defined are so numerous that joinder of all members of the CLASS is impracticable. While the precise size of the CLASS has not been ascertained at this time, PLAINTIFF is informed and believes, and based thereon alleges, that DEFENDANTS currently employee, and during THE RELEVANT TIME PERIOD employed, at least 40 persons in the State of California who fall within the CLASS definition.

52. Accounting for employees' turnover during THE RELEVANT PERIOD necessarily increases this number. PLAINTIFFS allege that DEFENDANTS' employment records would provide information as to the number and location of members of the CLASS. Joinder of members of the CLASS is not practicable.

53. **Common Questions of Fact or Law:** This action involves questions of law and fact common to the CLASS that predominate over questions affecting only individual class members. The common questions of law and fact focuses on DEFENDANTS' systematic course of illegal practices and policies, which were applied to the entire CLASS in violation of the California Labor Code, IWC Orders, the California Business and Professions Code, which prohibits unfair business practices arising from such violations. These common questions of law and fact include, without limitations:

a. Whether DEFENDANTS' failure to pay minimum wages, without abatement or

1 reduction, in accordance with California Labor Code, was willful;

- 2 b. Whether DEFENDANTS required PLAINTIFF and the CLASS to work over eight (8)
3 hours per day and/or over forty (40) hours per week and failed to pay for all hours
4 worked;
- 5 c. Whether DEFENDANTS required PLAINTIFF and the CLASS to work over eight (8)
6 hours per day and/or over forty (40) hours per week and failed to pay the legally
7 required overtime compensation to PLAINTIFFS;
- 8 d. Whether DEFENDANTS deprived PLAINTIFF and the CLASS of meal periods or
9 required PLAINTIFF and the CLASS to work during meal periods without
10 compensation;
- 11 e. Whether DEFENDANTS deprived PLAINTIFF and the CLASS of rest periods or
12 required PLAINTIFF and the CLASS to work during rest periods without
13 compensation;
- 14 f. Whether DEFENDANTS failed to timely pay all wages due to PLAINTIFF and the
15 CLASS during their employment;
- 16 g. Whether DEFENDANTS failed to issue accurately itemized wage statements to
17 PLAINTIFF and the CLASS, in violation of Labor Code §§ 226(a);
- 18 h. Whether DEFENDANTS paid PLAINTIFFS their final wages beyond the time frames
19 set forth in Labor Code §§ 201-203;
- 20 i. Whether DEFENDANTS' conduct was willful or reckless;
- 21 j. Whether DEFENDANTS failed to properly record all hours worked;
- 22 k. Whether DEFENDANTS failed to properly pay for reporting time;
- 23 l. Whether DEFENDANTS engaged in unfair business practices in violation of California
24 Business & Professions Code section 17200, *et seq.*

25 54. **Typicality:** The claims of the PLAINTIFF are typical of the CLASS because
26 DEFENDANTS subjected all of their Servers to identical violations of the California Labor Code,
27 IWC Wage Order, and California Business and Professions Code by, *inter alia*, failing to pay
28 PLAINTIFFS for all hours worked; failing to pay PLAINTIFFS for minimum, overtime, and

1 reporting time wages; failing to properly maintain PLAINTIFFS' records; failing to provide
2 PLAINTIFFS accurate itemized statements for each pay period; failing to authorize or permit
3 PLAINTIFFS to take meal and rest breaks as required by California law.

4 55. **Adequacy of Representation:** PLAINTIFF is fully prepared to take all necessary steps to
5 represent fairly and adequately the interest of the members of the CLASS. PLAINTIFF has no
6 interests that are adverse to the interests of the CLASS. PLAINTIFF'S attorneys are ready, able and
7 willing to fully and adequately represent the CLASS and individual PLAINTIFF. PLAINTIFF has
8 incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that
9 have been, are and will be necessarily expended for the prosecution of this action for the substantial
benefit of each CLASS member.

10 56. **Superiority of Class Action:** A class action is superior to other available means for the
11 fair and efficient adjudication of this controversy. Individual joinder of all proposed members of the
12 CLASS is not practicable, and questions of law and fact common to the proposed CLASS
13 predominate over any questions affecting only individual members of the proposed CLASS. Each
14 member of the proposed CLASS has been damaged and is entitled to recovery by reason of
DEFENDANTS' illegal policies and/or practices.

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

20 58. Class action treatment will allow those similarly situated persons to litigate their claims in
21 the manner that is most efficient and economical for the parties and the judicial system. PLAINTIFF
22 is unaware of any difficulties that are likely to be encountered in the management of this action that
23 would preclude its maintenance as a class action. Individualized litigation would also present the
24 potential for inconsistent or contradictory judgments, in addition of duplication of efforts and
expenses.

25 ///

26 ///

27 ///

28 ///

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGE
LABOR CODE §§ 1197, 1194, 1194.2, 1197.1
(AGAINST ALL DEFENDANTS)

59. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporate them by reference, and further allege:

60. Cal. Lab. Code §1197 provides that: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and *the payment of a lower wage than the minimum so fixed is unlawful*. This section does not change the applicability of local minimum wage laws to any entity.” [Emphasis added.]

61. Cal. Lab. Code §1194 provides in relevant part that any employee receiving less than the legal minimum wage applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage, including interest thereon, reasonable attorneys’ fees, and costs of suit.

62. California’s minimum wage law provides for two different rates based on the size of the employer as reflected in this chart:

Date	Minimum Wage for Employers with 25 Employees or Less	Minimum Wage for Employers with 26 Employees or More
January 1, 2017	\$10.00/hour	\$10.50/hour
January 1, 2018	\$10.50/hour	\$11.00/hour
January 1, 2019	\$11.00/hour	\$12.00/hour
January 1, 2020	\$12.00/hour	\$13.00/hour
January 1, 2021	\$13.00/hour	\$14.00/hour
January 1, 2022	\$14.00/hour	\$15.00/hour

1 63. Any individual performing any kind of compensable work for the employer who is
2 not a bona fide independent contractor would be considered and counted as an employee, including
3 salaried executives, part-time workers, minors, and new hires. DEFENDANTS employed more than
4 26 employees but failed to satisfy the minimum wage requirements. In fact, even for 25 employees,
5 DEFENDANTS paid a lower wage while purposing to pay the wage designated by statute.
6 PLAINTIFF was paid \$13.00 per hour until February 22, 2022 when DEFENDANTS increased his
7 rate to \$14.00 per hour purporting to comply with the minimum wage increase despite the fact that
8 DEFENDANTS had more than 26 employees.

9 64. Cal. Lab. Code §1194.2 provides in relevant part that: “in any action under ... Section
10 1194 to recover wages because of a payment of wage less than the minimum wage fixed by an order
11 of the commission, an employee shall be entitled to recover liquidated damages in an amount equal
12 to the wage unlawfully unpaid and interest thereon.”

13 65. California Code of Regulation title 8, §11040(4)(B) provides that employers must pay
14 all employees not less than the lawful minimum wage for all hours worked.

15 66. DEFENDANTS’ business is part of the “public housekeeping industry” within the
16 meaning of California Code of Regulations, title 8 section 11050.

17 67. PLAINTIFF and the CLASS are non-exempt employees within the meaning of Cal.
18 Code of Regulations tit. 8, §11040.

19 68. As alleged herein, DEFENDANTS failed to pay PLAINTIFF and the CLASS the
20 mandated minimum wage according to California Law.

21 69. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF and the CLASS have
22 been deprived of compensation in amounts to be determined at trial, and are entitled to recovery of
23 such amounts, including interest thereon, attorneys’ fees, costs, liquidated damages, and any other
24 damages as set forth under California law.

25 WHEREFORE, PLAINTIFF and the CLASS seek to request relief as described below.

26 ///

27 ///

28 ///

SECOND CAUSE OF ACTION
FAILURE TO PAY CALIFORNIA OVERTIME COMPENSATION
(VIOLATION OF CAL. LAB. CODE §§ 510, 1194, 1194.2, 1197, 1197.1, 1198; IWC
WAGE ORDER NO.5.)
(AGAINST All DEFENDANTS)

70. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

71. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS are and were “non-exempt” employees of DEFENDANTS and did not receive the proper compensation for overtime hours worked.

72. During the RELEVANT TIME PERIOD, PLAINTIFFS worked in excess of eight (8) hours in a workday, and/or in excess of forty (40) hours in a workweek. The precise number of overtime hours will be proven at trial. Despite the hours worked by PLAINTIFFS, DEFENDANTS intentionally, willfully, in bad faith, and in knowing violation of the California Labor Code, and the applicable IWC Wage Order failed and refused to compensate PLAINTIFFS for all of the overtime wages earned.

73. At all relevant times, DEFENDANTS were aware of, and were under a duty to comply with, the overtime provisions of the IWC Wage Orders, and California Labor Code including, but not limited to, California Labor Code §§510, 1194 and 1198.

74. The IWC Wage Order provides that DEFENDANTS are and were required to pay PLAINTIFF and the CLASS employed by DEFENDANTS, and working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at a rate of time-and-one half for all hours worked in excess of eight (8) hours in a day or more than forty hours (40) in a workweek.

75. The Applicable IWC Wage Order further provides that DEFENDANTS are and were required to pay PLAINTIFF and the CLASS overtime compensation at the rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

76. California Labor Code § 510 codifies the right to overtime compensation and provides, in pertinent part:

“Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

1 77. California Labor Code §1194, in pertinent part, provides:

2 “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than
3 the legal minimum wage or the legal overtime compensation applicable to the employee is
4 entitled to recover in a civil action the unpaid balance of the full amount of this minimum
5 wage or overtime compensation, including interest thereon, reasonable attorney’s fees and
6 cost of the suit.”

7 78. Cal. Lab. Code §1197 provides that “the minimum wage for employees fixed by the
8 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
9 minimum so fixed is unlawful.”

10 79. California Labor Code §1198, in pertinent part, provides:

11 “(t) the maximum hours of work and the standard conditions of labor fixed by the commission
12 shall be the maximum hours of work and the standard conditions of labor for employees. The
13 employment of any employee for longer hours than those fixed by the order or under
14 conditions of labor prohibited by the order is unlawful.”

15 80. By refusing to compensate PLAINTIFF and the CLASS for overtime wages earned,
16 DEFENDANTS violated those California Labor Code provisions cited herein as well as the
17 applicable IWC Wage Order, and their actions are therefore unlawful.

18 81. PLAINTIFF and the CLASS are entitled to receive overtime compensation for all hours
19 worked in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in
20 any workweek and the first eight hours worked on the seventh day of work in any one workweek at
21 the rate of no less than one and one half times the regular rate of pay for each employee. In
22 determining the regular rate of pay for each CLASS member, all remuneration paid to each, including
23 but not limited to bonuses, must be calculated.

24 82. As a direct and proximate result of DEFENDANTS’ unlawful conduct, as set forth therein,
25 PLAINTIFF and the CLASS have sustained damages, including loss of earnings for hours worked,
26 hours of overtime worked, in an amount to be established at trial.

27 83. Pursuant to California Labor Code §1194, PLAINTIFF and the CLASS are entitled to
28 recover unpaid overtime compensation and double time compensation, including interest thereon.

1 84. PLAINTIFF is also entitled to recover reasonable attorneys' fees and costs, pursuant to
2 California Labor Code §1194(a).

3 85. During the RELEVANT TIME PERIOD, defendants BSTI, GENTILE, and BORRELLI
4 were and are the PLAINTIFF'S and the CLASS employers and/or persons acting on behalf of the
5 DEFENDANTS, within the meaning of California Labor Code § 558, who violated or caused to be
6 violated any section of the wage order regulating the days and hours worked and, as such are
7 individually liable to each member of the CLASS for each such violations as set forth in the
8 California Labor Code.

9 86. Labor Code § 558 imposes upon DEFENDANTS, for each initial violation, a penalty of
10 \$50.00 for each underpaid employee for each pay period for which the employee was underpaid in
11 addition to an amount sufficient to recover the underpaid wages, which shall be paid to each affected
12 employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS, for each subsequent
13 violation, a penalty of \$100.00 for each underpaid employee for each pay period for which the
14 employee was underpaid, in addition to an amount sufficient to recover the underpaid wages, which
15 shall be paid to each affected employee.

16 87. Cal. Lab. Code §1194.2 provides in relevant part that: "in any action under ... Section 1194
17 to recover wages because of a payment of wage less than the minimum wage fixed by an order of the
18 commission, an employee shall be entitled to recover liquidated damages in an amount equal to the
19 wage unlawfully unpaid and interest thereon."

20 88. PLAINTIFF on behalf of himself and the CLASS seeks all available remedies for
21 DEFENDANTS' violations including any and all wages due, penalties, monies, interest, attorney's
22 fees, and costs to the extent permitted by law.

23 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

24 **THIRD CAUSE OF ACTION**
25 **FAILURE TO PAY REPORTING TIME PAY**
(VIOLATION OF IWC Wage Order 5-2001, CAL. LAB. CODE § 1198)
26 **(AGAINST All DEFENDANTS)**

27 89. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
28 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

1 90. California employers must pay “reporting time” pay when “an employee is required to
2 report for work and does report, but is not put to work or is furnished less than half said employee’s
3 usual or scheduled day’s work.” *See, e.g.,* Wage Order 5-2001. Specifically, IWC Wage Order 5-
4 2001, section 5 states:

5 (A) Each workday an employee is required to report for work and does report, but is not put
6 to work or is furnished less than half said employee's usual or scheduled day's work, the
7 employee shall be paid for half the usual or scheduled day's work, but in no event for less
8 than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay,
9 which shall not be less than the minimum wage.

10 (B) If an employee is required to report for work a second time in any one workday and is
11 furnished less than two hours of work on the second reporting, said employee shall be paid
12 for two hours at the employee's regular rate of pay, which shall not be less than the
13 minimum wage.

14 91. Reporting time pay constitutes wages. *Murphy v. Kenneth Cole Productions, Inc.* (2007)
15 40 Cal. 4th 1094. The IWC’s purpose in adopting reporting time pay requirements was two-fold: “to
16 compensate employees” and “encourag[e] proper notice and scheduling”. *Id.* at pp. 1111-
17 1112. In *Ward v. Tilly’s, Inc.* (2019) 31 Cal.App.5th 1167, the California Court of Appeal held
18 physical reporting was not required in order to come within the reporting time pay provision. Rather,
19 that reporting time pay is owed for certain “on-call” shifts, where the employee must call in to find
20 out if he or she is needed, but is told not to report to work. The act of calling in triggers the reporting
21 time pay requirements in these circumstances, even though the employee is not actually required to
22 come in to work.

23 92. Violation of the wage and hour provisions of the IWC Wage Orders maybe enforced
24 privately through Lab. Code §1198.

25 93. Despite the requirements of the IWC Wage Order, DEFENDANTS failed to pay reporting
26 pay when PLAINTIFF and the members of the CLASS were required to report to work and did
27 report, but were furnished less than half of their scheduled day’s work.

28 94. DEFENDANTS’ failure to properly compensate employees for those shifts resulted in
violations of IWC Wage Order 5, Labor Code sections 200-203, 226, and 226.3, and Business and
Professions Code section 17200.

1 95. Additionally, IWC Wage Order 5, section (4)(C) states “[w]hen an employee works a split
2 shift, one hour's pay at the minimum wage shall be paid in addition to the minimum wage for that
3 workday, except when the employee resides at the place of employment.”

4 96. DEFENDANTS also failed to pay PLAINTIFF and the CLASS one hour's pay at the
5 minimum wage in addition to the minimum wage for workdays when PLAINTIFF and the CLASS
6 worked a split shift.

7 97. As a result of DEFENDANTS’ conduct alleged herein, PLAINTIFF and the CLASS have
8 suffered damages in the amount of the update reporting time on days when PLAINTIFF and the
9 CLASS reported to work but were furnished less than half of their scheduled day’s work.

10 **FOURTH CAUSE OF ACTION**
11 **FAILURE TO PROVIDE MEAL PERIODS**
12 **(VIOLATION OF IWC Wage Order 5-2001, CAL. LAB. CODE §§ 226.7, 512)**
(AGAINST ALL DEFENDANTS)

13 98. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
14 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

15 99. During the RELEVANT TIME PERIOD, the IWC Wage Order and California Labor Code
16 sections 226.7 and 512 were applicable to PLAINTIFF and the CLASS employed by
17 DEFENDANTS.

18 100. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS are and were “non-
19 exempt” employees of DEFENDANTS and did not receive meal periods or premium pay in lieu of
20 meal periods.

21 101. By failing to provide PLAINTIFF and the CLASS with meal period,” DEFENDANTS
22 deprived PLAINTIFF and the CLASS proper protections and benefits of the laws governing meal
23 periods.

24 102. During the RELEVANT TIME PERIOD, DEFENDANTS were aware of, and under a duty
25 to comply with, California Labor Code §§226.7 and 512.

26 103. California Labor Code §226.7 provides:

27 “(a) No employer shall require any employee to work during any meal or rest period
28 mandated by an applicable order of the Industrial Welfare Commission.

1 (b) If an employer fails to provide an employee a meal period or rest period in accordance
2 with an applicable order of the Industrial Welfare Commission, the employer shall ay the
employee one additional hour of pay at the employee’s regular rate of compensation for each
work day that the meal or rest period is not provided.”

3 Moreover, California Labor Code §512 provides:

4 An employer may not employ an employee for a work period of more than five hours per day
5 without providing the employee with a meal period of not less than 30 minutes, except that if
6 the total work period per day of the employee is no more than six hours, the meal period may
7 be waived by mutual consent of both the employer and employee. An employer may not
8 employ and employee for a work period of more than 10 hours per day without providing the
employee with a second meal period no not less than 30 minutes, except that if the total hours
worked is no more than 12 hours, the second meal period maybe waived by mutual consent
of the employer and the employee only if the first meal period was not waived.

9
10 104. Sections 11 and 12 of IWC Wage Order 5 mandate that the employer provide all applicable
11 meal periods to employees.

12 105. Section 11 of the applicable IWC Wage Order provides in pertinent part:

13 “No employer shall employ any person for a work period of more than 5 hours without a meal
14 period of not less than 30 minutes... Unless the employee is relieved of all duty during a 30-
15 minute meal period, the meal period shall be considered an “on duty” meal period and counted
as time worked.

16 If an employer fails to provide an employee a meal period in accordance with the applicable
17 provisions of this order the employer shall provide the employee one (1) hour of pay at the
18 employee ‘s regular rate of compensation for each workday that the meal period is not
provided.

19 106. PLAINTIFFS regularly and consistently worked more than 5 hours per day but were not
20 provided an uninterrupted, thirty-minute meal period within the first five hours of work each day. By
21 failing to consistently provide PLAINTIFFS an uninterrupted thirty-minute meal period within the
22 first five hours of work each day, DEFENDANTS violated the California Labor Code and applicable
23 IWC Wage Order provisions.

24 107. During the RELEVANT TIME PERIOD, DEFENDANTS intentionally and willfully
25 required PLAINTIFFS to work during meal periods and failed to compensate PLAINTIFFS the full
26 meal period premium for work performed during meal periods.

27 108. PLAINTIFF is informed and believes and, on that basis, alleges, that DEFENDANTS have
28 never paid the one-hour compensation as a premium payment for PLAINTIFF or any member of the

1 CLASS due to their violation of the California Labor Code and applicable IWC Wage Order
2 provisions.

3 109. DEFENDANTS' conduct violates the applicable IWC Wage Order and California Labor
4 Code sections 226.7 and 512(a).

5 110. As a direct and proximate result of DEFENDANTS' unlawful conduct, as set forth herein,
6 PLAINTIFF and the CLASS have sustained damages including loss of compensation resulting from
7 missed meal periods, in an amount to be established at trial.

8 111. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b),
9 PLAINTIFF and the CLASS are entitled to recover from DEFENDANTS one additional hour of pay
10 at the employee's regular rate of compensation for each workday the meal or rest period is not
11 provided. In determining the regular rate of pay for each CLASS member, all remuneration paid to
12 each, including but not limited to bonuses, must be calculated.

13 112. During the RELEVANT TIME PERIOD, defendants BSTI, GENTILE, and BORRELLI
14 were and are the PLAINTIFF and the CLASS' employers and/or persons acting on behalf of the
15 DEFENDANTS, within the meaning of California Labor Code § 558, who violated or caused to be
16 violated any section of the wage order regulating the days and hours worked and, as such are
17 individually liable to each member of the CLASS for each such violations as set forth in the
18 California Labor Code.

19 113. Labor Code § 558 imposes upon DEFENDANTS, for each initial violation, a penalty of
20 \$50.00 for each underpaid employee for each pay period for which the employee was underpaid in
21 addition to an amount sufficient to recover the underpaid wages, which shall be paid to each affected
22 employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS, for each subsequent
23 violation, a penalty of \$100.00 for each underpaid employee for each pay period for which the
24 employee was underpaid, in addition to an amount sufficient to recover the underpaid wages, which
25 shall be paid to each affected employee.

26 114. As a direct result of DEFENDANTS' violations alleged herein, PLAINTIFF and the
27 CLASS have suffered and continue to suffer loss of wages and compensation, all in amounts to be
28 shown according to proof at trial and within the jurisdiction limitations of this Court. PLAINTIFF

1 and the CLASS seek all available remedies for DEFENDANTS' violations including, but not limited,
2 to any and all wages due, penalties, monies, interest, attorney's fees, and costs to the extent permitted
3 by law.

4 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

5 **FIFTH CAUSE OF ACTION**
6 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**
7 **(VIOLATION OF IWC Wage Order 5-2001, CAL. LAB. CODE§ 226.7)**
8 **(AGAINST ALL DEFENDANTS)**

9 115. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
10 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

11 116. During the RELEVANT TIME PERIOD, the IWC Wage Order and California Labor Code
12 sections 226.7 and 512 were applicable to PLAINTIFF and the Class employed by DEFENDANTS.

13 117. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS were and continue
14 to "non-exempt" hourly employees of DEFENDANTS and did not receive rest periods or premium
15 pay in lieu of rest periods.

16 118. By failing to provide PLAINTIFF and the CLASS rest periods, DEFENDANTS deprived
17 PLAINTIFF and the CLASS proper protections and benefits of the laws governing rest periods.

18 119. During the RELEVANT TIME PERIOD, DEFENDANTS were aware of and under a duty
19 to comply with, California Labor Code §226.7 and Section 12 of Wage Order 5-2001.

20 120. California Labor Code. §226.7 states

21 "no employer shall require any employee to work during any meal or rest period mandated
22 by an applicable order of the Industrial Welfare Commission."

23 Section 12 of Wage Order No. 5-2001 provides in relevant part that:

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

1 121. During the RELEVANT TIME PERIOD, DEFENDANTS willfully required PLAINTIFF
2 and the CLASS to work four (4) or more hours without authorizing or permitting a ten (10) minute
3 rest period per each four (4) hours period worked.

4 122. During the RELEVANT TIME PERIOD, DEFENDANTS willfully required PLAINTIFF
5 and the CLASS to work during rest periods and failed to pay PLAINTIFF and the CLASS the full
6 rest period premium for work performed during rest periods.

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

10 124. During the RELEVANT TIME PERIOD, DEFENDANTS failed to pay PLAINTIFF and
11 the CLASS the full rest period premium due pursuant to California Labor Code section 226.7.

12 125. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b),
13 PLAINTIFF and the CLASS are entitled to recover from DEFENDANTS one additional hour of pay
14 at the employees' regular rate of compensation for each work day that the rest period was not
15 provided. In determining the regular rate of pay for each CLASS member, all remuneration paid to
16 each, including but not limited to performance bonuses, must be calculated.

17 126. In committing the violations of state law as herein alleged, DEFENDANTS refused to
18 perform their obligations to authorize and permit rest periods and have also failed to pay rest premium
19 wages. As a direct result, PLAINTIFF and the CLASS have suffered, and continue to suffer,
20 substantial losses, including those related to the use and enjoyment of such compensation, wages,
21 and lost interest on such monies in seeking to compel DEFENDANTS to fully perform their
22 obligation under state law, all to their respective damage in amounts according to proof at trial and
23 within the jurisdictional limitations of this Court.

24 127. During the RELEVANT TIME PERIOD, defendants BSTI, GENTILE, and BORRELLI
25 are and/or were the PLAINTIFF and the CLASS' employers and/or persons acting on behalf of
26 DEFENDANTS within the meaning of California Labor Code § 558, who violated or caused to be
27 violated, a section of Part 2, Chapter I, of the California Labor Code or any provision regulating
28 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject

1 to penalties for each underpaid employee, which shall be paid to each affected employee, as set forth
2 in Labor Code § 558.

3 128. Labor Code § 558 imposes upon DEFENDANTS for each initial violation a penalty of
4 \$50.00 for each underpaid employee for each pay period for which the employee was underpaid in
5 addition to an amount sufficient to recover the underpaid wages, which shall be paid to each affected
6 employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS for each subsequent
7 violation a penalty of \$100 for each underpaid employee for each pay period for which the employee
8 was underpaid, in addition to an amount sufficient to recover the underpaid wages, which shall be
9 paid to each affected employee.

10 129. The CLASS, including PLAINTIFF, suffered and continue to suffer loss of wages and
11 compensation, all in an amount to be shown according to proof at trial and within the jurisdictional
12 limitations of this Court.

13 130. PLAINTIFF seeks all available remedies for DEFENDANTS' violations including, but not
14 to, any and all wages due, penalties, interest, attorney's fees, costs to the extent permitted by law.

15 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

16 **SIXTH CAUSE OF ACTION**
17 **WAITING TIME PENALTIES**
18 **(VIOLATION OF CALIFORNIA LABOR CODE § § 201, 202, 203, 204)**
19 **(AGAINST ALL DEFENDANTS)**

20 131. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
21 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

22 132. At all times herein mentioned, PLAINTIFFS were employees of DEFENDANTS.
23 DEFENDANTS were subject to California law.

24 133. Cal. Lab. Code §201 provides in relevant part that: "[i]f an employer discharges an
25 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

26 134. Cal. Lab. Code §202 provides in relevant part that: "[i]f an employee not having a written
27 contract for a definite period quits his or her employment, his or her wages shall become due and
28 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of

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

3 135. As alleged herein, DEFENDANTS failed to pay earned wages to PLAINTIFF and the
4 CLASS who are former employees of DEFENDANTS at the time they became due and payable.

5 136. DEFENDANTS failed to timely pay PLAINTIFF and the CLASS who are former
6 employees of DEFENDANTS, among other things, all minimum and overtime wages, reporting time
7 pay, and earned wages relating to meal and rest period premiums. Thus, DEFENDANTS violated
8 Cal. Lab. Code §§201 and 202.

9 137. As a result of DEFENDANTS’ unlawful acts, PLAINTIFF and the CLASS who are former
10 employees of DEFENDANTS’ are entitled to recover, pursuant to Cal. Lab. Code §203, continuing
11 wages as a penalty from the due date thereof at the same rate until paid or until this action was
12 commenced; but for no more than 30 days.

13 138. DEFENDANTS willfully failed to provide PLAINTIFF and the CLASS with all wages due
14 and owing, including all regular and overtime wages, and meal and rest period premium wages as
15 specified by Labor Code §§ 201 and 202, as alleged herein.

16 139. Consequently, pursuant to Labor Code section 203, DEFENDANTS are obligated to pay
17 PLAINTIFF and member of the CLASS that are former employees of the DEFENDANTS waiting-
18 time penalties equivalent to thirty (30) full working days’ worth of wages because certain wages
19 were not paid within 30 days.

20 140. DEFENDANTS’ failure to pay PLAINTIFFS that were former employees all wages due
21 were done with the wrongful and deliberate intention of injuring PLAINTIFFS, for improper motives
22 amounting to malice and in conscious disregard to PLAINTIFFS’ rights.

23 141. DEFENDANTS’ willful failure to pay PLAINTIFFS the wages due and owing each of
24 them constitutes violations of Labor Code §§ 201, 202, and 203.

25 142. PLAINTIFFS are each entitled to recover from DEFENDANTS the statutory penalty for
26 each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code
27 section 203.
28

1 143. DEFENDANTS also failed to pay PLAINTIFF and the CLASS one hour's pay at the
2 minimum wage in addition to the minimum wage for that workday when PLAINTIFFS worked split
3 shifts.

4 144. PLAINTIFF seeks all available remedies for DEFENDANTS violation including but not
5 limited to, any and all wages due, penalties, monies, interest, attorneys' fees, and costs incurred in
6 this action to the extent permitted by law.

7 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

8 **SEVENTH CAUSE OF ACTION**
9 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
10 **(VIOLATION OF CAL. LAB. CODE §§ 226, 226.3**
11 **(AGAINST ALL DEFENDANTS))**

12 145. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
13 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

14 146. Labor Code § 226(a) requires employers, including DEFENDANTS, to furnish their
15 employees with each wage payment an accurate, itemized writing that shows gross wages earned,
16 total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the
17 employee is paid, the name of the employee and the portion of his or her social security number as
18 required by law, all applicable hourly rates in effect during the pay period, and the corresponding
19 number of hours worked at each hourly rate by the employee.

20 147. During THE RELEVANT TIME PERIOD, DEFENDANTS knowingly and intentionally
21 failed to provide to the PLAINTIFF and the CLASS, the above described writing required by Labor
22 Code § 226 through actions alleged herein, including a failure to provide total hours worked, the
23 correct applicable hourly rate, and all wages earned. To top it off, DEFENDANTS compelled and
24 coerced PLAINTIFFS to share their tips with other employees and falsely reported the "Cash Tips"
25 in their entirety on the Server/Waiter's wage statement subjecting the Server/Waiter to income taxes
26 for tips that the Server/Waiter in fact shared with other employees.

27 148. The PLAINTIFF and the CLASS, have suffered and continue to suffer injuries, including
28 substantial losses related to the use and enjoyment of such wages, lost interest on such wages and
expenses and attorney's fees in seeking to compel DEFENDANTS to fully perform their obligations
under state law, all to their respective damage in amounts according to proof at trial. Pursuant to

1 Labor Code §§ 226(e)(2) and 226(c)(2)(B)(i), PLAINTIFFS are deemed to have suffered injury as a
2 result of DEFENDANTS' failure to provide accurate and complete information as required by Labor
3 Code § 226(a).

4 149. Labor Code § 226, in part, permits employees suffering injury to collect actual damages or
5 the amount specified in Labor Code § 226. Thus, Labor Code § 226(e) requires DEFENDANTS to
6 pay the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a
7 violation occurred and one hundred dollars (\$100.00) per employee for each violation in subsequent
8 pay periods, plus attorney's fees and costs, to each member of the CLASS, including PLAINTIFF,
9 who was injured by DEFENDANTS' failure to comply with Labor Code § 226(a). The exact amount
10 of the applicable penalty is all in an amount to be shown according to proof at trial.

11 150. Furthermore, Labor Code § 226(g) permits an employee to bring an action for injunctive
12 relief to ensure compliance with Labor Code § 226. Thus, PLAINTIFF and the CLASS additionally
13 seek injunctive relief to ensure compliance with Labor Code § 226 including, but not limited to, the
14 providing and maintenance of accurate itemized wage statements identifying, among other things,
15 all the hours worked and their corresponding rate for each pay period and the total net wages earned
16 during each pay period.

17 151. PLAINTIFF seeks all available remedies for DEFENDANTS' violations including, but not
18 limited to, any and all wages due, actual damages, penalties, payments pursuant to Labor Code §
19 226(e), monies, interest, attorney's fees, costs and injunctive relief.

20 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

21 **EIGHTH CAUSE OF ACTION**
22 **FAILURE TO PROVIDE PERSONNEL RECORDS (CAL. LAB CODE § 1198.5)**
23 **(AGAINST ALL DEFENDANTS)**

24 152. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
25 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

26 153. Lab Code § 1198.5 provides:

27 (a) Every current and former employee, or his or her representative, has the right to inspect
28 and receive a copy of the personnel records that the employer maintains relating to the
employee's performance or to any grievance concerning the employee.

(b) (1) The employer shall make the contents of those personnel records available for
inspection to the current or former employee, or his or her representative, at reasonable

1 intervals and at reasonable times, but not later than 30 calendar days from the date the
2 employer receives a written request, unless the current or former employee, or his or her
3 representative, and the employer agree in writing to a date beyond 30 calendar days to
4 inspect the records, and the agreed-upon date does not exceed 35 calendar days from the
5 employer's receipt of the written request. Upon a written request from a current or former
6 employee, or his or her representative, the employer shall also provide a copy of the
7 personnel records, at a charge not to exceed the actual cost of reproduction, not later than 30
8 calendar days from the date the employer receives the request, unless the current or former
9 employee, or his or her representative, and the employer agree in writing to a date beyond
10 30 calendar days to produce a copy of the records, as long as the agreed-upon date does not
11 exceed 35 calendar days from the employer's receipt of the written request. Except as
12 provided in paragraph (2) of subdivision (c), the employer is not required to make those
13 personnel records or a copy thereof available at a time when the employee is actually
14 required to render service to the employer, if the requester is the employee.

15 (k) If an employer fails to permit a current or former employee, or his or her representative,
16 to inspect or copy personnel records within the times specified in this section, or times
17 agreed to by mutual agreement as provided in this section, the current or former employee
18 or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750)
19 from the employer.

20 (l) A current or former employee may also bring an action for injunctive relief to obtain
21 compliance with this section, and may recover costs and reasonable attorney's fees in such
22 an action.

23 154. DEFENDANTS willfully failed to permit the PLAINTIFF to inspect or copy his personnel
24 file within 30 calendar days of her request in direct violation of Cal. Lab. Code § 1198.5.

25 WHEREFORE, PLAINTIFF requests the relief as described below.

26 **NINTH CAUSE OF ACTION**
27 **GENDER DISCRIMINATION IN VIOLATION OF FEHA**
28 **GOVERNMENT CODE §12940 ET SEQ.**
(AGAINST ALL DEFENDANTS)

155. At all times herein mentioned, the FEHA was in full force and effect and was binding on
DEFENDANTS, since each of the DEFENDANTS regularly employed five or more persons.

156. DEFENDANTS were at all times material hereto employers within the meaning of the
FEHA and, as such, were barred from discriminating in employment decisions on the basis of
PLAINTIFF'S gender, as set forth in California Government Code §12940.

157. Under the FEHA, it is an unlawful employment practice for an employer because of
gender, to bar, or discharge an employee from employment, or to discriminate against an employee
in compensation or in terms, conditions, or privileges of employment.

1 158. FEHA requires DEFENDANTS to refrain from discriminating against an employee on the
2 basis of sex/gender, and to prevent discrimination and harassment on the basis of sex/gender from
3 occurring.

4 159. PLAINTIFF was a member of a protect class and was performing competently in the
5 position he held with DEFENDANTS.

6 160. PLAINTIFF suffered adverse employment actions of unlawful discrimination, and
7 wrongful termination as a result of DEFENDANTS' discrimination and wrongful termination of his
8 employment. PLAINTIFF was harmed as a result of DEFENDANTS' unlawful conduct.

9 161. PLAINTIFF is informed and believes and thereon alleges that his sex/gender, male, was a
10 motivating reason and/or factor in DEFENDANTS' decision to terminate his employment.

11 162. PLAINTIFF was the only male server working for DEFENDANTS. DEFENDANTS
12 falsely informed the PLAINTIFF that his layoff was due to lack of work. DEFENDANTS replaced
13 PLAINTIFF with a female Server.

14 163. By the discriminatory acts and conduct of DEFENDANTS, PLAINTIFF has been directly
15 and legally caused to suffer actual damages pursuant to California Civil Code §3333 including, but
16 not limited to, loss of earning and future earning capacity, attorneys' fees and other pecuniary loss
17 not presently ascertained, for which PLAINTIFF will seek leave of court to amend when ascertained.
18 PLAINTIFF also claims such amounts as damages pursuant to Civil Code §3287 and/or §3288 and/or
19 any other provision of law providing for prejudgment interest.

20 164. As a further direct and legal result of the acts and conduct of DEFENDANTS,
21 PLAINTIFF, has been caused to, and did, suffer and continue to suffer severe emotional and mental
22 distress and anguish, humiliation, embarrassment, anger, shock, pain, discomfort, and anxiety. The
23 exact nature and extent of these injuries is presently unknown to PLAINTIFF, who will pray leave
24 of court to assert the same when they are ascertained.

25 165. In addition, pursuant to Government Code §12965(b), PLAINTIFF is entitled to his
26 attorneys' fees in prosecuting this lawsuit.

27 166. PLAINTIFF has been generally damaged in an amount within the jurisdictional limits of
28 this Court.

167. The aforementioned acts of DEFENDANTS' individually, or by and through their managing agents, officers, and/or directors were willful, wanton, malicious, intentional, oppressive, and despicable, and were done in willful and conscious disregard of the rights of PLAINTIFF, and each of them, and were done by managerial agents and employees of DEFENDANTS, or with the express knowledge, consent, and ratification of managerial employees of DEFENDANTS, with the intent to vex, injure, and annoy PLAINTIFF, such as to constitute oppression, fraud, or malice pursuant to California Civil Code § 3294, entitling PLAINTIFF to punitive and exemplary damages in a sum which is an amount appropriate to punish and set an example of DEFENDANTS, and each of them, to deter such conduct in the future, and to set an example for others.

TENTH CAUSE OF ACTION
FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF CALIFORNIA
GOVERNMENT CODE § 12940(k)
(AGAINST ALL DEFENDANTS)

168. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

169. At all times mentioned herein, the FEHA, including but not limited to FEHA Section 12940 (k), was in full force and effect and binding upon DEFENDANTS and each of them. These sections impose on employers a duty to take immediate and appropriate corrective action to end discrimination and take all reasonable steps necessary to prevent discrimination from occurring. DEFENDANTS violated the FEHA and breached their duty by failing to take all reasonable steps necessary to prevent discrimination from occurring.

170. DEFENDANTS, and each of them discriminated against the PLAINTIFF, because of his gender.

171. DEFENDANTS knew that PLAINTIFF was being discriminating against because of his gender but DEFENDANTS failed to take immediate and appropriate corrective action to end the discrimination.

172. In failing and/or refusing to take immediate and appropriate corrective action to end the discrimination, DEFENDANTS violated FEHA Sections 12940 (k), causing PLAINTIFF to suffer damages, as set forth above.

173. As a proximate result of the aforesaid acts of DEFENDANTS, and each of them, PLAINTIFF have suffered actual, consequential and incidental financial losses, including without limitation, loss of salary and benefits, all in an amount subject to proof at the time of trial. PLAINTIFF claim such amounts as damages pursuant to Civil Code § 3287 and/or § 3288 and/or any other provision of law providing for prejudgment interest.

174. As a proximate result of the wrongful acts of DEFENDANTS, and each of them, PLAINTIFF, has suffered and continues to suffer emotional distress, anger, humiliation, mental anguish, and embarrassment. PLAINTIFF is informed and believes and thereupon alleges that he will continue to experience said emotional suffering for a period in the future not presently ascertainable, all in an amount subject to proof at the time of trial.

175. As a proximate result of the wrongful acts of DEFENDANTS, and each of them, PLAINTIFF has been forced to hire attorneys to prosecute his claims herein and has incurred and is expected to continue to incur attorneys' fees and costs in connection therewith. PLAINTIFF is entitled to recover attorneys' fees and costs under California Government Code § 12965(b).

176. The aforementioned acts of DEFENDANTS' individually, or by and through their managing agents, officers, and/or directors were willful, wanton, malicious, intentional, oppressive, and despicable, and were done in willful and conscious disregard of the rights of PLAINTIFF, and each of them, and were done by managerial agents and employees of DEFENDANTS, or with the express knowledge, consent, and ratification of managerial employees of DEFENDANTS, with the intent to vex, injure, and annoy PLAINTIFF, such as to constitute oppression, fraud, or malice pursuant to California Civil Code § 3294, entitling PLAINTIFF to punitive and exemplary damages in a sum which is an amount appropriate to punish and set an example of defendants, and each of them, to deter such conduct in the future, and to set an example for others.

ELEVENTH CAUSE OF ACTION
WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY
(AGAINST ALL DEFENDANTS)

177. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

1 178. At all times herein mentioned PLAINTIFF was fully competent to perform the duties to
2 which he was assigned.

3 179. Under California law, no employee, whether they are “at will” employee, or an employee
4 under a written or other employment contract, can be terminated for a reason that is in violation of a
5 fundamental public policy, or because they report behavior of their employer that they reasonably
6 believe constitutes discriminatory or illegal conduct. In recent years, the California Supreme Court
7 has interpreted a fundamental public policy to be any articulated constitutional, statutory provision,
8 or regulation that is concerned with a matter affecting society at large rather than a purely personal
9 or proprietary interest of the employee or the employer. Moreover, the public policy must be
10 fundamental, substantial and well established at the time of discharge.

11 180. PLAINTIFF’S gender was a substantial factor in DEFENDANTS’ decision to wrongfully
12 terminate his employment.

13 181. PLAINTIFF’S discharge was wrongful and it violated the fundamental public policy of
14 this State prohibiting discrimination on the basis of gender. This public policy is embodied in
15 following public policy statutes:

16 a. California Fair Employment and Housing Act, California Government Code Section
17 12940(a), which prohibits discrimination against an employee based on gender;

18 b. California Government Code Section 12940(i), which prohibits ratification of
19 unlawful conduct by an employer;

20 c. California Government Code Section 12940(j), under which an employer is strictly
21 liable for a supervisor’s harassment of a subordinate, and for the unlawful acts of non-supervisory
22 employees and/or third persons whom the employer knows or should have known have committed
23 discriminatory or harassing acts against an employee;

24 d. California Government Code Section 12940(k), which requires an employer to take
25 all reasonable steps to prevent harassment and discrimination from occurring in the workplace;

26 182. PLAINTIFF believes and thereon alleges that his sex/gender was a substantial and
27 motivating factor in DEFENDANTS’ conduct as alleged herein.
28

183. As a direct proximate result of the wrongful acts of DEFENDANTS, and each of them, PLAINTIFF has suffered and continues to suffer actual, consequential and incidental financial losses, including without limitation, loss of salary and benefits, emotional distress, humiliation, mental anguish, anger, and embarrassment, all in an amount subject to proof at the time of trial.

184. The aforementioned acts of DEFENDANTS' individually, or by and through their managing agents, officers, and/o directors were willful, wanton, malicious, intentional, oppressive, and despicable, and were done in willful and conscious disregard of the rights of PLAINTIFF, and each of them, and were done by managerial agents and employees of DEFENDANTS, or with the express knowledge, consent, and ratification of managerial employees of DEFENDANTS, with the intent to vex, injure, and annoy PLAINTIFF, such as to constitute oppression, fraud, or malice pursuant to California Civil Code § 3294, entitling PLAINTIFF to punitive and exemplary damages in a sum which is an amount appropriate to punish and set an example of DEFENDANTS, and each of them, to deter such conduct in the future, and to set an example for others.

TWELFTH CAUSE OF ACTION
INJUNCTIVE RELIEF
(AGAINST ALL DEFENDANTS)

185. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

186. DEFENDANTS unlawful conduct of failing to properly pay PLAINTIFF and the CLASS the statutory mandated minimum and overtime wages; failing to provide compliant meal periods; failing to authorize and permit rest periods; failing to provide accurate itemized wage statements; failure to timely pay wages due upon termination of employment; failing to treat employees equally regardless of gender; failing to provide PLAINTIFFS' personnel records; failing to properly maintain records; and failing to provide paid sick leave, threatens real and immediate harm to the CLASS, who will suffer irreparable harm.

187. PLAINTIFF and the CLASS are therefore entitled to an order restraining and ordering DEFENDANTS, representatives, attorneys, servants, and agents from further harm pending final judgment on this matter.

WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

THIRTEENTH CAUSE OF ACTION
VIOLATION OF BUSINESS & PROFESSIONS CODE §17200
(AGAINST ALL DEFENDANTS)

188. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

189. The foregoing conduct, as alleged, violates the California Unfair Competition Law (“UCL”), Cali. Bus. & Prof. Code §§ 17200 et seq., which prohibits unfair competition by prohibiting, inter alia, any unlawful or unfair business acts or practices.

190. DEFENDANTS have systematically engaged in unlawful conduct such as wage and hour violations in order to decrease their costs of doing business and gain an unfair advantage over their competitors.

191. DEFENDANTS' Labor Code and IWC Wage Orders violations include, but are not limited to, DEFENDANTS' (i) failure to provide proper meal and rest periods and pay PLAINTIFF and the CLASS meal and rest premiums for missed, short, late and/or on-duty meal and rest periods; (ii) failure to pay all minimum and overtime wages for all hours worked and under the control of DEFENDANTS; (iii) failure to maintain accurate records including accurate records of DEFENDANTS' employees' hours worked and wages earned; (iv) failure to provide accurate wage statements; (v) failure to treat employees equally regardless of gender; and (vi) failure to timely pay all wages due to their employees during employment and after separation of employment including AIAP.

192. DEFENDANTS intentionally avoided paying PLAINTIFF and the CLASS all wages and monies, including all overtime wages, and other financial obligations attached thereto to create for DEFENDANTS an artificially lower cost of doing business and, thus, undercut their competitors and establish and/or gain a greater foothold in the marketplace, all to the detriment of PLAINTIFF and the CLASS.

193. DEFENDANTS lowered their costs of doing business by paying PLAINTIFF and the CLASS amounts less than what was required under the California Labor Code and Wage Order of

1 the Industrial Welfare Commission, thereby unfairly forcing PLAINTIFF and the CLASS to perform
2 work without fair compensation and benefits.

3 194. DEFENDANTS held themselves out to PLAINTIFF and the CLASS as being
4 knowledgeable and adhering to the employment laws of California at all times relevant herein.
5 PLAINTIFF and the CLASS relied on and believed in DEFENDANTS' representation concerning
6 their conformance with the California laws alleged herein, all to their detriment.

7 195. DEFENDANTS' scheme to lower their payroll costs by violating the California Labor Code
8 and Wage Order of the Industrial Welfare Commission, as alleged herein, constitutes "unlawful,
9 unfair or fraudulent business act or practice," under Business and Professions Code § 17200 et seq.
10 By engaging in the above-described acts and practices, DEFENDANTS have committed one or more
11 acts of unfair competition within the meaning of Business & Profession Code §17200, et seq.
12 DEFENDANTS, and each of them, have acted contrary to public policies and have engaged in other
13 unlawful and unfair business practices in violation of Business & Profession Code §17200, et seq.,
14 depriving PLAINTIFF and the CLASS and all interested persons of rights, benefits, and privileges
15 guaranteed to all employees under law

16 196. DEFENDANTS' conduct as herein alleged has damaged PLAINTIFF and the CLASS as
17 described in this Complaint. The aforementioned acts of DEFENDANTS' individually, or by and
18 through their managing agents, officers, and/o directors were willful, wanton, malicious, intentional,
19 oppressive, and despicable, and were done in willful and conscious disregard of the rights of
20 PLAINTIFFS, and each of them, and were done by managerial agents and employees of
21 DEFENDANTS, or with the express knowledge, consent, and ratification of managerial employees
22 of DEFENDANTS, with the intent to vex, injure, and annoy PLAINTIFFS, such as to constitute
23 oppression, fraud, or malice pursuant to California Civil Code § 3294, entitling PLAINTIFFS to
24 punitive and exemplary damages in a sum which is an amount appropriate to punish and set an
25 example of DEFENDANTS, and each of them, to deter such conduct in the future, and to set an
26 example for others.

197. PLAINTIFF and the CLASS suffered and continue to suffer loss of wages and monies, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court, as a direct result of DEFENDANTS' Labor Code and IWC Wage Orders violations.

198. PLAINTIFF seeks an order of this Court awarding restitution, injunctive relief and all other relief allowed under Business & Profession Code § 17200, et seq., plus interest, attorneys' fees and costs pursuant to, inter alia, Code of Civil Procedure Section 1021.5.

WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

FOURTEENTH CAUSE OF ACTION

PENALTIES, PURSUANT TO LABOR CODE § 2699 FOR VIOLATIONS OF LABOR CODE §§ 1182.12, 1197, 1194, 1194.2, 1197.1, 510, 1198, 558, 226.7, 512, 201, 202, 203, 204, 226, 226.3, 245.5, 246, 246.5, 247, 247.5, 248.5, 249, 2810.5, and 1198.5 (AGAINST ALL DEFENDANTS)

199. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

200. Cal. Labor Code § 2698 et seq., the Labor Code Private Attorney General Act of 2004 expressly establishes that any provision of the Cal. Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards agencies or employees for a violation of the Cal. Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and collectively on behalf of all other current or former employees.

201. Whenever the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitation and conditions, to assess a civil penalty.

202. PLAINTIFF, and the CLASS of "aggrieved employees", as defined by Cal. Labor Code § 2699, who are all current and former employees of DEFENDANTS, and against them one or more of the alleged violations was committed.

203. Having complied with the Notice and administrative provisions of PAGA, PLAINTIFF holds a right to bring an action on behalf of himself and other employees acting as a

1 proxy of the LWDA. Pursuant to Labor Code § 2699 et seq., PLAINTIFF seeks to recover civil
2 penalties for which DEFENDANTS are liable as a result of violations of the Labor Code, as set forth
3 in this Complaint and the Labor Code Private Attorney General Notice attached hereto as Exhibit
4 “1” and incorporated by reference including, but not limited to, violations of Labor Code §§ 1182.12,
5 1197, 1194, 1194.2, 1197.1, 510, 1198, 558, 226.7, 512, 201, 202, 203, 204, 226, 226.3, 245.5, 246,
6 246.5, 247, 247.5, 248.5, 249, 2810.5, and 1198.5.

7 204. California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide
8 employees who have worked in California on or after July 1, 2015 for 30 or more days from the
9 commencement of employment with paid sick days, to be accrued at least one hour for every 30
10 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less
11 than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each
12 year of the employee’s employment.

13 205. Section 246(i) requires an employer to provide an employee with written notice that
14 sets forth the amount of paid sick leave *available*, or PTO leave an employer provides in lieu of sick
15 leave, for use on either the employee's itemized wage statement as described in Section 226 or in a
16 separate writing provided on the designated pay date with the employees’ payment of wages. If an
17 employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer
18 may satisfy this section by indicating on the notice or the employee's itemized wage statement
19 "unlimited."

20 206. Labor Code § 247.5(a) requires an employer to keep for at least three years records
21 documenting the hours worked and paid sick days accrued and used by an employee. An employer
22 shall make these records available to an employee in the same manner as described in Section 226.

23 207. DEFENDANTS also failed to comply with section 247.5(a) as they failed to provide
24 PLAINTIFF and Aggrieved Employees with the records reflecting accrued and used paid sick days
25 and hours worked.

26 208. Even if DEFENDANTS complied with the accrual rate specified in section 246(a);
27 however, DEFENDANTS failed to comply with the written notice requirements of 246(i). The
28 itemized wage statements issued by DEFENDANTS do not contain any information relating to paid

1 sick leave accrued or paid time off, nor do the statements reflect “unlimited” paid time off.
2 Defendants fail to comply with the notice requirements and fail to provide each employee with a
3 separate writing on the designated pay date to setting forth the amount of paid sick leave available
4 as required by § 246(i).

5 209. The California Wage Theft Prevention Act of 2011 ("WTPA") became effective on
6 January 1, 2012. Among other provisions, the WTPA adds section 2810.5 to the California Labor
7 Code. The act requires that all employers provide each employee with a written notice containing
8 specified information. The notice must be in the language the employer normally uses to
9 communicate employment-related information to the employee. Specifically, employers are
10 required to provide each employee, at the time of hiring, with a written notice containing the
11 following information: (1) the rate or rates of pay “and basis thereof,” whether paid by the hour, shift,
12 day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable;
13 (2) allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances;
14 (3) the regular payday designated by the employer in accordance with the requirements of the Labor
15 Code; (4) the name of the employer, including any “doing business as” names used by the employer;
16 (5) the physical address of the employer's main office or principal place of business, and a mailing
17 address, if different; (6) the telephone number of the employer; (7) the name, address, and telephone
18 number of the employer's workers' compensation insurance carrier; and (8) any other information the
19 Labor Commissioner deems material and necessary.

20 210. PLAINTIFF began his employment with DEFENDANTS on December 2, 2021 when
21 Cal. Lab. Code § 2810.5 was in full force and effect. PLAINTIFF was a non-exempt employee
22 entitled to notice pursuant Cal. Lab. Code § 2810.5. Cal. Labor Code § 2810.5 is aimed at informing
23 employees about such fundamental and material information concerning their pay and rates of pay
24 under an employment relationship. DEFENDANTS willfully, and intentionally failed to comply with
25 the requirements of Cal. Lab. Code § 2810.5. Specifically, DEFENDANTS completely failed to
26 provide PLAINTIFF and Aggrieved Employees with a Notice to Employee.

27 211. As a result of the violations alleged herein, PLAINTIFF, individually and on behalf
28 of all aggrieved employees in their capacity as private attorneys general seeks penalties under Labor

1 Code § 2699(f), which states in relevant part:

2 For all provisions of this code except those for which a civil penalty is specifically provided,
3 there is established a civil penalty for a violation of these provisions as follows: ... (2) If, at
4 the time of the alleged violation, the person employs one or more employees, the civil penalty
5 is one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial
violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for
each subsequent violation.

6 212. To the extent that any violation alleged herein does not carry penalties under Cal. Labor
7 Code § 2699(a), PLAINTIFF seeks civil penalties pursuant to Cal. Lab. Code § 2699(f) for
8 PLAINTIFF and each member of the CLASS for each pay period in which they were aggrieved, in
9 the amounts established by Cal. Lab. Code § 2699(f).

10 213. For each such violations, PLAINTIFF and all other aggrieved employees are entitled to
11 penalties in an amount to be shown at the time of trial. The penalties will be allocated 75% to LWDA,
12 and 25% to the CLASS, (i.e., affected employees.)

13 214. Pursuant to Cal. Labor Code §§2699(g)(1) PLAINTIFF and aggrieved employees are
14 entitled to seek and recover reasonable attorneys' fees and costs.

15 215. PLAINTIFF, on behalf of himself and the CLASS, requests relief through PAGA as
16 described herein and below.

17 **DEMAND FOR JURY TRIAL**

18 PLAINTIFF, on behalf of himself and the CLASS, demands a trial by jury on all issues so
19 triable.

20 **PRAYER FOR RELIEF**

21 PLAINTIFF, on behalf of himself, the CLASS, the Aggrieved Employees, and all others
22 similarly situated, prays for relief and judgment against DEFENDANTS, jointly and severally, as
23 follows:

24 1. For an Order certifying the proposed CLASS and/or any other appropriate subclasses
25 under CCP § 382;

26 2. For an Order appointing PLAINTIFF as the representative of the CLASS;

27 3. For an Order appointing counsel for PLAINTIFF as counsel for the CLASS;

28 4. For a finding that DEFENDANTS violated the provisions of the California Labor Code,

1 including but not limited to, §§ 201-203, 226, 226.7, 510, 512, 1194, and 1198 as to PLAINTIFF and
2 the CLASS;

3 5. That the Court declare, adjudge, and decree that DEFENDANTS violated California
4 Business and Professions Code §§ 17200 et seq. as alleged herein;

5 6. That the Court make an award to PLAINTIFF and the CLASS of damages for the
6 amount of unpaid wages, including interest thereon and penalties, in amounts to be proven, in a
7 formulaic manner, at trial;

8 7. For an appropriate injunctive relief, including an Order directing DEFENDANTS to
9 cease and desist from discriminating against male PLAINTIFFS;

10 8. For special damages, according to proof;

11 9. For actual damages pursuant to Labor Code § 226(e);

12 10. For liquidated damages in an amount equal to the wages unlawfully unpaid and interest
13 thereon pursuant to Labor Code § 1194.2;

14 11. For reasonable attorneys' fees as provided by statute, including but not limited to
15 California Code of Civil Procedures § 1021.5 and California Labor Code §§ 218.5, 226, 1194;

16 12. For pre-judgment and post-judgment interest as provided by law;

17 13. For an award of damages in the amount of unpaid compensation and monies including,
18 but not limited to, actual damages, unpaid wages, overtime wages, regular wages, consequential, and
19 incidental losses and damages in an amount according to proof;

20 14. For penalties as permitted under California Labor Code for violations of each of the
21 sections identified herein, including but not limited to §§ 225.5, 226, 226.3, and 558;

22 15. For waiting time penalties and other penalties according to proof pursuant to California
23 Labor Code section 203 for all employees who have left DEFENDANTS' employment;

24 16. For injunctive relief pursuant to California Labor Code section 226(h);

25 17. For cost of suit herein;

26 18. For the appointment of a receiver to receive, manage and distribute any and all funds
27 disgorged from DEFENDANTS and determined to have been wrongfully acquired by
28 DEFENDANTS as a result of violations of California Business & Professions Code sections 17200

1 et seq.;

2 19. For any other such relief as the Court deems just and proper due to the misconduct
3 committed by the DEFENDANTS as alleged in this Complaint.

4 20. For disgorgement of all monies which DEFENDANTS have illegally gained;

5 21. For Punitive Damages;

6 22. For restitution of unpaid wages to PLAINTIFF and all the CLASS;

7 23. For an award of additional hour of pay at the regular rate of compensation pursuant to
8 Labor Code §226.7(b) for each meal and rest period not in compliance with the applicable Wage
9 Order of the IWC;

10 24. For penalties and subsequent violation of a section of Chapter 1 of Labor Code, Div. 2,
11 Part 2, or any provision regulating hours and days of work in any Order of the IWC for each
12 underpaid employee for each pay period for which the employee was underpaid, in addition to an
13 amount sufficient to recover the underpaid wages to be paid to each affected employee pursuant to
14 Labor Code §558;

15 25. For an accounting to determine all money wrongfully obtained and held by
16 DEFENDANTS;

17 26. For penalties according to the schedule as laid out in PAGA: for any initial violation,
18 one hundred (\$100) dollars for each aggrieved employee per pay period; two hundred (\$200) dollars
19 for each aggrieved employee per pay period for any subsequent violation, and reasonable attorneys'
20 fees and costs pursuant to California Labor Code § 2699;

21 27. For all other Orders, findings, and determinations identified and sought in this
22 Complaint and/or the Court finds just and proper;

23 28. PLAINTIFF reserves the right to amend her prayer for relief.

24 Dated: January 26, 2023

25
26 By:

MIRZAYAN LAW, APLC



Natalie Mirzayan, Esq.

Attorney for PLAINTIFF DANIEL MITCHELL
and the CLASS

EXHIBIT 1

MIRZAYAN LAW, APLC

September 28, 2022



VIA ONLINE FILING

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

VIA CERTIFIED MAIL

Joseph Vincent Borrelli
422 S. Myrtle Avenue
Monrovia, CA 91016

Julie Lynn Gentile-Soldo
128 E. Palm Avenue, Ste. 100
Monrovia, CA 91016

Bella Sera Trattoria, Inc.
128 E. Palm Avenue, Ste. 100
Monrovia, CA 91016

Re: **Notification Of Labor Code Private Attorney General Action, Labor Code 2698 et. seq. Against Bella Sera Trattoria, Inc., et. al.**

This notification is provided in advance of a civil action under Labor Code Private Attorneys General Act of 2004, (“PAGA”). This office represents Mr. Daniel Mitchell (“Mr. Mitchell” or “Plaintiff”) who was employed by Defendants BELLA SERA TRATTORIA, INC., (“BSTT”); JULIE LYNN GENTILE-SOLDO; (“GENTILE”); JOSEPH VINCENT BORRELLI (“BORRELLI”) (collectively referred to as “Defendants”) since December 2, 2021 until approximately March 7, 2022. This letter is a notice and a request, pursuant to California Labor Code §2699.3 that your agency investigates the claims in this impending civil action. If the agency does not intend to investigate the alleged violations, we specifically and respectfully request notification so that we can file our civil action to include our PAGA claims.

This impending action is brought on behalf of Mr. Mitchell who was employed as a Server/Busboy/Waiter and other similarly situated and aggrieved non-exempt current and former employees of Defendants in the state of California (“Aggrieved Employees”). The impending action is to recover penalties for the following Labor Code Violations as detailed below:

Labor Code §§ 1182.12, 1197, 1194, 1194.2, 1197.1: Cal. Lab. Code §1197 provides that: “the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Cal. Lab. Code §1194 provides in relevant part that any employee receiving less than the legal minimum wage applicable to the employee is entitled to recover in a civil action the unpaid

26632 Towne Centre Drive, Ste. # 300
Foothill Ranch, CA 92610
(949)-285-3550
mirzayanlaw@outlook.com

balance of the full amount of this minimum wage, including interest thereon, reasonable attorneys' fees, and costs of suit.

Cal. Lab. Code §1194.2 provides in relevant part that: "in any action under ... Section 1194 to recover wages because of a payment of wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wage unlawfully unpaid and interest thereon."

California's minimum wage law provides for two different rates based on the size of the employer as reflected in this chart:

Date	Minimum Wage for Employers with 25 Employees or Less	Minimum Wage for Employers with 26 Employees or More
January 1, 2017	\$10.00/hour	\$10.50/hour
January 1, 2018	\$10.50/hour	\$11.00/hour
January 1, 2019	\$11.00/hour	\$12.00/hour
January 1, 2020	\$12.00/hour	\$13.00/hour
January 1, 2021	\$13.00/hour	\$14.00/hour
January 1, 2022	\$14.00/hour	\$15.00/hour

Any individual performing any kind of compensable work for the employer who is not a bona fide independent contractor would be considered and counted as an employee, including salaried executives, part-time workers, minors, and new hires. Defendants employed more than 26 employees but failed to satisfy the minimum wage requirements. In fact, even for 25 Employees, Defendants paid a lower wage while purposing to pay the wage designated by statute. Plaintiff was paid \$13.00 per hour until February 22, 2022 when Defendants increased his rate to \$14.00 per hour purporting to comply with the minimum wage increase despite the fact that Defendants had more than 26 employees.

Labor Code §§ 510, 1198, 558 Payment for Overtime: Labor Code sections 510 and 1198 requires employers to pay employees time and half (1.5) the employees' hourly rate for all hours worked in excess of eight hours per day and in excess of 40 hours per week; and double times the hourly rate for hours worked in excess of 12 hours per day, and eight hours on the seventh day worked in a week. Defendants engage in a policy and practice of suffering their Employees to work more than 8 hours per day and/or forty hours in a work week by failing to compensate them overtime and double time as required by law.

Therefore, Aggrieved Employees were entitled to receive certain wages for overtime compensation but were not paid overtime hours as a result of Defendants' policies and practices, including but not limited to failing to pay proper minimum wages.

Labor Code §§ 226.7 and 512: Defendants violated Labor Code § 226.7 which requires employers to provide a ten-minute rest period during each four-hour segment of work. Defendants further violated Labor Code § 226.7 and 512 by failing to provide Mr. Mitchell and all other similarly situated and aggrieved employees with a meal period of not less than 30 minutes for each work period more than 5 hours per day and a second meal period of not less than 30 minutes for a work period of more than 10 hours-day. The meal period must be provided prior to the 5th hour of work.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Defendants required Mr. Mitchell and other Aggrieved Employees to work during meal and rest periods and failed to compensate them properly for missed meal and rest periods including but not limited to failing to pay them any premium pay, additional wages, and/or penalties.

Labor Code § 1198, IWC Wage Order 5-2001, §§ 4, 5:

(4)(C) When an employee works a split shift, one hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.

(5) (A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(5)(B) If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, said employee shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

Reporting time pay constitutes wages. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094. The IWC's purpose in adopting reporting time pay requirements was two-fold: "to compensate employees" and "encourag[e] proper notice and scheduling". *Id.* at pp. 1111-1112. In *Ward v. Tilly's, Inc.* (2019) 31 Cal.App.5th 1167, the California Court of Appeal held physical reporting was not required in order to come within the reporting time pay provision. Rather, that reporting time pay is owed for certain "on-call" shifts, where the employee must call in to find out if he or she is needed, but is told not to report to work. The act of calling in triggers the reporting time pay requirements in these circumstances, even though the employee is not actually required to come in to work.

Despite the requirements of the IWC Wage Order, Defendants failed to pay reporting pay when Mr. Mitchell and the Aggrieved Employees were required to report to work and did report, but were furnished less than half of their scheduled day's work. Defendants also failed to pay Mr. Mitchell and Aggrieved Employees one hour's pay at the minimum wage in addition to the minimum wage for that workday when Mr. Mitchell and Aggrieved Employees worked a split shift.

Labor Code §§ 201, 202, 203, 204: California Labor Code section 201 provides that if an employer discharges an employee, the employee's wages that have been earned and are unpaid at the time of discharge shall be paid immediately. Labor Code § 202 provides that if an employee quits, his or her wages become due no later than 72 hours thereafter or if an employee gives 72-hours previous notice of his or her intention to quit, the employees' wages are due at the time of quitting. Labor Code §203 provides that if the employer willfully fails to pay any wages of an employee who is discharged or who quits, the employee's wages shall continue as a penalty from the due date of the payment of wages, at the same rate, until such wages paid, or an action commenced, but not more than 30 days.

Labor Code § 204 provides that all wages earned by an employee are due and payable twice during a calendar month on days designated in advance as regular paydays by the employer.

Even if Defendants have less than 25 employees, which they don't, Defendants did not pay Mr. Mitchell and Aggrieved Employees the minimum wages in effect beginning January 1, 2022 until February 22, 2022, failed to pay Plaintiff and Aggrieved Employees for wages for split-shifts they worked, and failed to pay Plaintiff and Aggrieved Employees reporting time pay. Additionally, Defendants willfully failed and refused, and continue to willfully refuse, to timely pay compensation and wages, including overtime, payments, premiums for meal and rest periods, split-shift and reporting time pay, as described above. As a result, Defendants are liable for wages due, interest, and waiting time penalties, any other statutory penalties, other damages together with attorneys' fees and costs.

Labor Code §§ 226, and 226.3: Labor Code requires employers to maintain accurate records for each employee's hours of work and to provide each employee with an accurate wage statements in writing setting forth, among other things: gross wages earned; total hours worked by the employee; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, all deductions made, and the name

and address of the legal entity that is the employer

Defendants engage in a policy and practice of willfully and intentionally failing to furnish its Employees with accurate itemized wage statements in compliance with the statutory requirement of §226(a) for the reasons alleged above. To top it off, Defendants compelled and coerced Plaintiff and Aggrieved Employees to share their tips with other employees and falsely reported the “Cash Tips” in their entirety on the Server/Waiter’s wage statement subjecting the Server/Waiter to income taxes for tips that the Server/Waiter in fact shared with other employees.

Labor Code §§ 245.5 -249: California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California on or after July 1, 2015 for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee’s employment.

Section 246(i) requires an employer to provide an employee with written notice that sets forth the amount of paid sick leave *available*, or PTO leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement as described in Section 226 or in a separate writing provided on the designated pay date with the employees’ payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee’s itemized wage statement "unlimited."

Labor Code § 247.5(a) requires an employer to keep for at least three years records documenting the hours worked and paid sick days accrued and used by an employee. An employer shall make these records available to an employee in the same manner as described in Section 226.

Defendants also failed to comply with section 247.5(a) as they failed to provide Plaintiff and Aggrieved Employees with the records reflecting accrued and used paid sick days and hours worked.

Even if Defendants comply with the accrual rate specified in section 246(a); however, Defendants failed to comply with the written notice requirements of 246(i). The itemized wage statements issued by Defendants do not contain any information relating to paid sick leave accrued or paid time off, nor do the statements reflect “unlimited” paid time off. Defendants fail to comply with the notice requirements and fail to provide each employee with a separate writing on the designated pay date to setting forth the amount of paid sick leave available as required by § 246(i).

Labor Code § 2810.5: The California Wage Theft Prevention Act of 2011 ("WTPA") became effective on January 1, 2012. Among other provisions, the WTPA adds section 2810.5 to the California Labor Code. The act requires that all employers provide each employee with a written notice containing specified information. The notice must be in the language the employer normally uses to communicate employment-related information to the employee. Specifically, employers are required to provide each employee, at the time of hiring, with a written notice

containing the following information: (1) the rate or rates of pay “and basis thereof,” whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable; (2) allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances; (3) the regular payday designated by the employer in accordance with the requirements of the Labor Code; (4) the name of the employer, including any “doing business as” names used by the employer; (5) the physical address of the employer's main office or principal place of business, and a mailing address, if different; (6) the telephone number of the employer; (7) the name, address, and telephone number of the employer's workers' compensation insurance carrier; and (8) any other information the Labor Commissioner deems material and necessary.

Mr. Mitchell began his employment with Defendants on December 2, 2021 when Cal. Lab. Code § 2810.5 was in full force and effect. Mr. Mitchell was a non-exempt employee entitled to notice pursuant Cal. Lab. Code § 2810.5. Cal. Labor Code § 2810.5 is aimed at informing employees about such fundamental and material information concerning their pay and rates of pay under an employment relationship. Defendants willfully, and intentionally failed to comply with the requirements of Cal. Lab. Code § 2810.5. Specifically, Defendants completely failed to provide Mr. Mitchell and Aggrieved Employees with a Notice to Employee.

Lab Code § 1198.5:

Lab Code § 1198.5 provides:

(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

(b) (1) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request. Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records, at a charge not to exceed the actual cost of reproduction, not later than 30 calendar days from the date the employer receives the request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to produce a copy of the records, as long as the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request. Except as provided in paragraph (2) of subdivision (c), the employer is not required to make those personnel records or a copy thereof available at a time when the employee is actually required to render service to the employer, if the requester is the employee.

(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

(l) A current or former employee may also bring an action for injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney's fees in such an action.

Defendants willfully failed to permit the Plaintiff to inspect or copy his personnel file within 30 calendar days of his request in direct violation of Cal. Lab. Code § 1198.5.

The purpose of this letter is to satisfy the requirements created by California Labor Code section 2699 prior to filing a lawsuit and seeking penalties allowed by law for the aforementioned violations. We look forward to determining whether the agency intends to take any action in reference to these violations.

Sincerely,

A handwritten signature in black ink, appearing to read "Natalie Mirzayan", with a long horizontal flourish extending to the right.

Natalie Mirzayan, Esq.

Attorney for Plaintiff

Daniel Mitchell and Aggrieved Employees

7020 1810 0001 6538 8943

U.S. Postal Service TM	
CERTIFIED MAIL [®] RECEIPT	
Domestic Mail Only	
For delivery information, visit our website at www.usps.com .	
Monrovia, CA 91016	
OFFICIAL USE	
Certified Mail Fee	\$4.00
Extra Services & Fees (check box, add fee as appropriate)	\$0.00
☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00
Postage	\$0.84
Total Postage and Fees	\$4.84
Sent To	
Julie Lynn Gentile-Soldo	
Street and Apt. No., or PO Box No.	
128 E. Palm Ave # 100	
City, State, ZIP+4 [®]	
Monrovia, CA 91016	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

7020 1810 0001 6538 9049

CERTIFIED MAIL [®] RECEIPT	
Domestic Mail Only	
For delivery information, visit our website at www.usps.com .	
Monrovia, CA 91016	
OFFICIAL USE	
Certified Mail Fee	\$4.00
Extra Services & Fees (check box, add fee as appropriate)	\$0.00
☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00
Postage	\$0.84
Total Postage and Fees	\$4.84
Sent To	
Joseph Vincent Borrelli	
Street and Apt. No., or PO Box No.	
422 S. Myrtle Ave	
City, State, ZIP+4 [®]	
Monrovia, CA 91016	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

7020 1810 0001 6538 8967

U.S. Postal Service TM	
CERTIFIED MAIL [®] RECEIPT	
Domestic Mail Only	
For delivery information, visit our website at www.usps.com .	
Monrovia, CA 91016	
OFFICIAL USE	
Certified Mail Fee	\$4.00
Extra Services & Fees (check box, add fee as appropriate)	\$0.00
☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00
Postage	\$0.84
Total Postage and Fees	\$4.84
Sent To	
Bella Sera Trattoria Inc.	
Street and Apt. No., or PO Box No.	
128 Palm Ave # 100	
City, State, ZIP+4 [®]	
Monrovia, CA 91016	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

EXHIBIT 2



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@dfeh.ca.gov

January 26, 2023

RE: Notice of Filing of Discrimination Complaint

CRD Matter Number: 202301-19515427

Right to Sue: MITCHELL / BELLA SERA TRATTORIA, INC. et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Civil Rights Department (CRD)) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for CRD's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in CRD's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in CRD's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. You may contact CRD's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the CRD matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to CRD is requested or required.

Sincerely,



Civil Rights Department

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@dfeh.ca.gov

Civil Rights Department

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
Civil Rights Department
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

DANIEL MITCHELL

CRD No. 202301-19515427

Complainant,

vs.

BELLA SERA TRATTORIA, INC.
422 S. Myrtle Avenue
Monrovia, CA 91016

JULIE LYNN GENTILE-SOLDO
128 E. Palm Ave., Ste 100
Monrovia, CA 91016

JOSEPH VINCENT BORRELLI
422 S. Myrtle Avenue
Monrovia, CA 91016

Respondents

1. Respondent **BELLA SERA TRATTORIA, INC.** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **JULIE LYNN GENTILE-SOLDO** individual as Co-Respondent(s).
Complainant is naming **JOSEPH VINCENT BORRELLI** individual as Co-Respondent(s).

3. Complainant **DANIEL MITCHELL**, resides in the City of , State of .

4. Complainant alleges that on or about **March 7, 2022**, respondent took the following adverse actions:

Complainant was discriminated against because of complainant's sex/gender and as a result of the discrimination was terminated, denied hire or promotion, denied equal pay, denied any employment benefit or privilege.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment and as a result was terminated, denied hire or promotion, denied equal pay, denied work opportunities or assignments.

Additional Complaint Details: FEHA requires Respondents to refrain from discriminating against an employee on the basis of sex/gender, and to prevent discrimination and harassment on the basis of sex/gender from occurring. Claimant was a member of a protect class and was performing competently in the position he held with Respondents. Claimant suffered adverse employment actions of unlawful discrimination, and wrongful termination as a result of Respondents' discrimination and wrongful termination of his employment. Claimant was harmed as a result of Respondents' unlawful conduct. Claimant is informed and believes and thereon alleges that his sex/gender, male, was a motivating reason and/or factor in Respondents' decision to terminate his employment. Claimant was the only male server working for Respondents. Respondents falsely informed the Claimant that his layoff was due to lack of work; however, thereafter replaced Claimant with a female Server. Respondents only hire, promote, and continue the employment of female servers.

1 VERIFICATION

2 I, **Natalie Mirzayan**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On January 26, 2023, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Foothill Ranch, CA**
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25