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NO SUMMONS FILED

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA – NORTH COUNTY

JUAN RIVERA, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

COPENHAGEN SAUSAGE GARDEN LLC, a
California limited liability company;
AARMARK BEER GARDENS, a California
corporation; and DOES 1 through 100, Inclusive,

Defendants.

Case No. 22CV04059

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

- (1) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 204, 558, 1182.12,
1194, 1194.2, 1197, 1198);**
- (2) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 1198);**
- (3) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 1198);**
- (4) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (5) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (6) FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR
CODE §§ 2802, 2804);**
- (7) UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*).**
- (8) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Juan Rivera (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this Class and Representative Action Complaint against Copenhagen Sausage
3 Garden LLC, a California limited liability company; Aarmark Beer Gardens, a California
4 corporation; and Does 1 through 100, inclusive (collectively, “Defendants”), and on information
5 and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 class and representative action for recovery of unpaid wages and penalties under California
9 Business and Professions Code section 17200, *et. seq.*; Labor Code sections 201-204, 226, 226.7,
10 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, and 2804, 2698 *et seq*; and Industrial
11 Welfare Commission Wage Order No. 5 (“Wage Order 5”), in addition to seeking declaratory
12 relief and restitution. This class action is brought pursuant to California Code of Civil Procedure
13 section 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code
14 because the amount in controversy exceeds this Court’s jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
18 occurred in Santa Barbara County. Defendants own, maintain offices, transact business, have an
19 agent or agents within Santa Barbara County, and/or otherwise are found within Santa Barbara
20 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
24 the filing of this action and within the statute of limitations periods applicable to each cause of
25 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
26 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
27 and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-
28 204, 226, 226.7, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq*;

1 California Business & Professions Code § 17200, *et seq.* (Unfair Competition), and Wage Order
2 5, which sets employment standards for employees in the public housekeeping industry,
3 including, but not limited to, restaurants, taverns, bars and any occupations therein.

4 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
5 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
6 business as a restaurant and bar company, and that they employed Plaintiff and other similarly
7 situated non-exempt employees within Santa Barbara County and the state of California.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner,
9 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
11 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
12 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
13 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
14 and proximately caused Plaintiff and the Classes (as defined in Paragraph 17) to be subject to the
15 unlawful employment practices, wrongs, injuries, and damages complained of herein.

16 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
17 mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

18 7. At all times herein mentioned, each of said Defendants participated in the acts
19 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and
20 each of them, were the agents, servants, and employees of each of the other Defendants, as well
21 as the agents of all Defendants, and at all times herein mentioned were acting within the course
22 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
23 and/or otherwise ratified each of the acts or omissions alleged herein.

24 8. At all times mentioned herein, Defendants, and each of them, were members of
25 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
26 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
27 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
28 Members (as defined in Paragraph 17).

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff was employed by Defendants as a non-exempt employee from approximately February 2022 until approximately March 2022.

10. During Plaintiff's employment with Defendants, Defendants did not pay Plaintiff the statutorily mandated minimum wage for all hours worked. Specifically, Defendants paid Plaintiff at a rate of \$14.00 per hour, whereas the minimum wage for employers employing 26 or more employees in California in 2022 was (and currently is) \$15.00 per hour. On information and belief, Defendants intentionally kept the number of employees at Copenhagen Sausage Garden, the restaurant where Plaintiff worked, at a number below 26 employees, in order to pay the lower \$14.00 per hour minimum wage applicable to smaller employers. This, however, was a subterfuge to avoid paying the higher minimum wage, as Defendants operate multiple restaurants in California and the total number of employees employed by Defendants is, and on information and belief during the putative class period consistently has been, above 26 employees. Specifically, Defendants own and operate at least three (3) other restaurants in California in addition to Copenhagen Sausage Garden, including SB Biergarten, Fire & Vice Moorpark, and Fire & Vice Santa Maria, which together have well over 26 employees.

11. California's minimum wage statute, Labor Code section 1182.12, defines "employer" as "any person who ***directly or indirectly, or through an agent or any other person,*** employs or exercises control over the wages, hours, or working conditions of any person." Labor Code § 1182.12(b)(3) (emphasis added). On information and belief, Aarmark Beer Gardens is the parent company of Copenhagen Sausage Garden LLC, operates the Copenhagen Sausage Garden restaurant, and is therefore the employer of all employees working at Copenhagen Sausage Garden as well as Aarmark's other restaurants. As such, Defendants employ well over 26 employees and, per Labor Code § 1182.12, must pay employees the higher minimum wage applicable to employers with 26 or more employees. Defendants knew or reasonably should have known that Plaintiff and other non-exempt employees were entitled to the higher minimum wage as set forth above, but as a result of this policy and practice, Defendants failed to pay Plaintiff and other non-exempt employees at least the applicable minimum wage for all hours worked.

12. Defendants also failed to reimburse Plaintiff and other employees for expenses they incurred in the course of their employment. Specifically, Defendants required Plaintiff to use his personal cellular phone to obtain his weekly work schedule. Defendants required Plaintiff and other non-exempt employees to download a digital application, “Homebase,” through which Defendants made the employees work schedules available. Employee work schedules were not made available in any other form, and failure to download and use Homebase on an employee’s personal cell phone would result in effective exclusion from Defendants’ workforce. Despite requiring Plaintiff to use his personal cellular phone for work-related purposes, Defendants failed to reimburse Plaintiff for any portion of his personal cellular phone bill. As a result of the foregoing, Plaintiff and other employees are entitled to reimbursement pursuant to Labor Code § 2802 and *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (2014).

13. Defendants have also failed to provide Plaintiff and other non-exempt employees with all statutorily mandated meal periods due to Defendants’ meal period policies/practices. Specifically, the workload imposed on Plaintiff and other non-exempt employees – including the high volume of customers requiring attention each day and the under-staffing of the restaurants – often made it impracticable for Plaintiff and other non-exempt employees to take a 30-minute off-duty meal period prior to the end of the fifth hour of work, and/or a second 30-minute meal period on shifts over 10.0 hours. In those instances that Defendants failed to provide Plaintiff and other non-exempt employees with a legally compliant meal period, Defendants failed to pay the meal period premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code or other mechanism for paying meal period premiums when Defendants failed to provide a legally compliant meal period.

14. Defendants have also failed to authorize and permit rest periods to Plaintiff and other non-exempt employees. Specifically, Defendants have failed to authorize and permit a 10-minute net rest period for every 4 hours worked or major fraction thereof, as Plaintiff and other non-exempt employees were frequently unable to take the full rest periods to which they were entitled as a result of the workload imposed by Defendants, including but not limited to the

constant requirement to attend to customers and under-staffing mentioned above. In those instances that Defendants failed to authorize and permit Plaintiff and other non-exempt employees to take a legally compliant rest period, Defendants failed to pay the rest period premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code or other mechanism for paying rest period premiums when Defendants failed to authorize and permit a legally compliant rest period.

15. As a result of Defendants' failure to pay all minimum wages, as well as Defendants' failure to pay meal and rest period premium wages, Defendants failed to pay all wages to Plaintiff and other formerly employed non-exempt employees at the separation of their employment. In addition, Defendants failed to timely provide Plaintiff with his final paycheck, as Defendants terminated Plaintiff on or about March 16, 2022, but failed to pay Plaintiff the wages listed on his final paycheck until 9 days later, on March 25, 2022.

16. As a further result of Defendants' failure to pay all minimum wages, as well as Defendants' failure to pay meal and rest period premium wages, Defendants maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiff and other employees.

CLASS ACTION ALLEGATIONS

17. Class Definitions: Plaintiff bring this action on behalf of himself and the following Classes pursuant to Section 382 of the Code of Civil Procedure:

a. The Minimum Wage Class consists of all of the Defendants' current and former non-exempt employees (including employees at all restaurants operated by Aarmark Beer Gardens) in California whom Defendants paid the minimum wage applicable to employers of 25 or fewer employees, at any time from four years prior to the filing of this action through the present.

b. The Meal Period Class consists of all of the Defendants' current and former non-exempt employees (including employees at all restaurants operated by Aarmark Beer Gardens) in California who worked at least one shift in excess of 5.0 hours, at any time from four years immediately preceding the filing of this action through the present.

1 c. The Rest Period Class consists of all of the Defendants' current and former non-
2 exempt employees (including employees at all restaurants operated by Aarmark Beer
3 Gardens) in California who worked at least one shift of 3.5 hours or more, at any time from
4 four years immediately preceding the filing of this action through the present.

5 d. The Wage Statement Class consists of all members of the Minimum Wage Class,
6 Meal Period Class, and/or Rest Period Class who received a wage statement at any time
7 from one year immediately preceding the filing of this action through the present.

8 e. The Waiting Time Class consists of (i) all members of the Minimum Wage Class,
9 Meal Period Class, and/or Rest Period Class, who are no longer employed by Defendants
10 and who last worked for Defendants at any time from three years immediately preceding
11 the filing of this lawsuit through the present; and (ii) all of the Defendants' employees
12 (including employees at all restaurants operated by Aarmark Beer Gardens) in California
13 who are no longer employed by Defendants and last worked for Defendants at any time
14 from three years immediately preceding the filing of this action through the present, and
15 whose final paycheck was not paid to them on their last date of employment (in the case of
16 employees who were discharged or who gave at least 72 hours notice of quitting) or within
17 72 hours of their quitting (for those employees who did not provide 72 hours notice).

18 f. The Expense Reimbursement Class consists of all of Defendants' employees
19 (including employees at all restaurants operated by Aarmark Beer Gardens) in California
20 who were required to use their personal cellular phones for work-related purposes, at any
21 time from four years prior to the filing of this action through the present.

22 18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
23 joinder of all members would be unfeasible and impracticable. The membership of the Classes is
24 unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than
25 fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via
26 Defendants' employment records.

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1 **19. Common Questions of Law and Fact Predominate/Well Defined Community**
2 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
3 situated employees, which predominate over questions affecting only individual members
4 including, without limitation to:

- 5 i. Whether Defendants paid at least the minimum wage for all hours worked
6 to members of the Minimum Wage Class;
- 7 ii. Whether Defendants provided legally compliant meal periods to members
8 of the Meal Period Class;
- 9 iii. Whether Defendants authorized and permitted legally compliant rest
10 periods to members of the Rest Period Class;
- 11 iv. Whether Defendants furnished legally compliant wage statements to
12 members of the Wage Statement Class pursuant to Labor Code § 226;
- 13 v. Whether Defendants paid all wages due to members of the Waiting Time
14 Class at the time of separation of employment; and
- 15 vi. Whether Defendants properly reimbursed expenses incurred by members
16 of the Expense Reimbursement Class.

17 **20. Predominance of Common Questions:** Common questions of law and fact
18 predominate over questions that affect only individual members of the Classes. The common
19 questions of law set forth above are numerous and substantial and stem from Defendants' policies
20 and/or practices applicable to each individual class member, such as Defendants' timekeeping,
21 wage statement, meal period, rest period, expense reimbursement, and final wage
22 policies/practices. As such, the common questions predominate over individual questions
23 concerning each individual class member's showing as to his or her eligibility for recovery or as
24 to the amount of his or her damages.

25 **21. Typicality:** Plaintiff's claims are typical of the claims of the Classes because
26 Plaintiff was employed by Defendants as a non-exempt employee in California during the
27 statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As
28 alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned minimum

wages, was subject to Defendants' uniform meal and rest period policies/practices, was furnished with inaccurate wage statements, was deprived of all final wages upon his separation of employment from Defendants, and was not reimbursed for all expenses he incurred in carrying out his job duties for Defendants.

22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

23. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by individual class members would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants. Further, the claims of the individual members of the Classes are not

1 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant
2 costs and expenses attending thereto. As such, the Classes identified in Paragraph 17 are
3 maintainable under Section 382 of the Code of Civil Procedure.

4 **FIRST CAUSE OF ACTION**

5 **MINIMUM WAGE VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

7 24. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 25. Wage Order 5, § 4 and Labor Code §§ 1197 and 1182.12 establish employees'
9 right to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§
10 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage
11 as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees,
12 costs of suit, liquidated damages in an amount equal to the unpaid wages, and interest.

13 26. At all relevant times, Defendants failed to conform their pay practices to the
14 requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours
15 actually worked including, but not limited to, all hours they were subject to Defendants' control
16 and/or suffered or permitted to work under the Labor Code and Wage Order 5.

17 27. California Labor Code § 1198 makes unlawful the employment of an employee
18 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
19 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
20 those employees the balance of the unpaid wages as well as liquidated damages in an amount
21 equal to the wages due and interest thereon.

22 28. As a direct and proximate result of Defendants' unlawful conduct as alleged
23 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
24 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
25 entitled to recover economic and statutory damages and penalties and other appropriate relief as
26 a result of Defendants' violations of the California Labor Code and Wage Order 5.

27 29. Defendants' practice and uniform administration of corporate policy regarding
28 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and

the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, interest thereon, statutory penalties, and attorneys' fees and costs of suit, per Labor Code §§ 204, 218.6, 558, 1194, 1194.2, 1197, 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

30. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

31. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all their hourly non-exempt employees, including Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with the mandates of the California Labor Code and Wage Order 5, for the reasons set forth herein.

32. As a result, Defendants owe premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 5, Labor Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

34. Labor Code §§ 226.7 and 516, and Wage Order 5, § 12 establish the right of employees to be authorized and permitted a rest period of at least ten (10) net minutes of rest for each four (4) hour period worked, or major fraction thereof.

35. As alleged herein, Defendants failed to authorize and permit Plaintiff and Rest Period Class members to take their legally mandated rest periods. Defendants also failed to compensate Plaintiff and Rest Period Class members with a rest period premium for each rest period to which they were entitled while working.

36. The foregoing violations create an entitlement to recovery by Plaintiff and Rest Period Class members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor

Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

FOURTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

37. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

38. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all wages earned, all meal and rest period premium wages earned, and net wages earned, in violation of Labor Code § 226.

39. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all minimum wages and meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendants' reported data.

40. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit, pursuant to Labor Code §§ 226 and 226.3.

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

42. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee, or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent

1 to quit, said employee's wages become due and payable not later than 72 hours upon said
2 employee's last date of employment.

3 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
5 at their separation from employment, including (but not limited to) unpaid minimum wages, and
6 unpaid meal and rest period premium wages.

7 44. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
8 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
9 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
10 to the requirements of Labor Code §§ 201-203.

11 45. Defendants' failure to pay all final wages was willful within the meaning of Labor
12 Code § 203. Defendants' willful failure to timely pay Plaintiff and Waiting Time Class members
13 their earned wages upon separation from employment results in a continued payment of daily
14 wages up to 30 days from when the wages were due. Plaintiff and Waiting Time Class members
15 are entitled to compensation per Labor Code § 203, plus reasonable attorneys' fees and costs.

16 **SIXTH CAUSE OF ACTION**

17 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

18 **(AGAINST ALL DEFENDANTS)**

19 46. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 47. At all relevant times, Defendants were subject to Labor Code § 2802, which states
21 that "an employer shall indemnify his or her employees for all necessary expenditures or losses
22 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
23 her obedience to the directions of the employer."

24 48. At all relevant times, Defendants were subject to Labor Code § 2804, which states,
25 "any contract or agreement, express or implied, made by any employee to waive the benefits of
26 this article or any part thereof, is null and void, and this article shall not deprive any employee or
27 his personal representative of any right or remedy to which he is entitled under the laws of this
28 State."

1 49. Due to Defendants' unlawful policy and practice of requiring employees to use
2 their personal cellular phones for work purposes and failing to reimburse Plaintiff and members
3 of the Expense Reimbursement Class, Defendants have violated Labor Code § 2802.

4 50. As a proximate result of Defendants' policies and/or practices in violation of Labor
5 Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class suffered
6 damages in sums, which will be shown according to proof.

7 51. Plaintiff and members of the Expense Reimbursement Class are entitled to
8 attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

9 52. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
10 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
11 Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall
12 accrue from the date on which they incurred the initial necessary expenditure.

13 **SEVENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

15 **(AGAINST ALL DEFENDANTS)**

16 53. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

17 54. Defendants have engaged, and continue to engage, in unfair and/or unlawful
18 business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay
19 Plaintiff and the Classes all minimum wages due, failing to provide meal periods or pay meal
20 period premium wages, failure to authorize and permit rest periods or pay rest period premium
21 wages, failing to furnish accurate and complete itemized wage statements, failing to reimburse
22 business expenses, and failing to pay all earned wages at separation of employment.

23 55. Defendants' utilization of these unfair and/or unlawful business practices has
24 deprived Plaintiff and Class members of compensation to which they are entitled, constitutes
25 unfair and/or unlawful competition, and provides an unfair advantage over Defendants'
26 competitors who have been and/or are currently employing workers and attempting to do so in
27 honest compliance with applicable wage and hour laws.

28 ///

1 56. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
2 herein, Plaintiff for himself, and on behalf of the members of the Classes, seeks full restitution of
3 monies as necessary and according to proof, to restore all monies withheld, acquired, and/or
4 converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

5 57. The acts complained of herein occurred within the four years immediately
6 preceding the filing of this action.

7 58. Plaintiff was compelled to retain the services of counsel to file this court action to
8 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
9 of Defendants' current non-exempt employees, and to enforce important rights affecting the
10 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
11 which he is entitled to recover under Code of Civil Procedure § 1021.5.

12 **EIGHTH CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **(AGAINST ALL DEFENDANTS)**

15 59. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 60. Defendants have committed several Labor Code violations against Plaintiff and
17 other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor
18 Code § 2698 *et seq.* Plaintiff, acting on behalf of himself and other aggrieved employees, brings
19 this representative action against Defendants to recover the civil penalties due to Plaintiff, other
20 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
21 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
22 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
23 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
24 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
25 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
26 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
27 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and
28 \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay

period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees at least the statutory minimum wage for all hours worked, in violation of Labor Code §§ 204, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- c. Failing to authorize and permit all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- d. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198;
- e. Failing to pay all wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Code §§ 201-203;
- f. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses, in violation of Labor Code §§ 2802, 2804, and 1198.

61. On or about October 12, 2022, Plaintiff notified Copenhagen Sausage Garden, LLC and Aarmark Beer Gardens, via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in paragraph 60 (a)-(f) above. Now that sixty-five days have passed from Plaintiff's notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

62. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;
7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;
8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
9. Upon the Sixth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200, *et seq.*;

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1 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
2 employees, and the State of California according to proof pursuant to Labor Code § 2699,
3 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
4 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
5 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
6 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
7 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
8 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
9 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
10 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
11 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
12 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
13 Labor Code § 2699(f);

14 12. Prejudgment interest on all due and unpaid wages and other damages pursuant to
15 California Labor Code §§ 218.6, 1194(a), 1194.2(a), and 2802(b); Civil Code § 3287; and Art.
16 XV, § 1 of the California Constitution;

17 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
18 226(e), 1194 *et seq.*, 2802(c), 2699(g), and Code of Civil Procedure § 1021.5; and

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

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21 Date: December 19, 2022

Respectfully submitted,
ABRAMSON LABOR GROUP

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23 By:



Tuvia Korobkin
Attorney for Plaintiff

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Dated: December 19, 2022

By: 
Tuvia Korobkin
Attorney for Plaintiff