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SUPERIOR COURT

2023 MAR 23 AM 11:26

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8 AMBER ASHLEY DAMAS, and all others similarly situated
9 (Additional attorneys for Plaintiff(s) on next page)

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN JOAQUIN
12 (UNLIMITED JURISDICTION)

13 AMBER ASHLEY DAMAS, on behalf of
14 herself, all others similarly situated, and as
15 an "aggrieved employee" on behalf of other
16 "aggrieved employees" under the Labor
Code Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 JUST WINGIN' IT, INC., a California
20 corporation; and DOES 1-50, inclusive,

21 *Defendant(s).*

Case No. STK-CV-UOE-2022-7989

FIRST AMENDED CLASS ACTION

COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code § 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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1 Plaintiff, Amber Ashley Damas (hereafter “Plaintiff” or “Damas”), on behalf of herself
2 and all others similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class and representative action for alleged violations of the
5 California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage
6 Order”), and the California Business and Professions Code against Defendants Just Wingin' It,
7 Inc., a California corporation, and Does 1 through 50, inclusive (collectively “Defendants”).

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
9 and other similarly situated workers for unpaid wages, statutory penalties, interest, and related
10 relief. These claims are based on Defendants’ failures to:

11 (A) Pay all wages, including minimum, regular, and overtime, earned for all
12 hours worked at the correct rates of pay;

13 (B) Provide all meal periods;

14 (C) Authorize and permit all rest breaks;

15 (D) Pay premium wages for unprovided meal periods;

16 (E) Pay premium wages for unprovided rest breaks;

17 (F) Indemnify for necessary work-related expenditures;

18 (G) Issue only accurate and complete itemized wage statements; and

19 (H) Timely pay wages upon termination of employment

20 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
21 restitution, statutory penalties, attorneys’ fees, costs, and related relief through this class and
22 representative action.

23 **II. THE PARTIES**

24 3. Plaintiff Amber Ashley Damas is a resident of California. On approximately
25 August 8, 2021, the Defendants began to employ Damas in Turlock and Riverbank and, over the
26 course of her employment, employed her in the positions of hourly, non-exempt crew member
27 and shift lead. The Defendants employed her until on or about June 28, 2022, when her
28 employment ended.

4. At all relevant times, Plaintiff was an "employee" within the meaning of Title 8
California Code of Regulations § 11040 and "aggrieved employee" within the meaning of Labor
Code § 2699(c).



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1 individuals in similar positions, at any time during the period beginning four years prior to the
2 filing of this action and ending on the date that final judgment is entered in this action (“Class”
3 or “Class Members”).

4 12. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
5 right to amend or modify the class definition with greater specificity, by further division into
6 subclasses and/or by limitation to particular issues.

7 13. **Numerosity:** The Class Members are so numerous that the individual joinder of
8 each individual Class Member is impractical. While Plaintiff does not currently know the exact
9 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
10 minimum required for numerosity under California laws.

11 14. **Commonality and Predominance:** Common questions of law and fact exist as to
12 all Class Members and predominate over any questions which affect only individual Class
13 Members. These questions include, but are not limited to:

14 A. Whether Defendants failed to pay all wages earned to Class Members for
15 all hours worked at the correct rates of pay, including minimum, regular, overtime, meal period
16 premium, and rest period premium wages;

17 B. Whether Defendants failed to provide the Class Members with all meal
18 periods in compliance with California law;

19 C. Whether Defendants failed to authorize and permit the Class Members to
20 take all rest periods in compliance with California law;

21 D. Whether Defendants failed to indemnify the Class Members for the
22 reasonable expenses they incurred during the course of performing their duties;

23 E. Whether Defendants knowingly and intentionally failed to provide the
24 class with accurate and complete itemized wage statements;

25 F. Whether Defendants willfully failed to provide the class with timely final
26 wages;

27 G. Whether Defendants engaged in unfair competition within the meaning of
28 Business and Professions Code sections 17200, et seq., with respect to the Class; and

H. Whether Class Members are entitled to restitution of money or property
that Defendants may have acquired from them through alleged Labor Code violations.

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1 15. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
2 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
3 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
4 Code, the Wage Order, and the Business and Professions Code.

5 16. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
6 in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
7 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
8 Members. Plaintiff will fairly and adequately represent and protect the interests of Class

9 17. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
10 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
11 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
12 Plaintiff and absent Class Members.

13 18. **Superiority:** A class action is vastly superior to other available means for fair and
14 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
15 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
16 and efficiently prosecute their common claims in a single forum without the unnecessary
17 duplication of effort and expense that numerous individual actions would entail. In addition, the
18 monetary amounts due to many individual Class Members are likely to be relatively small and
19 would thus make it difficult, if not impossible, for individual Class Members to both seek and
20 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
21 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
22 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

22 IV. **STATEMENT OF FACTS**

23 19. The Wage Order applies to "all persons employed in the public housekeeping
24 industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The
25 Wage Order defines "Public Housekeeping Industry" to mean

26 any industry, business, or establishment which provides meals, housing, or
27 maintenance services whether operated as a primary business or when incidental
28 to other operations in an establishment not covered by an industry order of the
Commission, and includes, but is not limited to the following:



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- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either sold or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants, Damas, and all of the Class Members were covered by the Wage Order because the Defendants operated, and Damas, and all of the Class Members, worked for one or more restaurants. Accordingly, Damas and all of the other Class Members are entitled to the protections the Wage Order provides.

20. On approximately August 8, 2021, the Defendants began to employ Damas in Turlock and Riverbank and, over the course of her employment, employed her in the positions of hourly, non-exempt crew member and shift lead. The Defendants employed her until on or about June 28, 2022 when her employment ended.

21. At all relevant times, the Defendants issued wages to Damas and all of the other Class Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Defendants classified Damas and all of the other Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

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1 22. At all relevant times, the Defendants failed to compensate Damas and all of the
2 other Class Members for all hours worked at the applicable minimum or regular rates of pay. The
3 Defendants frequently interrupted the meals periods of Damas and the Class Members, though
4 they would not pay wages to Damas and the Class Members for time spent in such meal periods
5 clocked out.

6 23. At all relevant times, the Defendants failed to compensate Damas and all of the
7 other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40
8 in a week, and for the first eight hours of the seventh day of the workweek. The Defendants
9 frequently interrupted the meals periods of Damas and the Class Members, though they would
10 not pay wages to Damas and the Class Members for time spent in such meal periods clocked out.
11 These unpaid work periods combined with other work time resulted in Damas and the Class
12 Members working overtime hours. However, the Defendants did not pay overtime premium
13 wages to Damas and the Class Members for such overtime work.

14 24. At all relevant times, the Defendants failed to provide Damas and all of the other
15 Class Members with all timely 30-minute, off-duty meal periods. The Defendants frequently
16 interrupted the meals periods of Damas and the Class Members, though they would not pay wages
17 to Damas and the Class Members for time spent in such meal periods clocked out. The Defendants
18 required Damas and the Class Members to work through meal periods because the Defendants
19 understaffed their restaurants. The Defendants also failed to pay premium wages for days on
20 which they failed to provide Damas and all of the other Class Members with meal periods as
21 required by law.

22 25. At all relevant times, the Defendants failed to authorize and permit Damas and all
23 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
24 or major portion thereof. The Defendants frequently interrupted the rest breaks of Damas and the
25 Class Members. The Defendants required Damas and the Class Members to work through rest
26 breaks because the Defendants understaffed their restaurants. The Defendants also failed to pay
27 premium wages for days on which they failed to authorize and permit Damas and all of the other
28 Class Members to take rest breaks as required by law.

 26. At all relevant times, the Defendants required Damas and all of the other Class
Members to incur certain business expenses in the course of performing their duties. The
Defendants required Damas and all of the other Class Members to supply mobile phones,



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1 transportation between work sites to perform their job duties. However, the Defendants did not
2 provide these items and did not reimburse Damas and the other Class Members for these items.
3 The Defendants required Damas and the Class Members to travel in their automotive vehicles to
4 pick up supplies and chicken. The Defendants did not reimburse Damas and the Class Members
5 for mileage they incurred in such travel. The Defendants required Damas and the Class Members
6 to use their personnel mobile phones to communicate with management for work. The Defendants
7 did not reimburse Damas and the Class Members for such cell phone use or provide them with an
8 alternative to using their personal mobile phones. The Defendants required Damas and the Class
9 Members to use knives they purchased to perform their job duties. The Defendants did not
10 reimburse Damas and the Class Members for such knives. The Defendants required Damas and
the Class Members to wear uniforms and pay for replacement uniform items when they wore out.

11 27. At all relevant times, the Defendants failed to issue to Damas and all of the other
12 Class Members complete and accurate wage statements that state all hours worked at the correct
13 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
14 the wage statements they issued to Damas and all of the other Class Members the unpaid wages
15 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
16 earned, all overtime wages earned, all meal period premium wages earned, all rest break premium
17 wages earned, and related information. The Defendants also failed to state the correct name of the
employer on the wage statements, instead stating “Just Wing In It, Inc.”

18 28. At all relevant times, the Defendants also failed to timely pay Damas and all of the
19 other Class Members all earned wages as described above during and at the conclusion of
20 employment.

21 29. At all relevant times, the Defendants failed to maintain accurate employee records
22 of Damas and all of the other Class Members.

23 30. For the reasons stated herein, Plaintiff alleges that as a result of Defendants’
24 unlawful practices and policies, Plaintiff and the Class Members were:

- 25 A. Not provided with all off duty meal periods;
- 26 B. Not authorized and permitted to take all rest break periods;
- 27 C. Not paid one hour’s pay for each workday in which Defendants failed to
28 authorize and permit them to take one or more timely rest periods;

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1 D. Not paid one hour's pay for each workday in which Defendants failed to
2 provide them with one or more timely meal periods;

3 E. Not paid all wages earned, including, but not limited to, minimum, regular,
4 overtime, and doubletime wages for work performed while clocked out;

5 F. Not indemnified for all necessary business expenditures incurred during
6 the discharge of their duties;

7 G. Not provided with accurate and complete wage statements; and

8 H. Not timely paid all earned and unpaid wages at the time their employment
9 ended.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY ALL WAGES AT THE CORRECT RATES**

12 **Lab. Code §§ 510, 1194, 1197, and 1198**

13 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

14 31. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 32. At all relevant times, Plaintiff and the Class Members have been non-exempt
16 employees entitled to the protections of both the Labor Code and the Wage Order.

17 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT** 18 **THE CORRECT RATES OF PAY**

19 33. Section 2 of the Wage Order defines "hours worked" as "the time during which an
20 employee is subject to the control of an employer, and includes all the time the employee is
21 suffered or permitted to work, whether or not required to do so."

22 34. Section 3 of the Wage Order states:

23 **(A) Daily Overtime - General Provisions**

- 24 (1) The following overtime provisions are applicable to
25 employees 18 years of age or over and to employees 16 or
26 17 years of age who are not required by law to attend
27 school and are not otherwise prohibited by law from
28 engaging in the subject work. Such employees shall not be
employed more than eight (8) hours in any workday or
more than 40 hours in any workweek unless the employee
receives one and one-half (1 ½) times such employee's
regular rate of pay for all hours worked over 40 hours in
the workweek. Eight (8) hours of labor constitutes a day's



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work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

35. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

36. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. 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. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

37. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.



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1 38. Labor Code section 1197 makes it unlawful for an employer to pay an employee
2 less than the minimum wage required under the applicable Wage Order for all hours worked
3 during a payroll period.

4 39. Labor Code section 1198 makes it unlawful for an employer to employ an
5 employee under conditions that violate the Wage Order.

6 40. In conjunction, these provisions of the Labor Code require employers to pay non-
7 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
8 worked, including unrecorded hours when the employer knew or reasonably should have known
9 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
10 Cal.4th 575, 585.)

11 41. At all relevant times during the applicable limitations period, Defendants failed to
12 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
13 minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and
14 doubletime hours, respectively, that they worked at the correct rates of pay.

15 42. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
16 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
17 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
18 rates of pay as required by California law.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PROVIDE MEAL PERIODS**

21 **Lab. Code §§ 226.7 and 512**

22 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

23 43. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

24 44. At all relevant times during the applicable limitations period, Plaintiff and the
25 Class Members have been employees of Defendants and entitled to the benefits and protections
26 of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

27 45. In relevant part, California Labor Code § 1198 states:

28 The maximum hours of work and the standard conditions of labor fixed by the
commission shall be the maximum hours of work and the standard conditions of
labor for employees. The employment of any employee for longer hours than those
fixed by the order or under conditions of labor prohibited by the order is unlawful.



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1 46. In relevant part, In relevant part, California Labor Code § 512 states:

2 An employer shall not employ an employee for a work period of
3 more than five hours per day without providing the employee with
4 a meal period of not less than 30 minutes, except that if the total
5 work period per day of the employee is no more than six hours, the
6 meal period may be waived by mutual consent of both the
7 employer and employee.

8 An employer shall not employ an employee for a work period of
9 more than 10 hours per day without providing the employee with
10 a second meal period of not less than 30 minutes, except that if the
11 total hours worked is no more than 12 hours, the second meal
12 period may be waived by mutual consent of the employer and the
13 employee only if the first meal period was not waived.

14 47. In relevant part, Section 11 of the Wage Order states:

15 **Meal Periods**

16 (A) No employer shall employ any person for a work period of
17 more than five (5) hours without a meal period of not less
18 than 30 minutes, except that when a work period of not
19 more than six (6) hours will complete the day's work the
20 meal period may be waived by mutual consent of the
21 employee and the employee. Unless the employee is
22 relieved of all duty during a 30 minute meal period, the
23 meal period shall be considered an 'on duty' meal period
24 and counted as time worked. An 'on duty' meal period shall
25 be permitted only when the nature of the work prevents an
26 employee from being relieved of all duty and when by
27 written agreement between the parties an on-the-job paid
28 meal period is agreed to. The written agreement shall state
that the employee may, in writing, revoke the agreement at
any time.

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

48. In relevant part, California Labor Code § 226.7 states:

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(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

49. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

50. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants frequently interrupted the meals periods of Damas and the Class Members, though they would not pay wages to Damas and the Class Members for time spent in such meal periods clocked out. The Defendants required Damas and the Class Members to work through meal periods because the Defendants understaffed their restaurants.

51. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

52. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Class Members with all off-duty meal



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1 periods required by California law.

2 53. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
3 suffered damages in amounts subject to proof to the extent they were not paid additional wages
4 owed for all meal periods not provided to them.

5 54. By reason of the above, Plaintiff and the Class Members are entitled to premium
6 wages for workdays in which one or more meal periods were not provided to them pursuant to
7 California Labor Code § 226.7.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

10 **Lab. Code § 226.7**

11 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

12 55. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

13 56. At all relevant times during the applicable limitations period, Plaintiff and the
14 Class Members have been employees of Defendants and entitled to the benefits and protections
15 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

16 57. In relevant part, California Labor Code § 1198 states:

17 The maximum hours of work and the standard conditions of labor
18 fixed by the commission shall be the maximum hours of work and
19 the standard conditions of labor for employees. The employment
20 of any employee for longer hours than those fixed by the order or
21 under conditions of labor prohibited by the order is unlawful.

22 58. In relevant part, Section 12 of the Wage Order states:

23 **Rest Periods**

24 (A) Every employer shall authorize and permit all employees
25 to take rest periods, which insofar as practicable shall be in the
26 middle of each work period. The authorized rest period time shall
27 be based on the total hours worked daily at the rate of ten (10)
28 minutes net rest time per four (4) hours or major fraction thereof.
However, a rest period need not be authorized 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 which there shall be no deduction from wages.

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

59. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

60. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

61. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

62. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Class Members for days on which they failed to authorize and permit Plaintiff and the other Class Members to take timely rest periods.

63. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the



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1 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
2 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
3 to authorize and permit them to take 10-minute rest periods every four hours worked or major
4 fraction thereof.

5 64. Plaintiff is informed and believes and thereon alleges that, at all relevant times
6 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
7 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
8 take all rest breaks required by California law.

9 65. Defendants failed to provide Plaintiff with all required rest breaks in accordance
10 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
11 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
12 which resulted in Defendants not providing the Class Members with all rest breaks required by
13 California law.

14 66. Defendants failed to pay Plaintiff the additional wages required by California
15 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and
16 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
17 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
18 Class Members with additional wages for all rest breaks not provided to them as required by
19 California Labor Code § 226.7.

20 67. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
21 suffered damages in amounts subject to proof to the extent they were not paid additional wages
22 owed for all rest breaks not provided to them.

23 68. By reason of the above, Plaintiff and the Class Members are entitled to premium
24 wages for workdays in which one or more rest breaks were not provided to them pursuant to
25 California Labor Code § 226.7.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

Lab. Code § 2802

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

26 69. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

27
28 ///



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1 75. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

2 76. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
3 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
4 statement showing:

5 A. Gross wages earned;

6 B. Total hours worked by the employee, except for any employee whose
7 compensation is solely based on a salary and who is exempt from payment of overtime under
8 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

9 C. The number of piece rate units earned and any applicable piece rate if the
10 employee is paid on a piece-rate basis;

11 D. All deductions, provided that all deductions made on written orders of the
12 Employee may be aggregated and shown as one item;

13 E. Net wages earned;

14 F. The inclusive dates of the period for which the employee is paid;

15 G. The name of the employee and his or her social security number, except
16 that by January 1, 2008, only the last four digits of his or her social security number or an
17 employee identification number other than a social security number may be shown on the itemized
18 statement;

19 H. The name and address of the legal entity that is the employer; and

20 I. All applicable hourly rates in effect during the pay period and the
21 corresponding number of hours worked at each hourly rate by the employee.

22 77. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
23 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
24 the employer fails to provide accurate and complete information as required by California Labor
25 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
26 alone one or more of the following:

27 A. The amount of the gross wages or net wages paid to the employee during
28 the pay period or any of the other information required to be provided on the itemized wage
statement pursuant to California Labor Code § 226(a);

 B. Which deductions the employer made from gross wages to determine the
net wages paid to the employee during the pay period;



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1 C. The name and address of the employer and, if the employer is a farm labor
2 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
3 and address of the legal entity that secured the services of the employer during the pay period;

4 D. The name of the employee and only the last four digits of his or her
5 social security number or an employee identification number other than a social security number;
6 and

7 E. The number of piece-rate units earned and the piece rate.

8 78. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
9 means a reasonable person would be able to readily ascertain the information without reference
10 to other documents or information.

11 79. As alleged herein, at all relevant times during the applicable limitations period,
12 Defendants violated California Labor Code section 226 because they did not properly and
13 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
14 the corresponding number of hours worked at each rate by the employee and other requirements
15 of California Labor Code section 226. Defendants failed to state in the wage statements they
16 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
17 including, but not limited to, regular and overtime wages for work they performed off-the-clock
18 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
19 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
20 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
21 Members that state all minimum wages earned, all regular wages earned, all overtime wages
22 earned, all meal period premium wages earned, all rest break premium wages earned, and related
23 information. The defendants also failed to state the correct name of the employer on the way to
24 statements, instead stating “Just Wing In It, Inc.”

25 80. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
26 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
27 the other Class Members with accurate wage statements but intentionally provided wage
28 statements that Defendants knew were not accurate.

81. As a result of being provided with inaccurate wage statements by Defendants,
Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
wage statements were violated and they were misled about the amount of wages they had actually



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1 earned and were owed. In addition, the absence of accurate information on their wage statements
2 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
3 and mathematical computations to determine the amounts of wages owed, has caused difficulty
4 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
5 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
6 and the other Class Members were not able to ascertain from the wage statements whether
7 Defendants complied with their obligations under California Labor Code section 226(a).

8 **SIXTH CAUSE OF ACTION**

9 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

10 **Lab. Code §§ 201, 202, and 203**

11 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

12 82. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

13 83. At all relevant times during the applicable limitations period, Plaintiffs and the
14 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
15 of California Labor Code §§ 201, 202, and 203, and the Wage Order.

16 84. Labor Code § 201 provides that all earned and unpaid wages of an employee who
17 is discharged are due and payable immediately at the time of discharge.

18 85. Labor Code § 202 provides that all earned and unpaid wages of an employee who
19 quits after providing at least 72-hours notice before quitting are due and payable at the time of
20 quitting and that all earned and unpaid wages of an employee who quits without providing at least
21 72-hours notice before quitting are due and payable within 72 hours.

22 86. The Defendants failed to pay Damas and all of the other Class Members whose
23 employment ended all of the earned but unpaid wages described above by the conclusion of their
24 employment with Damas, including minimum wages, regular wages, overtime wages, unprovided
25 meal period premium wages, unprovided rest break premium wages, and related compensation.

26 87. By failing to pay such earned wages to Plaintiff and the Class Members,
27 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
28 § 201 or § 202.

88. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
and the Class Members all of their earned and unpaid wages (described above) have been willful
in that, at all relevant times, Defendants have deliberately maintained policies and practices that



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1 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,
2 they have had the ability to comply with those legal requirements.

3 89. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of
4 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
5 penalties for each Class Member.

6 **SEVENTH CAUSE OF ACTION**

7 **UNFAIR COMPETITION**

8 **Bus. & Prof. Code §§ 17200, *et seq.***

9 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

10 90. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

11 91. At all relevant times during the applicable limitations period, Plaintiff and the
12 Class Members have been employees of Defendants and entitled to the benefits and protections
13 of the Business and Professions Code §§ 17200, *et seq.*

14 92. The unlawful conduct of Defendants alleged herein amount to and constitutes
15 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
16 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
17 gained a competitive advantage over other comparable companies doing business in California
18 that comply with their legal obligations to compensate employees for all earned wages.

19 93. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
20 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
21 Members were deprived of minimum wages, regular wages, overtime wages, missed meal period
22 premium wages, missed rest period premium wages, uniform expense, phone expenses, telecom
23 expenses, mileage expenses, the costs for knives, and comparable money and property.

24 94. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
25 Class Members are entitled to restitution of all monies rightfully belonging to them that
26 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
27 practices.

28 95. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
connection with their unfair competition claims pursuant to California Code of Civil Procedure §
1021.5, the substantial benefit doctrine and/or the common fund doctrine.

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EIGHT CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

96. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

97. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning September 12, 2021 and ending on the date that final judgment is entered in this action.

98. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

99. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.



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1 100. During the applicable time period, Defendants violated California Labor Code §§
2 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

3 101. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
4 behalf of themselves and other current or former employees, to bring a civil action to recover civil
5 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

6 102. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
7 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
8 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable
9 limitations period in the following amounts:

10 A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for
11 each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each
12 Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts
13 established by California Labor Code § 210).

14 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
15 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
16 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
17 California Labor Code § 226.3).

18 C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for
19 each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each
20 Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established
21 by California Labor Code § 558).

22 D. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for
23 each Aggrieved Employee for each initial violation (penalty amounts established by Labor Code
24 § 1174.5).

25 E. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for
26 each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars
27 (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period (regardless
28 of whether the initial violations were intentionally committed) (penalty amounts established by
California Labor Code § 1197.1).

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1 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, 1198, and
2 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial
3 violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for
4 each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

5 103. Plaintiff has complied with the procedures for bringing suit specified in California
6 Labor Code § 2699.3. By letter dated September 12, 2022, Plaintiff filed written notice online
7 with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by
8 certified mail to Defendants of the specific provisions of the California Labor Code alleged to
9 have been violated, including the facts and theories to support the alleged violations. A true and
10 correct copy of the notice to the LWDA dated September 12, 2022 is attached as Exhibit A.
11 Plaintiff accompanied her LWDA notice with a fee in the amount of \$75.00. The LWDA has
12 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but
13 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing her that it
14 does not intend to investigate these allegations.

15 104. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
16 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
17 connection with their claims for civil penalties.

18 V. PRAYER FOR RELIEF

19 WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for relief and
20 judgment against Defendants as follows:

21 A. An order that the action be certified as a class action with respect to
22 Plaintiff’s claims for violations of California law;

23 B. An order that Plaintiff be appointed class representative;

24 C. An order that counsel for Plaintiff be appointed class counsel;

25 D. Unpaid wages, including minimum, regular, overtime, double-time, split
26 shift, vacation, missed meal period, missed rest period, nonproductive time, rest and recovery
27 time, and reporting time wages;

28 E. Liquidated damages;

F. Civil Penalties;



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- G. Statutory penalties, including waiting time penalties;
- H. Restitution;
- I. Declaratory relief;
- J. Actual damages;
- K. Pre-judgment interest;
- L. Costs of suit;
- M. Reasonable attorneys' fees; and
- N. Such other relief as the Court deems just and proper.

105. **DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of herself and all other Class Members, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: March 23, 2023

By:

DAVID G. SPIVAK
MAYA CHEAITANI, Attorneys for
Plaintiff(s), AMBER ASHLEY
DAMAS, and all others similarly
situated



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PROOF OF SERVICE

State of California,
County of Los Angeles

I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 1801 Century Park East, 25th Floor, Los Angeles, CA 90067.

I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On March 23, 2023, I served the foregoing document described as **FIRST AMENDED CLASS ACTION COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

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____ (BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 1801 Century Park East, 25th Floor, Los Angeles, CA 90067.

XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address stacy@spivaklaw.com.

EXECUTED on March 23, 2023, at Thousand Oaks, California.

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



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STACY SUSSMAN