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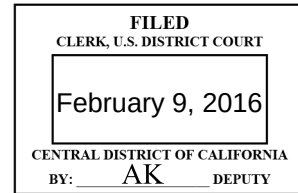
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KIANA TAMEZ, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

BUFFALO WILD WINGS, INC.;
and BLAZIN' WINGS, INC.,

Defendants.

Case No. LA CV15-09754 JAK (PJWx)

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

1. Failure to Provide Meal Periods;
2. Failure to Authorize or Permit Rest Periods;
3. Failure to Pay Wages Upon Separation of Employment and Within the Required Time;
4. Failure to Furnish Accurate Wage Statements;
5. Violation of California Business and Professions Code §§ 17200, *et seq.*; and
6. Enforcement of Labor Code § 2698 *et. seq.* ("PAGA")

1 Plaintiff Kiana Tamez, individually and on behalf of all others similarly
2 situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Kiana Tamez ("Plaintiff") brings this class action, pursuant to
5 California Code of Civil Procedure section 382, and representative action, pursuant
6 to Private Attorneys General Act of 2004, Cal. Lab. Code section 2698 *et seq.*, on
7 behalf of herself and non-exempt employees employed, or formerly employed,
8 within the State of California by Buffalo Wild Wings, Inc. and Blazin' Wings, Inc.
9 (collectively referred to as "Buffalo Wild Wings" or "Defendants").

10 2. Buffalo Wild Wings operates restaurants throughout the State of
11 California.

12 3. Through this action, Plaintiff is alleging that Defendants have engaged
13 in a systematic pattern of wage and hour violations under the California Labor Code
14 and Industrial Welfare Commission ("IWC") Wage Orders, all of which contribute
15 to Defendants' deliberate unfair competition.

16 4. Plaintiff is informed and believes, and thereon alleges, that Defendants
17 have increased their profits by violating state wage and hour laws by, among other
18 things:

19 (a) Failing to provide lawful meal periods or compensation in lieu
20 thereof,

21 (b) Failing to authorize or permit lawful rest periods or provide
22 compensation in lieu thereof;

23 (c) Willfully failing to provide accurate semi-monthly itemized wage
24 statements; and

25 (d) Failing to pay all wages due upon separation of employment.

26 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants
27 on behalf of herself and all others similarly to recover, among other things, unpaid
28 meal period compensation, unpaid rest period compensation, interest, attorney's fees,

1 costs and expenses and penalties pursuant to Labor Code §§ 201-203, 210, 226,
2 226.3, 226.7, 558, 512, and 2698 *et seq.*

3 6. Plaintiff, on behalf of herself and all class members, pursuant to
4 Business and Professions Code sections 17200, *et seq.*, also seeks injunctive relief
5 and restitution for the unfair, unlawful, or fraudulent practices alleged in this
6 Complaint.

7 **JURISDICTION AND VENUE**

8 7. This is a class action, pursuant to California Code of Civil Procedure
9 § 382. The monetary damages and restitution sought by Plaintiff exceed the minimal
10 jurisdictional limits of the Superior Court and will be established according to proof
11 at trial.

12 8. This Court has jurisdiction over this action pursuant to the California
13 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction
14 in all cases except those given by statutes to other courts. The statutes under which
15 this action is brought do not specify any other basis for jurisdiction.

16 9. This Court has jurisdiction over all Defendants because, upon
17 information and belief, Defendants have sufficient minimum contacts in California
18 or otherwise intentionally avail themselves of the California market so as to render
19 the exercise of jurisdiction over them by the California courts consistent with
20 traditional notions of fair play and substantial justice.

21 10. Venue as to each defendant is proper in this judicial district, pursuant to
22 California Code of Civil Procedure section 395.5. Upon information and belief,
23 Defendants transact business or have at least one facility in this county and acts and
24 omissions alleged herein took place in this county.

25 **THE PARTIES**

26 11. Plaintiff Kiana Tamez is a resident of California. Plaintiff was
27 employed by Defendants during the Class Period in California.
28

1 12. Plaintiff is informed and believes, and thereon alleges, that Defendants
2 at all times hereinafter mentioned, were and are employers as defined in and subject
3 to the Labor Code and IWC Wage Orders, whose employees were and are engaged
4 throughout this county and the State of California.

5 13. Plaintiff is unaware of the true names or capacities of the defendants
6 sued herein under the fictitious names DOES 1 through 20, but will seek leave of this
7 Court to amend this Complaint and serve such fictitiously named defendants once
8 their names and capacities become known.

9 14. Plaintiff is informed and believes, and based thereon alleges, that each
10 defendant acted in all respects pertinent to this action as the agent of the other
11 defendant, carried out a joint scheme, business plan or policy in all respects pertinent
12 hereto, and the acts of each defendant are legally attributable to the other defendant.
13 Furthermore, defendants in all respects acted as the employer and/or joint employer
14 of Plaintiff and the class members.

15 15. Plaintiff is informed and believes, and thereon alleges, that each and all
16 of the acts and omissions alleged herein were performed by, or are attributable to,
17 Defendants and/or DOES 1 through 20, acting as the agent or alter ego for the other,
18 with legal authority to act on the other's behalf. The acts of any and all Defendants
19 were in accordance with, and represent, the official policy of Defendants.

20 16. At all relevant times, Defendants, and each of them, acted within the
21 scope of such agency or employment, or ratified each and every act or omission
22 complained of herein. At all relevant times, Defendants, and each of them, aided and
23 abetted the acts and omissions of each and all the other Defendants in proximately
24 causing the damages herein alleged.

25 17. Plaintiff is informed and believes, and thereon alleges, that each of said
26 Defendants is in some manner intentionally, negligently or otherwise responsible for
27 the acts, omissions, occurrences and transactions alleged herein.
28

CLASS ACTION ALLEGATIONS

18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of herself and all other members of the general public similarly situated who were affected by Defendants' Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

19. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

20. Plaintiff's proposed Class consists of and is defined as follows:

All persons currently or formerly employed as non-exempt employees by Defendants in the State of California within four years prior to the filing of this action to the present.

21. Plaintiff also seeks to certify the following Subclass:

Waiting Time Subclass

All members of the Class who separated their employment from Defendants within three years prior to the filing of this action to the present.

22. Members of the Class and Subclass described above will collectively be referred to as "class members." Plaintiff reserves the right to establish other or additional subclasses, or modify any Class or Subclass definition, as appropriate based on investigation, discovery and specific theories of liability.

23. This action has been brought and may properly be maintained as a class action under the California Code of Civil Procedure § 382 because there are common questions of law and fact as to the Class that predominate over questions affecting only individual members including, but not limited to:

- a. Whether Defendants deprived Plaintiff and class members of timely meal periods;
- b. Whether Defendants deprived Plaintiff and class members of rest breaks or required Plaintiff and class members to work through rest breaks;

- c. Whether Defendants failed to timely pay Plaintiff and former class members all wages due upon termination or within 72 hours of resignation;
- d. Whether Defendants failed to furnish Plaintiff and class members with accurate wage statements; and
- e. Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*

24. There is a well-defined community of interest in the litigation and the Class is readily ascertainable.

- (a) Numerosity: The members of the Class are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiff at this time, on information and belief, the Class is estimated to be greater than 100 individuals. The identity of the class members are readily ascertainable by inspection of Defendants' employment and payroll records.
- (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims (or defenses, if any) of the Class because Defendants' failure to comply with the provisions of California wage and hour laws entitled each class member to similar pay, benefits and other relief. The injuries sustained by Plaintiff are also typical of the injuries sustained by the Class because they arise out of and are caused by Defendants' common course of conduct as alleged herein.
- (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent and protect the interests of all members of the Class because it is in her best interests to prosecute the claims alleged herein to obtain full compensation and penalties due her and the

1 Class. Plaintiff's attorneys, as proposed class counsel, are
2 competent and experienced in litigating large employment class
3 actions and are versed in the rules governing class action
4 discovery, certification and settlement. Plaintiff has incurred and,
5 throughout the duration of this action, will continue to incur
6 attorneys' fees and costs that have been and will be necessarily
7 expended for the prosecution of this action for the substantial
8 benefit of each class member.

9 (d) Superiority: The nature of this action makes the use of class
10 action adjudication superior to other methods. A class action will
11 achieve economies of time, effort and expense as compared with
12 separate lawsuits, and will avoid inconsistent outcomes because
13 the same issues can be adjudicated in the same manner and at the
14 same time for each Class. If appropriate this Court can, and is
15 empowered to, fashion methods to efficiently manage this case as
16 a class action.

17 (e) Public Policy Considerations: Employers in the State of
18 California and other states violate employment and labor laws
19 every day. Current employees are often afraid to assert their
20 rights out of fear of direct or indirect retaliation. Former
21 employees are fearful of bringing actions because they believe
22 their former employers might damage their future endeavors
23 through negative references and/or other means. Class actions
24 provide the class members who are not named in the complaint
25 with a type of anonymity that allows for the vindication of their
26 rights at the same time as affording them privacy protections.

27 ///

28 ///

GENERAL ALLEGATIONS

25. At all relevant times mentioned herein, Defendants employed Plaintiff and other persons as non-exempt employees.

26. Plaintiff was employed in a non-exempt position at Defendants' California business location(s).

27. Defendants continue to employ non-exempt employees within California.

28. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants were advised by skilled lawyers, employees and other professionals who were knowledgeable about California wage and hour law, employment and personnel practices and the requirements of California.

29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive all meal periods or payment of one additional hour of pay at Plaintiff's and class members' regular rate of pay when they did not receive one timely, uninterrupted meal period when working more than five hours and a second timely, uninterrupted meal period when working more than ten hours. Defendants failed to provide these lawful meal periods to class members. These failures include, but are not limited to, failing to provide the first meal periods within the first five hours of work and failing to provide second meal periods for shifts of longer than ten hours.

30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive all rest breaks or payment of one additional hour of pay at Plaintiff and class members' regular rate of pay when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class members did not receive all rest breaks or payment of one additional hour of pay at Plaintiff and class members' regular rate of pay when a rest break was missed.

1 31. Plaintiff is informed and believes, and thereon alleges, that Defendants
2 knew or should have known that Plaintiff and class members were entitled to timely
3 payment of wages during their employment. In violation of the California Labor
4 Code, Plaintiff and class members did not receive payment of all wages including,
5 but not limited to, compensation for meal period violations and rest period
6 violations, within permissible time periods.

7 32. Plaintiff is informed and believes, and thereon alleges, that Defendants
8 knew or should have known that Plaintiff and Waiting Time class members were
9 entitled to timely payment of wages upon separation of employment. In violation of
10 the California Labor Code, Plaintiff and Waiting Time class members did not receive
11 payment of all wages including, but not limited to, compensation for meal period
12 violations and compensation for rest period violations, upon separation of their
13 employment with Defendants.

14 33. Plaintiff is informed and believes, and thereon alleges, that Defendants
15 knew or should have known that Plaintiff and class members were entitled to receive
16 complete and accurate wage statements in accordance with California law. In
17 violation of the California Labor Code, Plaintiff and class members were not
18 furnished with complete and accurate wage statements showing their accurate gross
19 and net wages, among other things.

20 34. Plaintiff is informed and believes, and thereon alleges, that Defendants
21 knew or should have known they had a duty to compensate Plaintiff and class
22 members, and Defendants had the financial ability to pay such compensation but
23 willfully, knowingly and intentionally failed to do so all in order to increase
24 Defendants' profits.

25 35. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive
26 relief against Defendants on behalf of herself and all class members to recover,
27 among other things, unpaid meal period premium payments, unpaid rest period
28 premium payments, interest, attorneys' fees, penalties, costs and expenses.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violations of Labor Code §§ 226.7 and 512)

36. Plaintiff hereby incorporates all previous paragraphs of this Complaint as though fully set forth herein.

37. Labor Code § 226.7 provides that no employer shall require an employee to work during any meal period mandated by the IWC Wage Orders.

38. Section 11 of the applicable IWC Wage Order states, “no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

39. Labor Code § 512(a) provides that an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

40. Labor Code § 512(a) also provides that an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

41. During the relevant time period, Plaintiff and class members did not receive compliant meal periods for working more than five (5) and/or ten (10) hours per day because, among other things, Defendant did not provide the first meal

1 periods within the first 5 hours of class members' shifts and did not provide second
2 meal periods for shifts over 10 hours.

3 42. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage
4 Order requires an employer to pay an employee one additional hour of pay at the
5 employee's regular rate of compensation for each work day that a compliant meal
6 period is not provided.

7 43. At all relevant times, Defendants failed to pay Plaintiff and class
8 members the full meal period premium for missed and untimely meal periods
9 pursuant to Labor Code § 226.7(b) and section 11 of the applicable IWC Wage
10 Order.

11 44. As a result of Defendants' failure to pay Plaintiff and class members an
12 additional hour of pay for each day a compliant meal period was not provided,
13 Plaintiff and class members suffered and continue to suffer a loss of wages and
14 compensation.

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PERMIT REST PERIODS**

17 **(Violations of Labor Code § 226.7)**

18 45. Plaintiff hereby re-alleges and incorporates by reference all paragraphs
19 above as though fully set forth herein.

20 46. Labor Code § 226.7(a) provides that no employer shall require an
21 employee to work during any rest period mandated by the IWC Wage Orders.

22 47. Section 12 of the applicable IWC Wage Order states "every employer
23 shall authorize and permit all employees to take rest periods, which insofar as
24 practicable shall be in the middle of each work period" and the "authorized rest
25 period time shall be based on the total hours worked daily at the rate of ten (10)
26 minutes net rest time per four (4) hours or major fraction thereof" unless the total
27 daily work time is less than three and one-half (3½) hours.
28

1 48. During the relevant time period, Plaintiff and class members did not
2 receive a ten (10) minute rest period for every four (4) hours or major fraction
3 thereof worked because they were required to work through their daily rest periods
4 and/or were not authorized to take their rest periods.

5 49. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage
6 Order requires an employer to pay an employee one additional hour of pay at the
7 employee's regular rate of compensation for each work day that the rest period is not
8 provided.

9 50. At all relevant times, Defendants failed to pay Plaintiff and class
10 members the full rest period premium for missed or interrupted rest periods pursuant
11 to Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order.

12 51. As a result of Defendants' failure to pay Plaintiff and class members an
13 additional hour of pay for each day a rest period was not provided, Plaintiff and class
14 members suffered and continue to suffer a loss of wages and compensation.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES UPON SEPARATION**

17 **OF EMPLOYMENT AND WITHIN THE REQUIRED TIME**

18 **(Violations of Labor Code §§ 201, 202, 203 and 210)**

19 52. Plaintiff hereby incorporates all previous paragraphs of this Complaint
20 as though fully set forth herein.

21 53. California Labor Code §§ 201 and 202 provide that if an employer
22 discharges an employee, the wages earned and unpaid at the time of discharge are
23 due and payable immediately, and that if an employee voluntarily leaves his or her
24 employment, his or her wages shall become due and payable not later than seventy-
25 two (72) hours thereafter, unless the employee has given seventy-two (72) hours
26 previous notice of his or her intention to quit, in which case the employee is entitled
27 to his or her wages at the time of quitting.
28

1 54. During the relevant time period, Defendants willfully failed to pay
2 Plaintiff and Waiting Time Subclass Members all their earned wages upon
3 termination including, but not limited to, compensation for failure to provide
4 compliant meal periods and permit compliant rest periods, either at the time of
5 discharge or within seventy-two (72) hours of their leaving Defendants' employ.

6 55. Defendants' failure to pay Plaintiff and Waiting Time Subclass
7 Members all their earned wages at the time of discharge or within seventy-two (72)
8 hours of their leaving Defendants' employ, is in violation of California Labor Code
9 §§ 201 and 202.

10 56. California Labor Code § 203 provides that if an employer willfully fails
11 to pay wages owed promptly upon discharge or resignation as required under
12 California Labor Code §§ 201 and 202, then the wages of the employee shall
13 continue as a penalty from the due date, and at the same rate until paid or until an
14 action is commenced; but the wages shall not continue for more than thirty (30) days.

15 57. Defendants willfully failed to pay Plaintiff and Waiting Time Subclass
16 Members all wages due and, as a result, owe Plaintiff and Waiting Time Subclass
17 Members regular daily wages for each day they were not paid, at their regular rates
18 of pay up to a thirty (30) day maximum pursuant to California Labor Code § 203 all
19 in an amount to be shown according to proof at trial.

20 58. Based on these violations, Plaintiff and the Waiting Time Subclass she
21 seeks to represent request relief as described herein and below.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

24 **(Violation of Labor Code § 226)**

25 59. Plaintiff hereby incorporates all previous paragraphs of this Complaint
26 as though fully set forth herein.

27 60. California Labor Code § 226(a) requires employers to furnish their
28 employees with an accurate itemized writing that shows gross wages earned, total

1 hours worked, all deductions, net wages earned, the inclusive dates of the period for
2 which the employee is paid, the name of the employee and the portion of his or her
3 social security number as required by law, the name and address of the legal entity
4 that is the employer and all applicable hourly rates in effect during the pay period
5 and the corresponding number of hours worked at each hourly rate by the employee.

6 61. Defendants have intentionally and willfully failed to provide Plaintiff
7 and class members with complete and accurate wage statements. The deficiencies
8 include, among other things, the failure to list the proper amount of the gross wages
9 earned and net wages earned, due to the failure to compensate class members for
10 non-compliant meal periods and rest periods.

11 62. As a result of Defendants' violation of California Labor Code § 226(a),
12 Plaintiff and class members have suffered injury and damage to their statutorily
13 protected rights. Specifically, Plaintiff and class members have been injured by
14 Defendants' intentional violation of California Labor Code § 226(a) because they
15 were denied both their legal right to receive, and their protected interest in receiving,
16 accurate itemized wage statements under California Labor Code § 226(a). Plaintiff
17 has had to file this lawsuit in order to determine the extent of the underpayment of
18 wages, thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not
19 have had to engage in these efforts and incur these costs had Defendants provided
20 the accurate wages earned. This has also delayed Plaintiff's ability to demand and
21 recover the underpayment of wages from Defendants.

22 63. California Labor Code § 226(a) requires an employer to pay the greater
23 of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a
24 violation occurred, and one hundred dollars (\$100.00) per employee for each
25 violation in subsequent pay periods, plus attorney's fees and costs, to each employee
26 who was injured by the employer's failure to comply with California Labor Code §
27 226(a).
28

64. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and class members from knowing, understanding and disputing the wages paid to them, and resulted in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and class members have suffered an injury, and the exact amount of damages and/or penalties is all in an amount to be shown according to proof at trial.

65. Plaintiff and class members are also entitled to injunctive relief under California Labor Code § 226(g), compelling Defendants to comply with California Labor Code § 226, and seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

FIFTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

(Violation of Business and Professions Code §§ 17200 *et seq.*)

66. Plaintiff hereby incorporates all previous paragraphs of this Complaint as though fully set forth herein.

67. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice"

68. A violation of California Business and Professions Code §§ 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants' policies and practices have violated state law, causing Plaintiff and class members to suffer and continue to suffer injuries in fact. As alleged herein, Defendants systematically engaged in unlawful conduct in violation of the California Labor Code and IWC Wage Orders, such as failing to provide meal periods or compensation in lieu thereof, failing to permit rest periods or compensation in lieu thereof, failing to pay all wages due and owing upon separation of employment and

1 in a timely manner, and failing to furnish accurate wage statements, all in order to
2 decrease their costs of doing business and increase their profits.

3 69. At all times relevant herein, Defendants intentionally avoided paying
4 Plaintiff and class members wages and monies, thereby creating for Defendants an
5 artificially lower cost of doing business in order to undercut their competitors and
6 establish and/or gain a greater foothold in the marketplace.

7 70. As a result of Defendants' conduct, Plaintiff and class members suffered
8 a loss of wages and monies, all in an amount to be shown according to proof at trial.
9 By violating the foregoing statutes and regulations as herein alleged, Defendants'
10 acts constitute unfair and unlawful business practices under California Business and
11 Professions Code §§ 17200, *et seq.*

12 71. Defendants' violations of the California Labor Code and IWC Wage
13 Orders and their scheme to lower their payroll costs as alleged herein, constitute
14 unlawful business practices because they were done in a systematic manner over a
15 period of time to the detriment of Plaintiff and class members.

16 72. As a result of the unfair business practices of Defendants, as alleged
17 herein, Plaintiff and class members are entitled to injunctive relief, disgorgement and
18 restitution in an amount to be shown according to proof at trial.

19 73. Plaintiff seeks to enforce important rights affecting the public interest
20 within the meaning of California Code of Civil Procedure § 1021.5. Defendants'
21 conduct, as alleged herein, has been, and continues to be, unfair, unlawful and
22 harmful to Plaintiff, class members and to the general public. Based on Defendants'
23 conduct as alleged herein, Plaintiff and class members are entitled to an award of
24 attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

25 **SIXTH CAUSE OF ACTION**

26 **ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")**

27 74. Plaintiff hereby re-alleges and incorporates by reference the previous
28 paragraphs, as though fully set forth herein.

1 75. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that
 2 provides for a civil penalty to be assessed and collected by the Labor and Workforce
 3 Development Agency ("LWDA") or any of its departments, divisions, commissions,
 4 boards, agencies or employees for violation of the code may, as an alternative, be
 5 recovered through a civil action brought by an aggrieved employee on behalf of
 6 himself or herself and other current or former employees pursuant to the procedures
 7 specified in Labor Code § 2699.3.

8 76. For all provisions of the Labor Code except those for which a civil
 9 penalty is specifically provided, Labor Code § 2699(f) imposes upon Defendant a
 10 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
 11 period for the initial violation and two hundred dollars (\$200.00) for each aggrieved
 12 employee per pay period for each subsequent pay period in which Defendant
 13 violated these provisions of the Labor Code.

14 77. Defendants' conduct violates numerous Labor Code sections including,
 15 but not limited to, the following:

- 16 (a) Violation of Labor Code §§ 201-203 for failure to timely pay all
 17 earned wages owed to Plaintiff and other aggrieved employees upon
 18 separation of employment as herein alleged;
- 19 (b) Violation of Labor Code §§ 226.7 and 512 for failure to provide
 20 meal periods to Plaintiff and other aggrieved employees and failure
 21 to pay premium wages for missed meal periods as herein alleged;
- 22 (c) Violation of Labor Code § 226.7 for failure to permit rest breaks to
 23 Plaintiff and other aggrieved employees and failure to pay premium
 24 wages for missed rest periods as herein alleged; and
- 25 (d) Violation of Labor Code § 226 for failure to provide accurate
 26 itemized wage statements to Plaintiff and other aggrieved employees
 27 as herein alleged.

1 78. Further, Labor Code § 558(a) provides “any employer or other person
2 acting on behalf of an employer who violates, or causes to be violated, a section of
3 this chapter or any provisions regulating hours and days of work in any order of the
4 IWC shall be subject to a civil penalty as follows: (1) For any violation, fifty dollars
5 (\$50) for each underpaid employee for each pay period for which the employee was
6 underpaid in addition to an amount sufficient to recover underpaid wages. (2) For
7 each subsequent violation, one hundred dollars (\$100) for each underpaid employee
8 for each pay period for which the employee was underpaid in addition to an amount
9 sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section
10 shall be paid to the affected employee.” Labor Code § 558(c) provides “the civil
11 penalties provided for in this section are in addition to any other civil or criminal
12 penalty provided by law.”

13 79. As set forth above, Defendants have violated numerous provisions of
14 the Labor Code regulating hours and days of work as well as the IWC Wage Orders.
15 Accordingly, Plaintiff seeks the remedies set forth in Labor Code § 558 for himself,
16 the underpaid employees, and the State of California.

17 80. Plaintiff is an “aggrieved employee” because she was employed by the
18 alleged violator and had one or more of the alleged violations committed against her,
19 and therefore is properly suited to represent the interests of all other aggrieved
20 employees.

21 81. Plaintiff has exhausted the procedural requirements under Labor Code §
22 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on
23 behalf of herself and all other aggrieved employees under PAGA.

24 82. PAGA imposes a penalty of one hundred dollars (\$100.00) for each
25 aggrieved employee per pay period for the initial violation and two hundred dollars
26 (\$200.00) for each aggrieved employee per pay period for each subsequent violation.
27
28

1 83. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is
2 entitled to recover civil penalties, in addition to other remedies, for violations of the
3 Labor Code sections cited above.

4 84. For bringing this action, Plaintiff is entitled to attorney's fees and costs
5 incurred herein.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, on behalf of all others similarly situated, prays for
8 judgment against Defendants as follows:

9 1. For certification of the proposed Class and Waiting Time Subclass and
10 any other appropriate classes or subclasses under California Code of Civil Procedure
11 § 382;

12 2. For appointment of Plaintiff as the class representative;

13 3. For appointment of Aegis Law Firm, PC as class counsel for all
14 purposes;

15 4. For general damages;

16 5. For special damages;

17 6. For statutory penalties to the extent permitted by law, including those
18 pursuant to the California Labor Code and IWC Wage Orders;

19 7. For injunctive relief as provided by the California Labor Code and
20 California Business and Professions Code §§ 17200 *et seq.*;

21 8. For restitution as provided by California Business and Professions Code
22 §§ 17200, *et seq.*;

23 9. For an order requiring Defendants to restore and disgorge all funds to
24 each employee acquired by means of any act or practice declared by this Court to be
25 unlawful, unfair or fraudulent and, therefore, constituting unfair competition under
26 California Business and Professions Code §§ 17200 *et seq.*;

27 10. For an award of damages in the amount of unpaid compensation;

28 11. For pre-judgment interest;

1 12. For reasonable attorney's fees and costs of suit to the extent permitted
2 by law, including pursuant to PAGA; California Code of Civil Procedure § 1021.5
3 and California Labor Code §§ 226(e);

4 13. For penalties pursuant to PAGA.

5 14. For such other relief as the Court deems just and proper.

6
7 Dated: February 9, 2016

AEGIS LAW FIRM, PC

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10 By: _____

11 Jessica L. Campbell
12 Attorneys for Plaintiff
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EXHIBIT B

AEGIS LAW FIRM, PC

Samuel A. Wong (State Bar No. 217104)
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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
DISTRICT COURT

COUNTY OF LOS ANGELES CENTRAL DISTRICT OF CALIFORNIA

KIANA TAMEZ, individually and on
 behalf of all others similarly situated,

Plaintiff,

vs.

BUFFALO WILD WINGS, INC.;
and BLAZIN' WINGS, INC.,
 California Corporation, and DOES 1-
 10, inclusive,

Defendants.

Case No. BC596402LA CV15-09754 JAK
 (PJWx)

Assigned for All Purposes to:
 Hon. Jane L. Johnson
 Department 308

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

1. Failure to Provide Meal Periods;
2. Failure to Authorize or Permit Rest Periods;
3. Failure to Pay Wages Upon Separation of Employment and Within the Required Time;
4. Failure to Furnish Accurate Wage Statements;
5. Violation of California Business and Professions Code §§ 17200, *et seq.*; and
6. Enforcement of Labor Code § 2698

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1 Plaintiff Kiana Tamez, individually and on behalf of all others similarly
2 situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Kiana Tamez ("Plaintiff") brings this class action, pursuant to
5 California Code of Civil Procedure section 382, and representative action, pursuant
6 to Private Attorneys General Act of 2004, Cal. Lab. Code section 2698 *et seq.*, on
7 behalf of herself and non-exempt employees employed, or formerly employed,
8 within the State of California by Buffalo Wild Wings, Inc. and Blazin' Wings, Inc.
9 (~~and any subsidiaries or affiliated companies (hereinafter, along with DOES 1~~
10 ~~through 10,~~ collectively referred to as "Buffalo Wild Wings" or "Defendants").

11 2. Buffalo Wild Wings operates restaurants throughout the State of
12 California.

13 3. Through this action, Plaintiff is alleging that Defendants have engaged
14 in a systematic pattern of wage and hour violations under the California Labor Code
15 and Industrial Welfare Commission ("IWC") Wage Orders, all of which contribute
16 to Defendants' deliberate unfair competition.

17 4. Plaintiff is informed and believes, and thereon alleges, that Defendants
18 have increased their profits by violating state wage and hour laws by, among other
19 things:

- 20 (a) Failing to provide lawful meal periods or compensation in lieu
- 21 thereof;
- 22 (b) Failing to authorize or permit lawful rest periods or provide
- 23 compensation in lieu thereof;
- 24 (c) Willfully failing to provide accurate semi-monthly itemized wage
- 25 statements; and
- 26 (d) Failing to pay all wages due upon separation of employment.

27 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants
28 on behalf of herself and all others similarly to recover, among other things, unpaid

1 meal period compensation, unpaid rest period compensation, interest, attorney's fees,
2 costs and expenses and penalties pursuant to Labor Code §§ 201-203, 210, 226,
3 226.3, 226.7, 558, 512, and 2698 *et seq.*

4 6. Plaintiff, on behalf of herself and all class members, pursuant to
5 Business and Professions Code sections 17200, *et seq.*, also seeks injunctive relief
6 and restitution for the unfair, unlawful, or fraudulent practices alleged in this
7 Complaint.

8 JURISDICTION AND VENUE

9 7. This is a class action, pursuant to California Code of Civil Procedure
10 § 382. The monetary damages and restitution sought by Plaintiff exceed the minimal
11 jurisdictional limits of the Superior Court and will be established according to proof
12 at trial.

13 8. This Court has jurisdiction over this action pursuant to the California
14 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction
15 in all cases except those given by statutes to other courts. The statutes under which
16 this action is brought do not specify any other basis for jurisdiction.

17 9. This Court has jurisdiction over all Defendants because, upon
18 information and belief, Defendants have sufficient minimum contacts in California
19 or otherwise intentionally avail themselves of the California market so as to render
20 the exercise of jurisdiction over them by the California courts consistent with
21 traditional notions of fair play and substantial justice.

22 10. Venue as to each defendant is proper in this judicial district, pursuant to
23 California Code of Civil Procedure section 395.5. Upon information and belief,
24 Defendants transact business or have at least one facility in this county and acts and
25 omissions alleged herein took place in this county.

26 THE PARTIES

27 11. Plaintiff Kiana Tamez is a resident of California. Plaintiff was
28 employed by Defendants during the Class Period in California.

1 12. Plaintiff is informed and believes, and thereon alleges, that Defendants
2 at all times hereinafter mentioned, were and are employers as defined in and subject
3 to the Labor Code and IWC Wage Orders, whose employees were and are engaged
4 throughout this county and the State of California.

5 13. Plaintiff is unaware of the true names or capacities of the defendants
6 sued herein under the fictitious names DOES 1 through 20, but will seek leave of this
7 Court to amend this Complaint and serve such fictitiously named defendants once
8 their names and capacities become known.

9 14. Plaintiff is informed and believes, and based thereon alleges, that each
10 defendant acted in all respects pertinent to this action as the agent of the other
11 defendant, carried out a joint scheme, business plan or policy in all respects pertinent
12 hereto, and the acts of each defendant are legally attributable to the other defendant.
13 Furthermore, defendants in all respects acted as the employer and/or joint employer
14 of Plaintiff and the class members.

15 15. Plaintiff is informed and believes, and thereon alleges, that each and all
16 of the acts and omissions alleged herein were performed by, or are attributable to,
17 Defendants and/or DOES 1 through 20, acting as the agent or alter ego for the other,
18 with legal authority to act on the other's behalf. The acts of any and all Defendants
19 were in accordance with, and represent, the official policy of Defendants.

20 16. At all relevant times, Defendants, and each of them, acted within the
21 scope of such agency or employment, or ratified each and every act or omission
22 complained of herein. At all relevant times, Defendants, and each of them, aided and
23 abetted the acts and omissions of each and all the other Defendants in proximately
24 causing the damages herein alleged.

25 17. Plaintiff is informed and believes, and thereon alleges, that each of said
26 Defendants is in some manner intentionally, negligently or otherwise responsible for
27 the acts, omissions, occurrences and transactions alleged herein.
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CLASS ACTION ALLEGATIONS

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18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of herself and all other members of the general public similarly situated who were affected by Defendants' Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

19. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

20. Plaintiff's proposed Class consists of and is defined as follows:

All persons currently or formerly employed as non-exempt employees by Defendants in the State of California within four years prior to the filing of this action to the present.

21. Plaintiff also seeks to certify the following Subclass:

Waiting Time Subclass

All members of the Class who separated their employment from Defendants within three years prior to the filing of this action to the present.

22. Members of the Class and Subclass described above will collectively be referred to as "class members." Plaintiff reserves the right to establish other or additional subclasses, or modify any Class or Subclass definition, as appropriate based on investigation, discovery and specific theories of liability.

23. This action has been brought and may properly be maintained as a class action under the California Code of Civil Procedure § 382 because there are common questions of law and fact as to the Class that predominate over questions affecting only individual members including, but not limited to:

- a. Whether Defendants deprived Plaintiff and class members of timely meal periods;
- b. Whether Defendants deprived Plaintiff and class members of rest breaks or required Plaintiff and class members to work through rest breaks;

- c. Whether Defendants failed to timely pay Plaintiff and former class members all wages due upon termination or within 72 hours of resignation;
- d. Whether Defendants failed to furnish Plaintiff and class members with accurate wage statements; and
- e. Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*

24. There is a well-defined community of interest in the litigation and the Class is readily ascertainable.

- (a) Numerosity: The members of the Class are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiff at this time, on information and belief, the Class is estimated to be greater than 100 individuals. The identity of the class members are readily ascertainable by inspection of Defendants' employment and payroll records.
- (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims (or defenses, if any) of the Class because Defendants' failure to comply with the provisions of California wage and hour laws entitled each class member to similar pay, benefits and other relief. The injuries sustained by Plaintiff are also typical of the injuries sustained by the Class because they arise out of and are caused by Defendants' common course of conduct as alleged herein.
- (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent and protect the interests of all members of the Class because it is in her best interests to prosecute the claims alleged herein to obtain full compensation and penalties due her and the

Class. Plaintiff's attorneys, as proposed class counsel, are competent and experienced in litigating large employment class actions and are versed in the rules governing class action discovery, certification and settlement. Plaintiff has incurred and, throughout the duration of this action, will continue to incur attorneys' fees and costs that have been and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for each Class. If appropriate this Court can, and is empowered to, fashion methods to efficiently manage this case as a class action.

(e) Public Policy Considerations: Employers in the State of California and other states violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as affording them privacy protections.

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GENERAL ALLEGATIONS

25. At all relevant times mentioned herein, Defendants employed Plaintiff and other persons as non-exempt employees.

26. Plaintiff was employed in a non-exempt position at Defendants' California business location(s).

27. Defendants continue to employ non-exempt employees within California.

28. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants were advised by skilled lawyers, employees and other professionals who were knowledgeable about California wage and hour law, employment and personnel practices and the requirements of California.

29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive all meal periods or payment of one additional hour of pay at Plaintiff's and class members' regular rate of pay when they did not receive one timely, uninterrupted meal period when working more than five hours and a second timely, uninterrupted meal period when working more than ten hours. Defendants failed to provide these lawful meal periods to class members. These failures include, but are not limited to, failing to provide the first meal periods within the first five hours of work and failing to provide second meal periods for shifts of longer than ten hours.

30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive all rest breaks or payment of one additional hour of pay at Plaintiff and class members' regular rate of pay when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class members did not receive all rest breaks or payment of one additional hour of pay at Plaintiff and class members' regular rate of pay when a rest break was missed.

1 31. Plaintiff is informed and believes, and thereon alleges, that Defendants
2 knew or should have known that Plaintiff and class members were entitled to timely
3 payment of wages during their employment. In violation of the California Labor
4 Code, Plaintiff and class members did not receive payment of all wages including,
5 but not limited to, compensation for meal period violations and rest period
6 violations, within permissible time periods.

7 32. Plaintiff is informed and believes, and thereon alleges, that Defendants
8 knew or should have known that Plaintiff and Waiting Time class members were
9 entitled to timely payment of wages upon separation of employment. In violation of
10 the California Labor Code, Plaintiff and Waiting Time class members did not receive
11 payment of all wages including, but not limited to, compensation for meal period
12 violations and compensation for rest period violations, upon separation of their
13 employment with Defendants.

14 33. Plaintiff is informed and believes, and thereon alleges, that Defendants
15 knew or should have known that Plaintiff and class members were entitled to receive
16 complete and accurate wage statements in accordance with California law. In
17 violation of the California Labor Code, Plaintiff and class members were not
18 furnished with complete and accurate wage statements showing their accurate gross
19 and net wages, among other things.

20 34. Plaintiff is informed and believes, and thereon alleges, that Defendants
21 knew or should have known they had a duty to compensate Plaintiff and class
22 members, and Defendants had the financial ability to pay such compensation but
23 willfully, knowingly and intentionally failed to do so all in order to increase
24 Defendants' profits.

25 35. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive
26 relief against Defendants on behalf of herself and all class members to recover,
27 among other things, unpaid meal period premium payments, unpaid rest period
28 premium payments, interest, attorneys' fees, penalties, costs and expenses.

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FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violations of Labor Code §§ 226.7 and 512)

36. Plaintiff hereby incorporates all previous paragraphs of this Complaint as though fully set forth herein.

37. Labor Code § 226.7 provides that no employer shall require an employee to work during any meal period mandated by the IWC Wage Orders.

38. Section 11 of the applicable IWC Wage Order states, “no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

39. Labor Code § 512(a) provides that an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

40. Labor Code § 512(a) also provides that an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

41. During the relevant time period, Plaintiff and class members did not receive compliant meal periods for working more than five (5) and/or ten (10) hours per day because, among other things, Defendant did not provide the first meal

1 periods within the first 5 hours of class members' shifts and did not provide second
2 meal periods for shifts over 10 hours.

3 42. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage
4 Order requires an employer to pay an employee one additional hour of pay at the
5 employee's regular rate of compensation for each work day that a compliant meal
6 period is not provided.

7 43. At all relevant times, Defendants failed to pay Plaintiff and class
8 members the full meal period premium for missed and untimely meal periods
9 pursuant to Labor Code § 226.7(b) and section 11 of the applicable IWC Wage
10 Order.

11 44. As a result of Defendants' failure to pay Plaintiff and class members an
12 additional hour of pay for each day a compliant meal period was not provided,
13 Plaintiff and class members suffered and continue to suffer a loss of wages and
14 compensation.

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PERMIT REST PERIODS**

17 **(Violations of Labor Code § 226.7)**

18 45. Plaintiff hereby re-alleges and incorporates by reference all paragraphs
19 above as though fully set forth herein.

20 46. Labor Code § 226.7(a) provides that no employer shall require an
21 employee to work during any rest period mandated by the IWC Wage Orders.

22 47. Section 12 of the applicable IWC Wage Order states "every employer
23 shall authorize and permit all employees to take rest periods, which insofar as
24 practicable shall be in the middle of each work period" and the "authorized rest
25 period time shall be based on the total hours worked daily at the rate of ten (10)
26 minutes net rest time per four (4) hours or major fraction thereof" unless the total
27 daily work time is less than three and one-half (3½) hours.
28

1 48. During the relevant time period, Plaintiff and class members did not
2 receive a ten (10) minute rest period for every four (4) hours or major fraction
3 thereof worked because they were required to work through their daily rest periods
4 and/or were not authorized to take their rest periods.

5 49. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage
6 Order requires an employer to pay an employee one additional hour of pay at the
7 employee's regular rate of compensation for each work day that the rest period is not
8 provided.

9 50. At all relevant times, Defendants failed to pay Plaintiff and class
10 members the full rest period premium for missed or interrupted rest periods pursuant
11 to Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order.

12 51. As a result of Defendants' failure to pay Plaintiff and class members an
13 additional hour of pay for each day a rest period was not provided, Plaintiff and class
14 members suffered and continue to suffer a loss of wages and compensation.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES UPON SEPARATION**

17 **OF EMPLOYMENT AND WITHIN THE REQUIRED TIME**

18 **(Violations of Labor Code §§ 201, 202, 203 and 210)**

19 52. Plaintiff hereby incorporates all previous paragraphs of this Complaint
20 as though fully set forth herein.

21 53. California Labor Code §§ 201 and 202 provide that if an employer
22 discharges an employee, the wages earned and unpaid at the time of discharge are
23 due and payable immediately, and that if an employee voluntarily leaves his or her
24 employment, his or her wages shall become due and payable not later than seventy-
25 two (72) hours thereafter, unless the employee has given seventy-two (72) hours
26 previous notice of his or her intention to quit, in which case the employee is entitled
27 to his or her wages at the time of quitting.
28

1 54. During the relevant time period, Defendants willfully failed to pay
 2 Plaintiff and Waiting Time Subclass Members all their earned wages upon
 3 termination including, but not limited to, compensation for failure to provide
 4 compliant meal periods and permit compliant rest periods, either at the time of
 5 discharge or within seventy-two (72) hours of their leaving Defendants' employ.

6 55. Defendants' failure to pay Plaintiff and Waiting Time Subclass
 7 Members all their earned wages at the time of discharge or within seventy-two (72)
 8 hours of their leaving Defendants' employ, is in violation of California Labor Code
 9 §§ 201 and 202.

10 56. California Labor Code § 203 provides that if an employer willfully fails
 11 to pay wages owed promptly upon discharge or resignation as required under
 12 California Labor Code §§ 201 and 202, then the wages of the employee shall
 13 continue as a penalty from the due date, and at the same rate until paid or until an
 14 action is commenced; but the wages shall not continue for more than thirty (30) days.

15 57. Defendants willfully failed to pay Plaintiff and Waiting Time Subclass
 16 Members all wages due and, as a result, owe Plaintiff and Waiting Time Subclass
 17 Members regular daily wages for each day they were not paid, at their regular rates
 18 of pay up to a thirty (30) day maximum pursuant to California Labor Code § 203 all
 19 in an amount to be shown according to proof at trial.

20 58. Based on these violations, Plaintiff and the Waiting Time Subclass she
 21 seeks to represent request relief as described herein and below.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

24 **(Violation of Labor Code § 226)**

25 59. Plaintiff hereby incorporates all previous paragraphs of this Complaint
 26 as though fully set forth herein.

27 60. California Labor Code § 226(a) requires employers to furnish their
 28 employees with an accurate itemized writing that shows gross wages earned, total

1 hours worked, all deductions, net wages earned, the inclusive dates of the period for
2 which the employee is paid, the name of the employee and the portion of his or her
3 social security number as required by law, the name and address of the legal entity
4 that is the employer and all applicable hourly rates in effect during the pay period
5 and the corresponding number of hours worked at each hourly rate by the employee.

6 61. Defendants have intentionally and willfully failed to provide Plaintiff
7 and class members with complete and accurate wage statements. The deficiencies
8 include, among other things, the failure to list the proper amount of the gross wages
9 earned and net wages earned, due to the failure to compensate class members for
10 non-compliant meal periods and rest periods.

11 62. As a result of Defendants' violation of California Labor Code § 226(a),
12 Plaintiff and class members have suffered injury and damage to their statutorily
13 protected rights. Specifically, Plaintiff and class members have been injured by
14 Defendants' intentional violation of California Labor Code § 226(a) because they
15 were denied both their legal right to receive, and their protected interest in receiving,
16 accurate itemized wage statements under California Labor Code § 226(a). Plaintiff
17 has had to file this lawsuit in order to determine the extent of the underpayment of
18 wages, thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not
19 have had to engage in these efforts and incur these costs had Defendants provided
20 the accurate wages earned. This has also delayed Plaintiff's ability to demand and
21 recover the underpayment of wages from Defendants.

22 63. California Labor Code § 226(a) requires an employer to pay the greater
23 of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a
24 violation occurred, and one hundred dollars (\$100.00) per employee for each
25 violation in subsequent pay periods, plus attorney's fees and costs, to each employee
26 who was injured by the employer's failure to comply with California Labor Code §
27 226(a).

1 64. Defendants' violations of California Labor Code § 226(a) prevented
 2 Plaintiff and class members from knowing, understanding and disputing the wages
 3 paid to them, and resulted in an unjustified economic enrichment to Defendants. As a
 4 result of Defendants' knowing and intentional failure to comply with California
 5 Labor Code § 226(a), Plaintiff and class members have suffered an injury, and the
 6 exact amount of damages and/or penalties is all in an amount to be shown according
 7 to proof at trial.

8 65. Plaintiff and class members are also entitled to injunctive relief under
 9 California Labor Code § 226(g), compelling Defendants to comply with California
 10 Labor Code § 226, and seek the recovery of attorneys' fees and costs incurred in
 11 obtaining this injunctive relief.

12 **FIFTH CAUSE OF ACTION**

13 **UNFAIR BUSINESS PRACTICES**

14 **(Violation of Business and Professions Code §§ 17200 *et seq.*)**

15 66. Plaintiff hereby incorporates all previous paragraphs of this Complaint
 16 as though fully set forth herein.

17 67. California Business and Professions Code §§ 17200, *et seq.*, prohibits
 18 acts of unfair competition, which includes any "unlawful, unfair or fraudulent
 19 business act or practice"

20 68. A violation of California Business and Professions Code §§ 17200, *et*
 21 *seq.* may be predicated on the violation of any state or federal law. In the instant
 22 case, Defendants' policies and practices have violated state law, causing Plaintiff and
 23 class members to suffer and continue to suffer injuries in fact. As alleged herein,
 24 Defendants systematically engaged in unlawful conduct in violation of the California
 25 Labor Code and IWC Wage Orders, such as failing to provide meal periods or
 26 compensation in lieu thereof, failing to permit rest periods or compensation in lieu
 27 thereof, failing to pay all wages due and owing upon separation of employment and
 28

1 in a timely manner, and failing to furnish accurate wage statements, all in order to
2 decrease their costs of doing business and increase their profits.

3 69. At all times relevant herein, Defendants intentionally avoided paying
4 Plaintiff and class members wages and monies, thereby creating for Defendants an
5 artificially lower cost of doing business in order to undercut their competitors and
6 establish and/or gain a greater foothold in the marketplace.

7 70. As a result of Defendants' conduct, Plaintiff and class members suffered
8 a loss of wages and monies, all in an amount to be shown according to proof at trial.
9 By violating the foregoing statutes and regulations as herein alleged, Defendants'
10 acts constitute unfair and unlawful business practices under California Business and
11 Professions Code §§ 17200, *et seq.*

12 71. Defendants' violations of the California Labor Code and IWC Wage
13 Orders and their scheme to lower their payroll costs as alleged herein, constitute
14 unlawful business practices because they were done in a systematic manner over a
15 period of time to the detriment of Plaintiff and class members.

16 72. As a result of the unfair business practices of Defendants, as alleged
17 herein, Plaintiff and class members are entitled to injunctive relief, disgorgement and
18 restitution in an amount to be shown according to proof at trial.

19 73. Plaintiff seeks to enforce important rights affecting the public interest
20 within the meaning of California Code of Civil Procedure § 1021.5. Defendants'
21 conduct, as alleged herein, has been, and continues to be, unfair, unlawful and
22 harmful to Plaintiff, class members and to the general public. Based on Defendants'
23 conduct as alleged herein, Plaintiff and class members are entitled to an award of
24 attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

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28 **SIXTH CAUSE OF ACTION**

ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")

74. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as though fully set forth herein.

75. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

76. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of 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 pay period in which Defendant violated these provisions of the Labor Code.

77. Defendants' conduct violates numerous Labor Code sections including, but not limited to, the following:

- (a) Violation of Labor Code §§ 201-203 for failure to timely pay all earned wages owed to Plaintiff and other aggrieved employees upon separation of employment as herein alleged;
- (b) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;
- (c) Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged; and

1 (d) Violation of Labor Code § 226 for failure to provide accurate
2 itemized wage statements to Plaintiff and other aggrieved employees
3 as herein alleged.

4 78. Further, Labor Code § 558(a) provides "any employer or other person
5 acting on behalf of an employer who violates, or causes to be violated, a section of
6 this chapter or any provisions regulating hours and days of work in any order of the
7 IWC shall be subject to a civil penalty as follows: (1) For any violation, fifty dollars
8 (\$50) for each underpaid employee for each pay period for which the employee was
9 underpaid in addition to an amount sufficient to recover underpaid wages. (2) For
10 each subsequent violation, one hundred dollars (\$100) for each underpaid employee
11 for each pay period for which the employee was underpaid in addition to an amount
12 sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section
13 shall be paid to the affected employee." Labor Code § 558(c) provides "the civil
14 penalties provided for in this section are in addition to any other civil or criminal
15 penalty provided by law."

16 79. As set forth above, Defendants have violated numerous provisions of
17 the Labor Code regulating hours and days of work as well as the IWC Wage Orders.
18 Accordingly, Plaintiff seeks the remedies set forth in Labor Code § 558 for himself,
19 the underpaid employees, and the State of California.

20 80. Plaintiff is an "aggrieved employee" because she was employed by the
21 alleged violator and had one or more of the alleged violations committed against her,
22 and therefore is properly suited to represent the interests of all other aggrieved
23 employees.

24 81. Plaintiff has exhausted the procedural requirements under Labor Code §
25 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on
26 behalf of herself and all other aggrieved employees under PAGA.
27
28

1 82. PAGA imposes a penalty of one hundred dollars (\$100.00) for each
 2 aggrieved employee per pay period for the initial violation and two hundred dollars
 3 (\$200.00) for each aggrieved employee per pay period for each subsequent violation.

4 83. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is
 5 entitled to recover civil penalties, in addition to other remedies, for violations of the
 6 Labor Code sections cited above.

7 84. For bringing this action, Plaintiff is entitled to attorney's fees and costs
 8 incurred herein.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, on behalf of all others similarly situated, prays for
 11 judgment against Defendants as follows:

12 1. For certification of the proposed Class and Waiting Time Subclass and
 13 any other appropriate classes or subclasses under California Code of Civil Procedure
 14 § 382;

15 2. For appointment of Plaintiff as the class representative;

16 3. For appointment of Aegis Law Firm, PC as class counsel for all
 17 purposes;

18 4. For general damages;

19 5. For special damages;

20 6. For statutory penalties to the extent permitted by law, including those
 21 pursuant to the California Labor Code and IWC Wage Orders;

22 7. For injunctive relief as provided by the California Labor Code and
 23 California Business and Professions Code §§ 17200 *et seq.*;

24 8. For restitution as provided by California Business and Professions Code
 25 §§ 17200, *et seq.*;

26 9. For an order requiring Defendants to restore and disgorge all funds to
 27 each employee acquired by means of any act or practice declared by this Court to be
 28

1 unlawful, unfair or fraudulent and, therefore, constituting unfair competition under
2 California Business and Professions Code §§ 17200 *et seq.*;

3 10. For an award of damages in the amount of unpaid compensation;

4 11. For pre-judgment interest;

5 12. For reasonable attorney's fees and costs of suit to the extent permitted
6 by law, including pursuant to PAGA; California Code of Civil Procedure § 1021.5
7 and California Labor Code §§ 226(e);

8 13. For penalties pursuant to PAGA.

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12 14. For such other relief as the Court deems just and proper.

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14 Dated: ~~November~~
15 ~~16~~ February 9, 2015 ~~2016~~

AEGIS LAW FIRM, PC

16
17 By: _____
18 Jessica L. Campbell
19 Attorneys for Plaintiff

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