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Kameron Burroughs, Konstantin Howard,
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

Kameron Burroughs, Konstantin Howard,
Tucker Truen and Jaelyn Gonzales, on
behalf of themselves and others similarly
situated and the general public,

Plaintiffs,

v.

STK San Francisco, LLC, STK Westwood,
LLC, STK Westwood II, STK Rooftop San
Diego, LLC, STK Rebel San Diego, LLC,
The One Group, LLC, and The One Group
Hospitality, Inc., and DOES 1 through 50,

Defendants.

Case No. CGC-22-602250

**FIRST AMENDED CLASS ACTION
COMPLAINT**

- 1. FAILURE TO PAY OVERTIME**
- 2. FAILURE TO PAY MINIMUM WAGE**
- 3. MEAL PERIOD VIOLATION**
- 4. REST PERIOD VIOLATION**
- 5. WAGE STATEMENT VIOLATIONS**
- 6. WAITING TIME PENALTIES**
- 7. TIP VIOLATIONS**
- 8. PRIVATE ATTORNEY GENERAL ACT
(Labor Code §§ 2699, et seq.)**
- 9. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUSINESS AND
PROFESSIONS CODE §§ 17200 ET.
SEQ**

JURY TRIAL DEMANDED

**ELECTRONICALLY
FILED**

*Superior Court of California,
County of San Francisco*

12/21/2022
Clerk of the Court
BY: BOWMAN LIU

Deputy Clerk

1. Plaintiffs Kameron Burroughs, Konstantin Howard, Tucker Truen and Jaelyn Gonzales (hereinafter “PLAINTIFFS”) submit this Complaint against Defendants STK San Francisco, LLC, STK Westwood, LLC, STK Westwood II, LLC, STK Rooftop San Diego, LLC, STK Rebel San Diego, LLC, The One Group, LLC, The One Group Hospitality, Inc., and DOES 1-50 (collectively “DEFENDANTS” or “STK STEAKHOUSE”).

I. INTRODUCTION

2. This complaint is submitted by PLAINTIFFS for the purpose of prosecuting claims on their behalf and on behalf of the putative class identified below (hereinafter “EMPLOYEES”). PLAINTIFFS identify violations of California Labor Code §§ 201-203, 226.7, 351, 500, 510, 512, 1194, 1194.2 and Labor Code § 2698, et seq. (Private Attorneys General Act of 2004 or the “PAGA”), California Business and Professions Code § 17200, et seq., (Unfair Practices Act), and the applicable Industrial Welfare Commission (“IWC”) Wage Order No. 5-2001. This complaint challenges systemic, illegal employment practices by DEFENDANTS resulting in violations of the aforementioned statutes and authorities.

3. The Private Attorney General Act of 2004 (“PAGA”) codified in Cal. Labor Code § 2698, et seq. allows a private citizen to pursue civil penalties on behalf of the State of California Labor and Workforce Development Agency (“LWDA”). The aggrieved employee is allowed to seek civil penalties not only for violations that he personally suffered but also for violations of “other current or former employees” pursuant to Cal. Labor Code § 2699(a).

4. PLAINTIFFS are informed and believe and based thereon allege that DEFENDANTS, jointly and severally have acted intentionally and with deliberate indifference and conscious disregard to the rights of the EMPLOYEES. DEFENDANTS have failed in providing all wages, have failed in maintaining working conditions that ensure healthy and safe working conditions and have failed in properly managing pay and other benefits as required of every employer under California law.

5. PLAINTIFFS are informed and believe and based thereon allege DEFENDANTS have engaged in, among other things a system of willful violations of the California Labor Code, Business and Professions Code and the applicable IWC Wage Order by creating and maintaining

1 policies, practices and supervisory actions that knowingly: (1) fail to compensate PLAINTIFFS
2 or others similarly situated for all hours worked, by among other ways, requiring EMPLOYEES
3 to work off-the-clock, (2) fail to compensate PLAINTIFFS or others similarly situated for
4 improper/inadequate meal periods, (3) fail to compensate PLAINTIFFS or others similarly
5 situated for denied/improper rest breaks, (4) improperly managing the tip pooling system resulting
6 in illegally distributing tips to managers and non-service employees, (5) fail to maintain accurate
7 records of all gratuities received, and (6) fail to provide PLAINTIFFS or others similarly situated
8 accurate/itemized wage statements.

9 6. DEFENDANTS' working conditions result from substandard corporate policies,
10 practices and supervisory actions leading employees' inability to take their deserving meal periods
11 and rest breaks. Supervisors and managers install barriers against EMPLOYEES taking their
12 breaks by understaffing their shifts. When EMPLOYEES asks for breaks, they are demeaned and
13 frowned upon. There are no consistent break relief systems and relievers in place to ensure proper
14 breaks.

15 7. DEFENDANTS' tips policy and practice being illegal and fraudulent result in
16 stealing gratuities that belong to employees.

17 8. DEFENDANTS disregard the wellbeing, health and safety of employees and
18 customers. For example, employees are forced to work while experiencing Covid-19 symptoms
19 and/or testing positive for Covid-19. DEFENDANTS ignore employees' serious concerns of being
20 forced to work two shifts even though EMPLOYEES have expressed that they are too tired to
21 continue working.

22 9. DEFENDANTS' toxic workplace culture of openly telling employees that they are
23 replaceable, and exuding take-it-or-leave-it attitudes when employees express opinions or
24 inquiries related to questionable practices of managers and supervisors of STK STEAKHOUSE.

25 10. The policies, practices and customs of DEFENDANTS described above and below
26 have resulted in unjust enrichment of DEFENDANTS and an unfair business advantage over other
27 restaurants and businesses that routinely adhere to the strictures of the California Labor Code,
28 Business and Professions Code and the applicable IWC Wage Order.

1 **II. JURISDICTION & VENUE**

2 11. Jurisdiction is proper in this Court because the alleged damages exceed twenty-five
3 thousand dollars (\$25,000). Venue is proper because PLAINTIFFS have worked in the county of
4 San Francisco.

5 **III. PARTIES**

6 12. Plaintiff Kameron Burroughs is a California resident who has been employed by
7 DEFENDANTS as a non-exempt employee in the county of San Francisco.

8 13. Plaintiff Konstantin Howard is a California resident who was employed by
9 DEFENDANTS as a non-exempt employee in the county of San Francisco.

10 14. Plaintiff Tucker Truen is a California resident who has been employed by
11 DEFENDANTS as a non-exempt employee in the county of San Francisco.

12 15. Plaintiff Jaelyn Gonzales is a California resident who was employed by
13 DEFENDANTS as a non-exempt employee in the county of San Francisco.

14 16. Defendant STK San Francisco, LLC is registered with the California Secretary of
15 State as a limited liability company formed in Delaware doing business in California.

16 17. Defendant STK Westwood, LLC is registered with the California Secretary of State
17 as a limited liability company formed in California and doing business in California.

18 18. Defendant STK Westwood II, LLC is registered with the California Secretary of
19 State as a limited liability company formed in Delaware doing business in California.

20 19. Defendant STK Rooftop San Diego, LLC is registered with the California Secretary
21 of State as a limited liability company formed in California and doing business in California.

22 20. Defendant STK Rebel San Diego, LLC is registered with the California Secretary
23 of State as a limited liability company formed in California and doing business in California.

24 21. Defendant The One Group, LLC is registered with the California Secretary of State
25 as a limited liability company formed in Delaware doing business in California.

26 22. Defendant The One Group Hospitality, Inc. is registered with the California
27 Secretary of State as a corporation formed in Delaware doing business in California.

1 23. DEFENDANTS manage and operate STK Steakhouse and the Rooftop by STK
2 with currently three locations in California. Seventeen locations in the United States. Nine
3 locations worldwide. PLAINTIFFS are informed and believe that DEFENDANTS intend to open
4 and operate more restaurants in California. DEFENDANTS advertise in their website that “STK
5 aims to define the modern dining experience complete with incredible food, world-class service
6 and the perfect ambiance”. DEFENDANTS attract workers from their website by stating:

7 Join Our Amazing Team

8 We believe that the greatest factor in the success of our business is our team. We work hard
9 to attract, hire, mentor and provide growth opportunities for energetic hospitality driven
10 individuals. <https://stksteakhouse.com/careers/>

11 24. DEFENDANTS are being sued as joint employers of PLAINTIFFS and putative
12 class members. DEFENDANTS are jointly and severally liable to PLAINTIFFS and putative class
13 members.

14 25. DEFENDANTS were PLAINTIFFS’ and putative class members’ employers as
15 they exercised direct or indirectly, or through an agent or any other person, employed or exercised
16 control over the wages, hours, or working conditions of PLAINTIFFS and putative class members
17 covered by the applicable Industrial Welfare Commission Wage Order.

18 26. At all times herein mentioned, DEFENDANTS are or were limited liability
19 companies, corporations, business entities, individuals, and/or partnerships, doing business in the
20 State of California. As such and based upon all the facts and circumstances incident to
21 DEFENDANTS’ business in California, DEFENDANTS are subject to California laws that
22 regulate the employment and working conditions of employees in California including but not
23 limited to California Labor Code §§ 201-203, 226.7, 351, 500, 510, 512, 1194, 1194.2 and Labor
24 Code § 2698, et seq. (Private Attorneys General Act of 2004), and California Business and
25 Professions Code § 17200, et seq., (Unfair Practices Act), and Industrial Welfare Commission
26 (“IWC”) Wage Order No. 5-2001.

27 27. PLAINTIFFS do not know the true names or capacities of the DEFENDANTS sued
28 herein as DOES 1 through 50, inclusive, and for that reason, said DEFENDANTS are sued under

1 such fictitious names, and PLAINTIFFS pray leave to amend this complaint when the true names
2 and capacities are known. PLAINTIFFS believe and thereon alleges that each of said fictitious
3 DEFENDANTS were responsible in some way for the matters alleged herein and proximately
4 caused PLAINTIFFS and members of the class to be subject to the illegal employment practices,
5 wrongs and injuries complained of herein.

6 **IV. STATEMENT OF FACTS**

7
8 28. Plaintiff Kameron Burroughs is a competent individual who has been employed by
9 DEFENDANTS as a non-exempt employee since approximately June 2022. Plaintiff Burroughs
10 currently works as a server for DEFENDANTS.

11 29. Plaintiff Konstantin Howard was employed by DEFENDANTS as a non-exempt
12 server from approximately August 3, 2022 to September 22, 2022.

13 30. Plaintiff Tucker Truen has been employed by DEFENDANTS as a non-exempt
14 barback since approximately June 15, 2022.

15 31. Plaintiff Jaelyn Gonzales was employed by DEFENDANTS as a non-exempt
16 barback since approximately August 2022 to September 20, 2022.

17 32. The class period ("CLASS PERIOD") is the four years preceding the filing of this
18 action through the present.

19 33. DEFENDANTS failed to pay PLAINTIFFS and putative class members all hours
20 worked at their correct rate of pay. DEFENDANTS failed to pay PLAINTIFFS and putative class
21 members at a rate of one and a half times their regular rate of pay for any and all work that
22 exceeded eight (8) hours in a workday, and at a rate of double their regular rate of pay for any and
23 all work that exceeded twelve (12) hours in a workday. When PLAINTIFFS and putative class
24 members work double shifts, overtime and double time rates are not properly calculated and paid.

25 34. DEFENDANTS have required PLAINTIFFS and putative class members training
26 but have failed to properly pay for their hours worked. Often, PLAINTIFFS and putative class
27 members were improperly classified, paid salaries and stipends improperly. Such policy and
28 practice have resulted in the underpayment of wages and other benefits. Often PLAINTIFFS and

1 putative class members are subjected to travel and accommodations that were below promised
2 standards.

3 35. Due to DEFENDANTS' timekeeping policies, being short staffed and/or being
4 busy, PLAINTIFFS and putative class members regularly worked shifts that exceeded eight (8)
5 hours in a workday. Many times, PLAINTIFFS and putative class members arrive for their shifts
6 finding out that they have been scheduled for double shifts. DEFENDANTS have regularly failed
7 paying PLAINTIFFS and putative class members all their hours worked at the proper rate of pay
8 when they work double shifts.

9 36. DEFENDANTS require PLAINTIFFS and putative class members to arrive to
10 work at least 15 minutes prior to the start of their scheduled shifts. However, PLAINTIFFS and
11 putative class members are not allowed to clock in until 5 minutes prior to the start of their
12 scheduled shifts. This policy and practice resulted in unpaid off-the-clock worked hours.

13 37. DEFENDANTS' policy and practice is to deduct 30 minutes from PLAINTIFFS'
14 and putative class members recorded worked hours to account for meal periods regardless of
15 whether PLAINTIFFS and putative class members actually took uninterrupted off-duty meal
16 periods. This policy and practice results in unpaid off-the-clock worked hours.

17 38. PLAINTIFFS and putative class members that worked more than five (5) hour
18 shifts in a workday were not provided all the thirty (30) minute uninterrupted off-duty meal
19 periods that Plaintiffs and similarly aggrieved employees were entitled to.

20 39. DEFENDANTS failed to authorize and permit PLAINTIFFS and putative class
21 members to take rest breaks at a rate of ten (10) minutes per four (4) hours or major fraction
22 thereof worked.

23 40. DEFENDANTS did not have a policy to authorize and permit PLAINTIFFS and
24 putative class members a second uninterrupted off-duty meal period when they worked more than
25 ten (10) hours.

26 41. DEFENDANTS did not have a policy to authorize and permit Plaintiffs and
27 similarly aggrieved employees a third rest break when they worked more than ten (10) hours.
28

1 42. DEFENDANTS did not have a policy and practice of compensating PLAINTIFFS
2 and putative class members with premium wages when proper meal and rest breaks were not
3 provided to them.

4 43. PLAINTIFFS and putative class members were reprimanded when seen resting.

5 44. PLAINTIFFS and putative class members were unable to take proper meal periods
6 and rest breaks because DEFENDANTS' restaurants were understaffed, and DEFENDANTS
7 failed to implement an effective meal period and rest break reliever system to provide
8 PLAINTIFFS and putative class members a reasonable opportunity to take proper meal periods
9 and rest breaks.

10 45. While DEFENDANTS promised to provide one family meal per shift, it was either
11 rarely available to the EMPLOYEES making it difficult for PLAINTIFFS and putative class
12 members to effectively partake in the family meals and take uninterrupted off-duty meal periods
13 without interfering with their job duties.

14 46. PLAINTIFFS and putative class members are paid on a weekly basis.
15 DEFENDANTS do not provide paper wage statements. PLAINTIFFS and putative class members
16 are not provided access to view their daily hours and daily tip earnings. Nor are they all provided
17 with access to their wage statements. Several of the PLAINTIFFS and many of the putative class
18 members have been asking for access to their wage statements but have not been provided such.

19 47. DEFENDANTS have failed to issue accurate, itemized wage statements to
20 PLAINTIFFS and putative class members. The wage statements provided by DEFENDANTS
21 have not been accurate in that they do not reflect the required compensation for meal and rest
22 period premium pay. Therefore, PLAINTIFFS and putative class members have not been able to
23 ascertain if they have been properly compensated.

24 48. DEFENDANTS engaged in an illegal tip pooling system in which management –
25 who do not perform the same work as PLAINTIFFS and putative class members – managed and
26 collected part of gratuities that were left for PLAINTIFFS and putative class members.

27 49. DEFENDANTS have a policy and practice of taking forty eight percent (48%) of
28 all tips, including cash and credit card tips, left by customers, and unlawfully providing some of

1 the tips to the DEFENDANTS' agents, kitchen staff, including employees who supervised,
2 directed and/or controlled the acts of employees including PLAINTIFFS and putative class
3 members.

4 50. DEFENDANTS represent to PLAINTIFFS and putative class members that twenty
5 percent (20%) of gratuities are being distributed to kitchen employees.

6 51. DEFENDANTS have failed to properly distribute cash gratuities on a daily basis
7 and credit card tips on a weekly basis.

8 52. DEFENDANTS have failed to provide an accurate accounting to PLAINTIFFS and
9 putative class members.

10 53. PLAINTIFFS and putative class members are not allowed to view an accounting of
11 the distribution of gratuities either on a daily basis or when they receive their pay on a weekly
12 basis.

13 54. DEFENDANTS do not allow PLAINTIFFS and putative class members to access
14 their timekeeping records on a daily basis nor provide access to their records, daily nor weekly.

15 55. DEFENDANTS do not allow PLAINTIFFS and putative class members to access
16 servers point of sale information on a daily basis.

17 **V. CLASS ACTION ALLEGATIONS**

18 56. **DEFINITION:** PLAINTIFFS bring this action on behalf of themselves and a
19 putative class of similarly situated employees pursuant to California Code of Civil Procedure §
20 382. The class is defined as:

21 "All current and former hourly or non-exempt employees of DEFENDANTS who worked in the
22 State of California at any time from four years from the date of the filing of this action through
23 the entry of final judgment in this action."

24 57. **NUMEROSITY AND ASCERTAINABILITY:** The members of the class are so
25 numerous that joinder of all members would be impractical, if not impossible. PLAINTIFFS are
26 informed and believe that there are over one thousand (1,000) employees working for
27 DEFENDANTS in California at any one time. The identity of putative class members is readily
28 ascertainable by review of DEFENDANTS' records. Notice can be provided to DEFENDANTS'

1 employees using techniques and a form of notice similar to those customarily used in class action
2 lawsuits.

3 58. PLAINTIFFS are informed, believe, and based thereon allege that
4 DEFENDANTS' employees are denied: a) payment for all hours worked, b) minimum wages; c)
5 overtime and double time pay; d) meal period premium pay; e) rest period premium pay; f)
6 accurate, itemized wage statements; and g) payment of all gratuities left for employees.

7 59. **ADEQUACY OF REPRESENTATION:** PLAINTIFFS are members of the
8 putative class. PLAINTIFFS do not have any conflicts of interest with other putative class
9 members and will prosecute the case vigorously on behalf of the putative class. PLAINTIFFS will
10 fairly and adequately represent and protect the interests of putative class members. PLAINTIFFS'
11 counsel is competent and experienced in litigating wage and hour class actions.

12 60. **SUPERIORITY OF CLASS ACTION:** A class action is superior to all other
13 available means of fair and efficient adjudication of this controversy. Individual joinder of all
14 putative class members is not practicable, and questions of law and fact common to the putative
15 class predominate over any questions affecting only individual members of the class.
16 DEFENDANTS' employees have been damaged and are entitled to recovery by reason of
17 DEFENDANTS' unlawful policies and/or practices described herein. Because the damages
18 suffered by individual putative class members may be relatively small, albeit significant, the
19 expense and burden of individual litigation make it impractical for most putative class members
20 to seek individual redress for the wrongful conduct alleged. Class action treatment will allow those
21 similarly situated persons to litigate their claims in the manner that is most efficient and
22 economical for the parties and the judicial system.

23 61. The Labor Code and Wage Order No. 5-2001 are broadly remedial in nature. These
24 laws and labor standards serve an important public interest in establishing minimum working
25 conditions and standards in California. These laws and labor standards protect the average
26 working employee from exploitation by employers who may seek to take advantage of superior
27 economic conditions and bargaining power in setting onerous terms and conditions of
28 employment.

1 62. The nature of this action and the format of laws available to PLAINTIFFS and
2 members of the putative class identified herein make the class action format a particularly efficient
3 and appropriate procedure to redress the wrongs alleged herein. If each employee were required
4 to file an individual lawsuit, the corporate DEFENDANTS would necessarily gain an
5 unconscionable advantage since it would be able to exploit and overwhelm the limited resources
6 of each individual plaintiff with their vastly superior financial and legal resources. Requiring each
7 putative class member to pursue an individual remedy would also discourage the assertion of
8 lawful claims by employees who would be disinclined to file an action against their former and/or
9 current employer for real and justifiable fear of retaliation and permanent damage to their careers
10 at subsequent employment.

11 63. The prosecution of separate actions by individual putative class members, even if
12 possible, would create a substantial risk of: (a) Inconsistent or varying adjudications with respect
13 to individual putative class members against the DEFENDANTS, which would establish
14 potentially incompatible standards of conduct for the DEFENDANTS; and/or (b) Adjudications
15 with respect to individual putative class members which would, as a practical matter, be
16 dispositive of the interest of the other putative class members not parties to the adjudications, or
17 which would substantially impair or impede the ability of DEFENDANTS' aggrieved employees
18 to protect their interests. Further, the claims of the individual members of the putative class are
19 not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant
20 costs and expenses.

21 64. **COMMON QUESTION OF LAW AND FACT:** There are questions of law and
22 fact common to putative class members that predominate over any questions affecting only
23 individual members of the class. These common questions of law and fact include:

- 24 • Whether DEFENDANTS have failed to compensate employees for all hours worked;
- 25 • Whether DEFENDANTS have failed to compensate employees at least minimum for
26 all hours worked;
- 27 • Whether DEFENDANTS have failed to compensate employees overtime and double
28 time hours at the corresponding overtime and double time rates;

- Whether DEFENDANTS have failed to provide compensation to employees who were not provided rest periods in accordance with applicable law;
- Whether DEFENDANTS have failed to provide compensation to employees who were not provided meal periods in accordance with applicable law;
- Whether wage statements provided to DEFENDANTS' employees are adequate under applicable law, and whether employees are entitled to receive statutory penalties from DEFENDANTS for each wage statement violation committed;
- Whether DEFENDANTS failed to distribute all gratuities to employees and instead illegally distributed gratuities to managers;
- Whether DEFENDANTS failed to provide an accurate accounting of gratuities distribution to employees; and
- Whether PLAINTIFFS and putative class members are entitled to waiting time penalties under applicable law

65. **TYPICALITY:** PLAINTIFFS' claims are typical to the claims of all members of the putative class. PLAINTIFFS are members of the putative class and have suffered the alleged, class-wide violations described herein

VI. DAMAGES

66. As a direct, foreseeable, and proximate result of DEFENDANTS' conduct, PLAINTIFFS and putative class members are owed, among other things, payments for meal period premiums, rest period premiums, and other statutory penalties in an amount that exceeds \$25,000. The precise amount of which will be proven at trial.

VII. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

(Failure to Pay Minimum Wage)

67. PLAINTIFFS reallege and incorporate by reference the allegations of paragraphs above.

1 68. Pursuant to Labor Code §§ 1194 and 1194.2 and Wage Order No. 5,
2 notwithstanding any agreement to work for a lesser wage, any employee receiving less than the
3 legal minimum wage for any work performed is entitled to recover the unpaid balance of the full
4 amount of this minimum wage, liquidated damages, including interest thereon, reasonable
5 attorney's fees, and costs of suit.

6 69. DEFENDANTS have failed to pay PLAINTIFFS and putative class members for
7 all hours worked at least at minimum wage because of their unlawful rounding policy.

8 70. PLAINTIFFS, on behalf of themselves and putative class members, request reliefs
9 as described below.

10 **SECOND CAUSE OF ACTION**

11 *(Failure to Pay Overtime Compensation)*

12 71. PLAINTIFFS reallege and incorporate by reference the allegations of paragraphs
13 above.

14 72. Pursuant to Wage Order No. 5 and Labor Code §§ 500, 510, and 1194,
15 PLAINTIFF and putative class members are owed premium compensation for all overtime hours
16 worked.

17 73. DEFENDANTS fail to pay PLAINTIFF and putative class members overtime
18 compensation when they work overtime hours because of their rounding policy and practice.

19 74. As a result of DEFENDANTS' unlawful acts, PLAINTIFF and putative class
20 members have been deprived overtime compensation in an amount to be determined at trial, and
21 are entitled to recovery of such amounts, plus interest thereon, under Labor Code § 1194.

22 75. PLAINTIFFS, on behalf of themselves and putative class members, request reliefs
23 as described below.

24 **THIRD CAUSE OF ACTION**

25 *(Failure to Pay Compensation for Missed & Improper Meal Periods)*

26 76. PLAINTIFFS reallege and incorporate the above allegations by reference.

27 77. Pursuant to Labor Code §§ 226.7(a), 512, and IWC Wage Order No. 5-2001,
28 DEFENDANTS are required to authorize and permit PLAINTIFFS and putative class members

1 a 30-minute meal period, uninterrupted and away from work, for shifts between 5 and 10 hours
2 long; and a second meal period is required for shifts exceeding ten hours.

3 78. DEFENDANTS have violated Labor Code §§ 226.7, 512, and IWC Wage Order
4 No. 5-2001 by failing to pay PLAINTIFFS and putative class members one (1) hour of pay at
5 their regular rate of pay for each workday meal periods were required but not provided.

6 79. PLAINTIFFS, on behalf of themselves and putative class members, requests relief
7 as described below.

8 **FOURTH CAUSE OF ACTION**

9 *(Failure to Pay Compensation for Missed & Improper Rest Periods)*

10 80. PLAINTIFFS reallege and incorporate the above allegations by reference.

11 81. Pursuant to Labor Code § 226.7(a) and IWC Wage Order No. 5-2001,
12 DEFENDANTS are required to authorize and permit PLAINTIFFS and putative class members
13 the opportunity to take rest periods based upon total hours worked at a rate of ten (10) minutes net
14 rest time per four (4) hours worked or major fraction thereof, with no deduction from wages.

15 82. DEFENDANTS failed and refused to authorize and permit PLAINTIFFS and
16 putative class members ten (10) minute rest periods for every four (4) hours worked, or major
17 fraction thereof, in violation of Labor Code § 226.7(a) and IWC Wage Order No. 5-2001.

18 83. DEFENDANTS have violated Labor Code § 226.7 and IWC Wage Order No. 5-
19 2001 by failing to pay PLAINTIFFS and putative class members one (1) hour of pay at their
20 regular rate of pay for each workday rest periods were required but not provided.

21 84. PLAINTIFFS, on behalf of themselves and putative class members, request reliefs
22 as described below.

23 **FIFTH CAUSE OF ACTION**

24 *(Inaccurate Wage Statements)*

25 85. PLAINTIFFS reallege and incorporate the above allegations by reference.

26 86. As a pattern and practice, DEFENDANTS failed to furnish PLAINTIFFS and
27 putative class members accurate, itemized wage statements showing all gross wages earned,
28

1 including all overtime compensation and meal and rest period premium pay owed, to
2 PLAINTIFFS and putative class members.

3 87. PLAINTIFFS and putative class members are entitled to payment from
4 DEFENDANTS of the greater of actual damages or \$50.00 for the initial pay period in which the
5 violation occurred, and \$100.00 for each subsequent violation, up to a maximum of \$4,000.00 per
6 person pursuant to Labor Code § 226, as well as reasonable attorney's fees and costs of suit.

7 **SIXTH CAUSE OF ACTION**

8 *(Labor Code §§ 201-203 – Waiting Time Penalties)*

9 88. PLAINTIFFS reallege and incorporate by reference the allegations of paragraphs
10 above.

11 89. California Labor Code § 201 requires an employer who discharges an employee
12 to pay all compensation due to that employee immediately upon discharge.

13 90. California Labor Code § 202 requires an employer to pay all compensation due to
14 employees who quit within 72 hours of that employee quitting, unless the employee provides at
15 least 72 hours' notice of quitting, in which case all compensation is due at the end of the
16 employee's final day of work.

17 91. Labor Code § 203 provides that if an employer willfully fails to pay compensation
18 as required by § 201 or § 202, then the employer is liable for waiting time penalties in the form
19 of continued compensation of up to 30 workdays.

20 92. DEFENDANTS willfully failed and refused to timely pay compensation to
21 PLAINTIFFS and separated putative class members at the end of their employment.

22 93. As a result, DEFENDANTS are liable to separated PLAINTIFFS and putative
23 class members for waiting time penalties, together with interest thereon under Labor Code §
24 203.

25 **SEVENTH CAUSE OF ACTION**

26 *(Tips Violations)*

27 94. PLAINTIFFS reallege and incorporate by reference the allegations of paragraphs
28 above.

1 95. DEFENDANTS' conduct, as alleged herein, constitutes a violation of Lab. Code
2 §351, which prohibits an employer from taking any gratuity or part thereof that is paid, given to,
3 or left for an employee. This violation is enforceable pursuant to UCL §17200, *et seq.*

4 96. DEFENDANTS collected, took, and received gratuities that were paid, given to,
5 or left for the server by the customer and provided those gratuities to the servers' supervisors
6 who directed and controlled the acts of the servers.

7 97. DEFENDANTS failed to remit all gratuities to PLAINTIFFS and putative class
8 members in violation of Cal. Lab. Code §351 and the UCL.

9 98. PLAINTIFFS and putative class members were harmed.

10 99. DEFENDANTS wrongful conduct caused PLAINTIFFS and putative class
11 members' harm.

12 100. As a direct result of DEFENDANTS' unlawful employment practices, as alleged
13 herein, PLAINTIFFS and putative class members have been injured and seek relief as described
14 herein.

15 **EIGHTH CAUSE OF ACTION**

16 *(Civil Penalties Pursuant to Private Attorney General Act Labor Code §§ 2698, et seq.)*

17 101. PLAINTIFFS re-allege and incorporate the above allegations by reference.

18 102. Pursuant to Labor Code § 2699, the foregoing violations of statutes and regulations
19 permit PLAINTIFFS to recover a civil penalty through this action. Labor Code § 2699 provides
20 in relevant part that:

21 103. (a) Notwithstanding any other provisions of law, any provision of [the California
22 Labor Code] that provides for a civil penalty to be assessed and collected by the Labor and
23 Workforce Development Agency or any of its departments, divisions, commissions, boards,
24 agencies, or employees, for a violation of [the Labor Code], may, as an alternative, be recovered
25 through a civil action brought by an aggrieved employee on behalf of himself or herself and other
26 current or former employees....(e) For all provisions of this code except those for which a civil
27 penalty is specifically provided, there is established a civil penalty for a violation of those
28 provisions, as follows:(2) If at the time of the alleged violation, the person employs one or

1 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per
2 pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee
3 per pay period for each subsequent violation.

4 104. DEFENDANTS' violations of California wage and hour laws enable PLAINTIFFS
5 to recover civil penalties as aggrieved employees on behalf of themselves and other current and
6 former employees of DEFENDANTS.

7 105. PLAINTIFFS have complied with the procedural requirements specified in Labor
8 Code § 2699.3. As a result, PLAINTIFFS have exhausted all administrative procedures required
9 of them under Labor Code §§ 2698, 2699 and 2699.3, and are justified as a matter of right in
10 bringing forward this cause of action.

11 106. On October 4, 2022, PLAINTIFFS, through counsel, pursuant to the Labor Code
12 Private Attorneys General Act of 2004, submitted electronically a letter-notice of violations to the
13 California Labor and Workforce Development Agency's ("LWDA") website, as required by
14 Labor Code § 2699.3.

15 107. More than 60 calendar days has passed since PLAINTIFFS' submission and the
16 LWDA has not notified PLAINTIFFS' counsel that it does not intend to investigate the
17 allegations. Pursuant to Labor Code § 2699.3 (a)(2)(A), PLAINTIFFS may commence a civil
18 action pursuant to Labor Code § 2699.

19 108. As a result of DEFENDANTS' violation of numerous provisions of the Labor
20 Code, PLAINTIFFS seek all civil penalties, reasonable attorney's fees, and costs available
21 pursuant to Labor Code § 2699.

22 109. PLAINTIFFS are likely to have evidentiary support, after research and reasonable
23 opportunity for further investigation and discovery, to further penalties and violations.
24 PLAINTIFFS will amend this Complaint if appropriate and required to seek all applicable
25 penalties for violations which the LWDA has failed to investigate and/or failed to issue a citation.

26 110. Pursuant to Labor Code § 2699(i), PLAINTIFFS should be awarded twenty-five
27 percent (25%) of all penalties due under California law, interest, attorneys' fees, and costs. The
28 LWDA should be awarded seventy-five (75%) of the penalties due and awarded.

1 **NINTH CAUSE OF ACTION**

2 *(Business and Professions Code § 17200 et seq. violations)*

3 111. California Business and Professions Code § 17200 et. seq. prohibits acts of unfair
4 competition including any “unlawful and unfair business practices.”

5 112. The conduct of DEFENDANTS, as alleged herein, has been and continues to be
6 unfair, unlawful, and deleterious to PLAINTIFFS and putative class members, and to the general
7 public.

8 113. PLAINTIFFS hereby seek to enforce important rights affecting the public interest
9 within the meaning of Code of Civil Procedure § 1021.5. PLAINTIFFS are a “person” within
10 the meaning of Business and Professions Code § 17204 and therefore have standing to bring this
11 suit for injunctive relief and restitution.

12 114. The prompt and proper payment of wages is a fundamental public policy of the
13 State of California. It is also the public policy of the State to enforce minimum labor standards
14 ensuring that employees are not required or permitted to work under substandard and unlawful
15 conditions and to protect those employers who comply with the law from losing competitive
16 advantage to other employers that fail to comply with labor standards and requirements.

17 115. Through the conduct alleged herein, DEFENDANTS acted contrary to these
18 public policies and have thus engaged in unlawful and/or unfair business practices in violation
19 of Business and Professions Code §§ 17200 et. seq. depriving PLAINTIFFS and putative class
20 members the rights, benefits, and privileges guaranteed to employees under California law.

21 116. Beginning at an exact date unknown to PLAINTIFFS, but at least four years prior
22 to the filing of this action, DEFENDANTS have committed unlawful, unfair, and/or fraudulent
23 business acts and practices as defined by Cal. Business & Professions Code § 17200, by
24 engaging in the following:

- 25 a. Failing to pay at least minimum wage for all hours worked;
26 b. Failing to pay overtime wages;
27 c. Failing and refusing to authorize and permit proper rest breaks to
28 PLAINTIFFS and putative class members;

- d. Failing to pay all accrued rest break compensation to PLAINTIFFS and putative class members;
- e. Failing and refusing to authorize and permit proper meal breaks to PLAINTIFFS and putative class members;
- f. Failing to pay all accrued meal break compensation to PLAINTIFFS and putative class members;
- g. Failing to provide accurate itemized wage statements to PLAINTIFFS and putative class members; and
- h. Failing to remit all tips to PLAINTIFFS and putative class members.

117. By engaging in these business practices, which are unfair and unlawful within the meaning of Business and Professions Code §§ 17200 et. seq., DEFENDANTS harm PLAINTIFFS, putative class members, and the general public, and have gained an unfair competitive edge.

118. Under Business and Professions Code § 17203, PLAINTIFFS are entitled to obtain restitution on behalf of herself and others similarly affected by the unfair and/or unlawful business practices as set forth herein.

119. Pursuant to Business and Professions Code § 17202, PLAINTIFFS are entitled to specific reliefs enforcing the penalty provisions of various Labor Code sections for herself and for members of the general public in amounts to be proven at trial. Failure to enforce the penalties due would result in the unlawful enrichment of DEFENDANTS and would promote unfair competition.

120. Pursuant to Business & Professions Code § 17203, injunctive relief is necessary to prevent DEFENDANTS from continuing to engage in the unfair business practices as alleged herein.

121. PLAINTIFFS allege, on information and belief, that DEFENDANTS, and persons acting in concert with them, have committed and will continue to commit the above-described unlawful and/or unfair acts unless restrained or enjoined by this Court. Unless the relief prayed for below is granted, a multiplicity of actions will result. PLAINTIFFS and other interested

1 persons have no plain, speedy, or adequate remedy at law, in that pecuniary compensation alone
2 would not afford adequate and complete relief. The above-described acts will cause great and
3 irreparable damage to PLAINTIFFS and other interested persons unless DEFENDANTS are
4 restrained from committing further illegal acts.

5 122. PLAINTIFFS' success in this action will result in the enforcement of important
6 rights affecting the public and will confer a significant benefit upon the general public. Private
7 enforcement of the rights enumerated in this Complaint are necessary, as public agencies have
8 only sought limited enforcement of those rights, if any. The named PLAINTIFF individually,
9 and by and through counsel, is incurring a financial burden in pursuing this action on behalf of
10 the general public. PLAINTIFFS seek to enjoin the above-referenced unlawful actions under
11 California's Labor Code Industrial Welfare Commission Wage Orders. Therefore, PLAINTIFFS
12 seek an award of attorneys' fees and costs of suit on this action pursuant to California Code of
13 Civil Procedure § 1021.5 and other applicable laws.

14 **VIII. PRAYER**

15 WHEREFORE, PLAINTIFFS on their own behalf and on the behalf of the members of
16 the putative class, prays for judgment as follows:

- 17 1. For an order certifying the proposed class;
 - 18 2. For compensatory and consequential damages;
 - 19 3. Compensation of one hour at the regular rate of pay for each rest period and meal period
20 denied in violation of Labor Code § 226.7 and Wage Order No. 5, according to proof;
 - 21 4. Pursuant to Business & Professions Code § 17203, an award of restitution for the
22 unjustly amounts earned or retained DEFENDANTS by virtue of their engaging in
23 unlawful conduct, according to proof;
 - 24 5. Such other and further relief as the Court deems just and proper.
- 25
26
27
28

1 Dated: December 21, 2022

LIBERATION LAW GROUP, P.C.

2
3 By: Un Kei Wu

4 Arlo Garcia Uriarte
5 Un Kei Wu
6 Attorneys for Plaintiff

7 **IX. DEMAND FOR JURY TRIAL**

8 PLAINTIFFS hereby demand a trial by jury.

9 Dated: December 21, 2022

LIBERATION LAW GROUP, P.C.

10
11 By: Un Kei Wu

12 Arlo Garcia Uriarte
13 Un Kei Wu
14 Attorneys for Plaintiff