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VENTURA SUPERIOR COURT

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County of Ventura

06/28/2023

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

ELIZABETH ARELLANO, SOCORRO EDITH
VILLEGAS and JONATHAN ELIZARRARAZ,
individually and on behalf of the State of
California and similarly situated aggrieved
employees,

Plaintiffs,

vs.

SHAFFER ENTERPRISE LLC, a California
Corporation, dba CHICK-FIL-A, ROBERT
VERNON SHAFFER, an Individual, and DOES 1
through 20, inclusive,

Defendants.

Case No. 2023CUOE010656

CLASS ACTION

COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Rest Breaks or Pay Additional Wages in Lieu Thereof;
4. Failure to Provide Meal Periods or Pay Additional Wages in Lieu Thereof;
5. Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions
6. Failure to Pay All Wages Owed Upon Termination or Resignation
7. Wrongful Termination and/or Retaliation (Cal. Lab. Code §§ 98.6, 1102)
8. Wrongful Termination in Violation of Public Policy
9. Violation of Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*
10. Penalties Under LC 2699 *et seq.*

DEMAND FOR JURY TRIAL

1 **I. INTRODUCTION**

2 1. Plaintiffs Elizabeth Arellano, Socorro Edith Villegas and Jonathan Elizarraraz
3 (collectively “Plaintiffs”) bring this action against Shaffer Enterprise LLC dba Chick-Fil-A, Robert
4 Vernon Shaffer, and DOES 1-20 (collectively, “Defendants”), individually, on behalf of all
5 similarly situated individuals employed under common circumstances and facts, and as a
6 representative action under the Private Attorneys General Act (“PAGA”), Labor Code §§ 2698, et
7 seq. The allegations made in this complaint are based on Plaintiffs’ knowledge, except those
8 allegations made on information and belief, which are based on the investigation of their counsel.

9 **II. NATURE OF THE ACTION**

10 2. This is a wage and hour class action and representative wage and hour private
11 attorneys general action to vindicate the rights afforded employees by California labor laws.
12 Plaintiffs bring this action on behalf of similarly situated non-exempt employees employed by, or
13 formerly employed by, Defendants in California at any time within the applicable limitations
14 period, as well as the State of California, under PAGA.

15 3. This action revolves around the systematic failure by Defendants to pay California
16 non-exempt employees, including Plaintiffs and the aggrieved employees, in conformance with
17 California laws. Defendants have employed Plaintiffs and the aggrieved employees directly or as
18 agents of one another, and/or are liable under California Labor Code §§ 558, 558.1, 1197.1, and
19 2699(f).

20 4. The core violations Plaintiffs allege against Defendants are; (1) failure to pay
21 minimum and overtime premium wages; (2) failure to provide timely meal periods, and/or provide
22 appropriate compensation in lieu thereof; (3) failure to provide timely, complete, rest periods,
23 and/or provide appropriate compensation in lieu thereof; (4) failure to pay timely pay all wages due
24 at termination or resignation.

25 5. Defendants have refused to pay the wages due and owed to Plaintiffs and aggrieved
26 employees. As a result of these violations, Defendants have violated California labor laws, which
27 in turn has resulted in additional violations entitling Plaintiffs and the aggrieved employees to civil
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1 penalties. Defendants committed the violations at issue and benefitted financially and/or
2 professionally from these violations.

3 **III. NATURE OF THE ACTION**

4 **Plaintiffs**

5 6. Plaintiff Socorro Edith Villegas (“Villegas”) is a resident of Oxnard, California. At
6 all relevant times herein, Plaintiff Villegas is employed by Defendants, and, on information and
7 belief, Defendants are an enterprise engaged in commerce, in and around Ventura County,
8 California. Since on or about 2016 to the filing of this complaint, Plaintiff Villegas has been
9 employed by Defendants as a non-exempt employee at Defendants’ “Chick-fil-A” restaurant
10 establishment. During the relevant time period, Plaintiff Villegas was typically scheduled to start at
11 approximately 6:00 a.m. and scheduled to end at approximately 2:30 p.m. five (5) days a week.
12 Plaintiff Villegas is an aggrieved employee who has been subjected to the violations and unlawful
13 employment practices described herein, and who, as a result, has suffered injury in fact and has lost
14 money or property. As Defendants’ non-exempt employee, Plaintiffs Villegas was regularly
15 subjected to, or had personal knowledge of, the violations described in the Complaint.

16 7. Plaintiff Elizabeth Arellano (“Arellano”) is a resident of Oxnard, California. At all
17 relevant times herein, Plaintiff was employed by Defendants. On information and belief, Defendant
18 Shaffer Enterprise is an enterprise engaged in commerce, in and around Ventura County,
19 California. From approximately December 07, 2021, to September 22, 2022, Plaintiff was
20 employed by Defendants as a non-exempt employee at Defendants’ “Chick-fil-A” restaurant
21 establishment. During the relevant time period, Plaintiff was typically scheduled to start at
22 approximately 6:00 a.m. and scheduled to end at approximately 2:30 p.m. five (5) days a week
23 before Defendants started to manipulate her schedule so as to afford her a reduced income. Plaintiff
24 is an aggrieved employee who has been subjected to the violations and unlawful employment
25 practices described herein, and who, as a result, has suffered injury in fact and has lost money or
26 property. As Defendants’ non-exempt employee, Plaintiff was regularly subjected to, or had
27 personal knowledge of, the violations described in the Complaint.

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1 violations described above, and failed to prevent or address them. On information and belief,
2 Defendant Shaffer is an owner, director, officer, or managing agent of Defendant Shaffer
3 Enterprise who controlled and caused the violations at issue here either by making illegal policies,
4 implementing illegal policies, or failing to correct illegal policies. For instance, Defendant Shaffer
5 among other things, instructed supervisors and managers at Defendant Shaffer Enterprise to not
6 provide employee proper rest periods as Plaintiff Arellano was informed by her supervisor that it
7 was Defendant Shaffer Enterprise's policy and practice to not provide proper rest breaks because
8 Defendant Shaffer was the owner and did not permit rest periods. Defendant Shaffer is therefore
9 liable as a person acting on behalf of Defendant Shaffer Enterprise under California Labor Code §§
10 558, 558.1. Plaintiffs allege that Defendant Shaffer is liable under PAGA and Labor Code §§ 558,
11 1197.1, 2699(f) and 18 as a "person" who violated or caused to be violated the Labor Code and
12 Wage Orders listed in this complaint, by exercising control over and involvement in the creation
13 and/or implementation of the wage and hour practices and policies that are the subject matter of
14 this complaint.

15 12. Plaintiffs are ignorant of the true names or capacities of the Defendants sued herein
16 under the fictitious names of DOES 1 through 20, inclusive, and therefore sue Defendants under
17 such fictitious names. Plaintiffs will amend this complaint to allege the true names or capacities of
18 these Defendants once they have been ascertained. Plaintiffs are informed and believe, and based
19 thereon allege, that each Defendant is responsible in some manner for the occurrences herein
20 alleged, and that the damages herein alleged were actually and proximately caused by each
21 Defendants' conduct.

22 13. Plaintiffs are informed and believe, and based thereon allege, that at all times
23 mentioned herein, Defendants, including Does, were acting as the agent of every other Defendant,
24 and all acts alleged to have been committed by any Defendant were committed on behalf of every
25 other Defendant; and, at all times mentioned herein, each alleged act was committed by each
26 Defendant and/or agent, servant, or employee of each Defendant, and each Defendant directed,
27 authorized or ratified each such act. Plaintiffs are informed and believe, and based thereon allege,
28 that each Defendant, including Does, was the agent, employee, co-conspirator, business affiliate,

1 subsidiary, parent entity, owner and/or joint ventures of each other Defendant; and, in causing the
2 injuries herein alleged, each Defendant was acting at least in part within the course and scope of
3 such agency, employment, conspiracy, joint employer ship, alter ego status, and/or joint venture,
4 and with the permission and consent of each of the other Defendants

5 **IV. JURISDICTION**

6 14. This Court has jurisdiction over Plaintiffs' action, which arises under the California
7 Labor Code, for labor and business and professions code violations that occurred in California
8 throughout the past four years and alleges damages exceeding \$25,000.00.

9 **V. VENUE**

10 15. Venue is proper pursuant to California Code of Civil Procedure section 395(a),
11 because Plaintiffs were harmed by all Defendants violations of the California Labor Code in
12 Ventura County and Defendant Shaffer Enterprises continues to do business in Ventura County
13 and employs individuals in Ventura County. Defendants committed the acts in question in the
14 Complaint, partly or wholly, in Ventura County.

15 **VI. FACTUAL BACKGROUND**

16 16. The claims of this lawsuit spring from a pattern of employer misconduct and
17 wrongdoing that is a characteristic of the labor system utilized by Defendants, where unpaid and
18 improperly paid labor, as alleged herein, is a common business practice. Defendants' actions in this
19 case demonstrate a systematic disregard for the rights afforded to Plaintiffs and the Class under
20 California wage and hour law. The following paragraphs detail specific violations of law giving
21 rise to this action.

22 17. For at least four (4) years prior to the filing of this action and through to the present
23 (liability period for the UCL cause of action), Defendants maintained and enforced against their
24 non-exempt employees the following unlawful practices and policies, in violation of wage and
25 hour laws:

- 26 a. failure to pay Class Members, including Plaintiff Arellano, all overtime and
27 minimum wage due pursuant to Cal. Labor Code and Industrial Welfare
28 Commission Wage Orders for:

- i. failing to pay Plaintiff Arellano and the Class minimum wages for all hours worked “off the clock,” including but not limited to employees continuing to work after clocking out at the end of each workday and/or working through rest and meal periods for which they are required to clock out in violation of state laws, wage orders, and public policy; This practice occurred regularly;
- ii. failing to properly pay Plaintiff Arellano and the Class overtime wages for all hours worked in excess of eight (8) hours in one day, forty (40) hours in a workweek, and failing to properly pay Plaintiff Arellano and the Class premium double time wages for all hours worked in excess of 12 hours in one day for “off the clock” work, including but not limited to deducting time from employee time punches, employees working through rest and meal periods for which they are required to clock out, and continuing to work after clocking out at the end of each workday, in violation of state laws, wage orders, and public policy; This practice occurred regularly;
- b. failing to provide Plaintiff and the Class rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided as required by California, including but not limited to unprovided rest periods, late rest periods, and non-net ten (10) minute rest periods because of time spent working during rest periods to manage heavy workload and understaffing, and being interrupted by supervisors during rest periods, when they are given, to assist customers within the applicable time limits as instructed by Defendants, in violation of state laws, wage orders, and public policy; This practice occurred regularly;
- c. failing to provide Plaintiff and the Class a second meal period of no fewer than thirty (30) minutes for all workdays on which Plaintiff and the Class worked more than ten (10) hours and failing to pay such employees one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period was

- 1 not provided as required by California, including but not limited to unprovided meal
2 periods, late meal periods, and non-net thirty (30) minute meal periods because of
3 time spent working after clocking out for meal periods to manage heavy workload
4 and understaffing, and being interrupted by supervisors during meal periods, when
5 they are given, to assist customers within the applicable time limits as instructed by
6 Defendants, in violation of state laws, wage orders, and public policy; This practice
7 occurred regularly;
- 8 d. failing to provide employees, including Plaintiff, with accurate itemized wage
9 statements, in violation of California law and public policy; This practice occurred
10 regularly;
- 11 e. failing to maintain accurate timekeeping records, in violation of California law and
12 public policy; This practice occurred regularly;
- 13 f. failing to pay employees, including Plaintiffs, statutory penalties pursuant to Cal.
14 Labor Code §§ 201, 202, 203, 226 and 256. This practice occurred regularly;
- 15 g. At all relevant times, Defendants failed to compensate for all “hours worked” within
16 the meaning of the applicable IWC Wage Order and failed to pay overtime premium
17 wages for work performed. This includes, but is not limited to, regular hours
18 worked that were not compensated at minimum or agreed upon rates, overtime
19 hours worked that were either not compensated, or compensated at rates lower than
20 the applicable overtime premium wage rate and/or without properly calculating the
21 regular rate of pay for purposes of paying overtime, uncompensated or
22 undercompensated time spent on statutory rest breaks. By its conduct, Defendants
23 makes clear that they are intentionally and maliciously subverting minimum wage
24 requirements and overtime wage requirements, resulting in loss of property to
25 Plaintiffs and the Class as a result of Defendants payroll policies.
- 26 18. Under the meal period policies, Defendants failed to provide employees: (a) at least
27 one (1) meal period prior to the fifth hour failing to provide a second meal period of no fewer than
28 30 minutes for all workdays on which Plaintiffs and the Class worked more than ten (10) hours

and/or two (2) meal periods for shifts greater than ten hours, (b) net thirty (30) minute meal periods, and/or (c) timely meal periods because of time spent working after clocking out for meal periods to manage heavy workload and understaffing, and being interrupted by supervisors during meal periods, when they are given, to assist customers within the applicable time limits as instructed by Defendants, in violation of California state laws, wage orders, and public policy. Further, Defendants policy is to not pay the premium wages owed to workers for missed, incomplete and/or untimely meal periods.

19. Under the rest break policies, Defendants failed to provide employees: (a) at least two (2) rest breaks for shifts greater than six hours, (b) net ten-minute rest breaks, and (c) timely rest breaks because of time spent working through rest periods to manage heavy workload and understaffing, and being interrupted by supervisors during rest periods, when they are given, to assist customers within the applicable time limits as instructed by Defendants, in violation of California state laws, wage orders, and public policy. Further, Defendants failed to compensate any premium wages owed to workers for missed, incomplete, and/or untimely rest breaks. Finally, Defendants had a policy of discouraging and preventing employees from taking proper full rest breaks.

20. Under the time-keeping policies, Defendants failed to account and compensate Plaintiff Arellano and other current or former employees time spent working off the clock. Plaintiff Arellano and on information and belief, other current or former employees were not paid for their training/onboarding and were not paid for continuing to work after clocking out at the end of each workday and/or working through meal periods for which they are required to clock out. Plaintiff Arellano and other current or former employees performed such off-the-clock work almost every day and were denied compensation for all hours worked, in violation Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1.

21. Under the record-keeping policies, Defendants willfully provided inaccurate itemized wage statements because they did not account for “all hours worked” as Defendants failed to account and compensate for the off the clock time experienced by Plaintiff Arellano and other

1 current or former employees and failed to compensate Plaintiffs and similarly situated employees
2 for missed, short, or late rest and meal periods as required under California law.

3 22. Defendants willfully retaliated, discriminated, created a hostile work environment,
4 and/or intimidated Plaintiffs and other similarly situated current and former employees for engaging
5 in protected activity.

6 23. In response to and because of Plaintiffs' request for personnel file and wage records
7 pursuant to Cal. Labor Code § 226, complaints about unpaid wages, requests for full payment for
8 all hours worked, demands that Defendants comply with labor laws, and among other things,
9 Defendants willfully retaliated, discriminated, created a hostile work environment, and/or harassed
10 Plaintiffs which included but was not limited to unnecessarily checking Plaintiffs' work,
11 underpaying and manipulating Plaintiff Arellano's schedule so as to afford her a reduced income,
12 in an effort to penalize Plaintiffs for engaging in protected activity and Defendants belief that
13 Plaintiffs are prospective complainant and/or witness of Defendants' discriminatory and retaliatory
14 conduct towards similarly situated current and former employees.

15 24. Defendants' retaliatory and discriminatory acts have also created a chilling effect
16 among Defendants employees regarding identifying and complaining about wage and hour law
17 violations. Putative class members are concerned that Defendants will retaliate, discriminate,
18 harass, intimate, create a hostile work environment, and/or wrongfully terminate them if they
19 complain about Defendants' violation of wage and hour laws. As a result, other putative class
20 members are dissuaded from raising violations of wage and hour laws with agencies as a result of
21 Defendants acts.

22 25. On information and belief, Defendants were on actual and constructive notice of the
23 improprieties alleged herein by Plaintiffs and intentionally refused to rectify their unlawful
24 policies. Defendants' violations, as alleged above, were knowing, willful and deliberate.

25 26. Defendants have made it difficult to account with precision for the wages
26 unlawfully withheld from Defendants' non-exempt employees, including Plaintiffs, during all
27 relevant times herein, because they did not implement and preserve a sufficient record-keeping
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method to record all hours worked and wages earned by their employees as required for non-exempt employees by Cal. Labor Code §§ 226 and 1174(d).

27. Defendants have failed to comply with Cal. Labor Code §226(a) by itemizing in wage statements all wages properly earned and accurately reporting total hours worked by Plaintiffs and the Class. Plaintiffs and the Class are therefore entitled to statutory penalties not to exceed \$4,000 pursuant to Labor Code § 226(e).

28. Plaintiffs and the Class, pursuant to the Unfair Competition Law (“UCL”), Business and Professions Code §§ 17200 *et seq.*, also seek injunctive relief, declaratory relief, restitution, and restitutionary disgorgement of all wages earned by Plaintiffs and the Class but retained by Defendants as a result of their failure to comply with the above laws. Plaintiffs also seek injunctive relief and restitution of all benefits Defendants have received from Defendants retaliation against Plaintiffs and the Class.

29. Plaintiffs and the Class are also entitled to attorneys’ fees pursuant to C.C.P. § 1021.5, Cal. Labor Code, as well as California statutory law.

VII. CLASS ACTION ALLEGATIONS

30. Plaintiffs bring this action on behalf of themselves, and all others similarly situated as a class action pursuant to section 382 of the Code of Civil Procedure. Plaintiffs seek to represent the following “Class” composed of and defined as follows:

All non-exempt persons who are employed or have been employed by Defendants in the State of California who, within four (4) years of the filing of the original Complaint in this case until the present.

31. On information and belief, the legal and factual issues implicated by this Complaint are common to the Class and affect all Class Members. Plaintiffs reserve the right under Rule 3.765, California Rules of Court, to amend or modify the class description or divide into subclasses.

32. This action has been brought and may properly be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity

33. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiffs are informed and believe that Defendants has employed hundreds of non-exempt employees in the State of California during the Class Period and who are, or have been, affected by Defendant's unlawful practices as alleged herein.

34. Upon information and belief, Plaintiffs allege that Defendants employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

B. Commonality

35. There are questions of law and fact common to the Class predominating over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- a. Whether Defendants retaliated, discriminated, created a hostile work environment, harassed, and/or wrongfully terminated employees for engaging in protected activity in violation of of Cal. Labor Code §§ 98.6, 1102 and public policy.
- b. Whether Defendants violated the Cal. Labor Code, IWC Wage Orders, and public policy by failing to compensate Plaintiff Arellano and the other Class Members at minimum wages for all hours worked;
- c. Whether Defendants violated the Cal. Labor Code, IWC Wage Orders, or public policy by failing to provide Plaintiffs and other Class Members daily uninterrupted and off-duty rest periods of at least net ten (10) minutes for every four (4) hours or major fraction thereof worked, and failing to compensate said employees one-hour additional wages in lieu of each rest period denied;
- d. Whether Defendants violated the Cal. Labor Code, IWC Wage Orders, or public policy by failing to provide a meal period to Plaintiffs and other

- 1 Class Members on days they worked in excess of five (5) hours, and/or a
2 second meal period on days they worked in excess of ten (10) hours, by
3 deducting for lunch periods that were not taken, and/or by providing
4 shortened meal periods that were less than the required minimum net thirty
5 (30) minutes required by California law, and failing to compensate said
6 employees one hour additional wages in lieu of each meal period denied;
- 7 e. Whether Defendants violated the Cal. Labor Code, IWC Wage Orders, or
8 public policy by failing to pay all earned wages and/or premium wages due
9 and owing at the time that any Class Member's employment with
10 Defendants terminated;
- 11 f. Whether Defendants violated the Cal. Labor Code, wage orders, or public
12 policy by failing to, among other things, maintain and provide accurate
13 records of Plaintiffs and the other Class Members' earned wages and work
14 periods, accurately itemizing in wage statements all hours worked and
15 wages earned, and maintaining records pertaining to Plaintiffs and the other
16 Class Members;
- 17 g. Whether Defendants violated the Cal. Labor Code, IWC Wage Orders, or
18 public policy by willfully refusing to pay all wages due;
- 19 h. Whether Defendants violated the Cal. Labor Code and Wage Orders as a
20 result of the allegations described in this Complaint;
- 21 i. Whether Defendants committed unfair or unlawful business practices in
22 violation of the California Unfair Competition Law, Business &
23 Professions Code §§ 17200 et seq.; and
- 24 j. Whether Plaintiffs and other Class Members are entitled to damages,
25 restitution, wages, statutory penalties, premium wages, declaratory,
26 injunctive and declaratory relief, attorneys' fees, interest, and costs, and
27 other relief pursuant to the Cal. Labor Code, Business & Professions Code
28 §§ 17200 et seq., and IWC Wage Orders.

1 **C. Typicality**

2 36. The claims of the named Plaintiffs are typical of the claims of the Class. Plaintiffs
3 and all members of the Class sustained injuries and damages arising out of and caused by
4 Defendants common course of conduct in violation of California laws, regulations, and public
5 policy as alleged herein.

6 **D. Adequacy of Representation**

7 37. Plaintiffs will fairly and adequately represent and protect the interests of the
8 members of the Class. Counsel who represents Plaintiffs are competent and experienced in
9 litigating large employment class actions.

10 **E. Superiority of Class Action**

11 38. A class action is superior to other available means for the fair and efficient
12 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
13 questions of law and fact common to the Class predominate over any questions affecting only
14 individual members of the Class. Each member of the Class has been damaged and is entitled to
15 recovery by reason of Defendants unlawful policy and/or practice of failing to compensate Class
16 Members for the unlawful practices herein complained of.

17 39. Class action treatment will allow those similarly situated persons to litigate their
18 claims in the manner that is most efficient and economical for the parties and the judicial system.
19 PLAINTIFFS is unaware of any difficulties that are likely to be encountered in the management of
20 this action that would preclude its maintenance as a class action.

21 **VIII. CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**
23 **FAILURE TO PAY CALIFORNIA MINIMUM WAGES**
(CAL. LABOR CODE §§ 226, 226.6, 1194, 1194.2, 1197 & APPLICABLE Wage Order)
24 (PLAINTIFF ARELLANO AGAINST DEFENDANTS)

25 40. Plaintiff Arellano incorporates all preceding paragraphs as though fully set forth
26 herein.

27 41. Cal. Labor Code §1197, entitled "Pay of Less Than Minimum Wage," states:
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1 The minimum wage for employees fixed by the commission is the minimum wage to be
2 paid to employees, and the payment of a less wage than the minimum so fixed is
unlawful.

3 42. The applicable minimum wage fixed by the commission for restaurant workers
4 (Wage Orders 5) was set at eight dollars (\$8.00) per hour for all hours worked effective January 1,
5 2008 but was raised to nine dollars \$9.00 per hour starting July 1, 2014. The minimum wage was
6 again raised on January 1, 2016 to ten dollars (\$10.00) per hour. The minimum wage is currently
7 fifteen dollars and fifty cents (\$15.50) per hour.

8 43. As described in Cal. Labor Code §§ 1185 and 1194.2, any action for wages
9 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

10 44. Defendants failed to pay Plaintiff Arellano and other employees the minimum wage
11 “for all hours worked.” For example, Plaintiff Arellano and other employees were forced to work
12 “off-the-clock” time without compensation and time was deducted from their “on-the-clock” work
13 to avoid payment for all hours worked. In particular, Plaintiff Arellano and other current or former
14 employees were not paid for their training/onboarding, were not paid for continuing to work after
15 clocking out at the end of each workday, working through rest periods, and/or meal periods for
16 which they are required to clock out. During workweek(s) or workday(s) were Plaintiff Arellano
17 and other current or former employees were denied a proper meal or rest break and/or performed
18 the off-the-clock and on-the-clock work alleged herein were denied compensation for the same at
19 minimum wage, in violation of Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1.

20 45. For instance, Plaintiff Arellano was not compensated minimum wages for all hours
21 worked because Defendants did not record and account for fifteen (15) minutes at the end of
22 Plaintiff Arellano’s work shift three (3) to four (4) times a week because before leaving for the day
23 Plaintiff Arellano was required to either: (1) complete prepping enough toppings for hamburgers
24 for the afternoon shift; (2) finish washing dishes and cleaning her work area before the afternoon
25 shift arrives; (3) finish preparing and storing lemonade in the refrigerator; or because (4) due to
26 Defendants policy of understaffing work shifts Plaintiff Arellano was required to continue working
27 and wait for a replacement because an employee in the afternoon shift was late. Defendants’ policy
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1 and practice of failing to record this off the clock time was not limited to these circumstances or
2 frequency. This policy and practice of failing to record and account for the off the clock time
3 alleged herein resulted in Defendants failure to pay Plaintiff Arellano and other similarly situated
4 current and former employees' minimum wage for all hours.

5 46. As a result of Defendants' policy or practices described above, Plaintiff Arellano
6 and other current or former employees were required to perform off the clock work that
7 Defendants either knew or should have known they were performing

8 47. As a result of Defendants' violations of the minimum wage, by failing to record and
9 pay minimum wage for all hours worked or by deducting time from "on-the-clock" work,
10 Defendants violated Cal. Labor Code § 226(a), inaccurately stating gross wages earned, total hours
11 work, deductions, net wages and other issues as described above.

12 48. Defendants have the ability to pay minimum wages for all time worked but have
13 willfully refused to pay such wages, intending to secure instead a discount upon their indebtedness
14 to Plaintiff Arellano and the Class for all hours worked, and intending to annoy harass, oppress,
15 hinder delay or defraud Plaintiff Arellano, in violation of Cal. Labor Code §§ 216, 226.6, Penal
16 Code § 487m

17 49. Cal. Labor Code § 216 states:

18 In addition to any other penalty imposed by this article, any person,
19 or an agent, manager, superintendent, or officer thereof is guilty of a
20 misdemeanor, who:

21 (a) Having the ability to pay, willfully refuses to pay wages due and
22 payable after demand has been made.

23 (b) Falsely denies the amount or validity thereof, or that the same is
24 due, with intent to secure for himself, his employer or other person,
25 any discount upon such indebtedness, or with intent to annoy, harass,
26 oppress, hinder, delay, or defraud, the person to whom such
27 indebtedness is due.

28 50. Cal. Labor Code § 226.6 states:

Any employer who knowingly and intentionally violates the
provisions of 226 or 226.2, or any officer, agent, employee,
fiduciary, or other person who has the control, receipt, custody, or
disposal of, or pays, the wages due any employee, and who
knowingly and intentionally participates or aids in the violation of
any provision of Cal. Labor Code §§ 226 or 226.2 is guilty of a
misdemeanor and, upon conviction thereof, shall be fined not more
than one thousand dollars (\$1,000) or be imprisoned not to exceed
one year, or both, at the discretion of the court. That fine or

imprisonment, or both, shall be in addition to any other penalty provided by law.

51. Cal. Penal Code § 487m states in pertinent part:

(a) Notwithstanding Sections 215 and 216 of the Labor Code, the intentional theft of wages in an amount greater than nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars (\$2,350) in the aggregate from two or more employees, by an employer in any consecutive 12-month period may be punished as grand theft.

52. The Minimum Wage provisions of Cal. Labor Code are enforceable by private civil action pursuant to Cal. Labor Code § 1194(a), which states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit.

53. As such, Plaintiff Arellano and the Class may bring this action for minimum wages, interest, costs of suit and attorney's fees pursuant to Cal. Labor Code § 1194(a).

54. As described in Cal. Labor Code § 1194.2, any such action incorporates the applicable wage order of the California Labor Commission. Cal. Labor Code § 1194.2 states:

In any action under Section 1194 ... to recover wages because of the payment of a wage less than the minimum wages fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

55. As described herein, this is an action under Cal. Labor Code § 1194 to recover wages on account of Defendants' failure to pay minimum wages as described in Cal. Labor Code §§ 1197, 1194(a), 1194.2 and any applicable wage orders, including IWC Order 5. Therefore, Plaintiff Arellano and the Class are also entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

56. Under Cal. Labor Code § 558.1, any natural person who is an owner, director, officer, or managing agent of an employer, acting on behalf of the employer, who violates or causes to be violated any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Cal. Labor Code

1 §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
2 Therefore, Defendant Shaffer is liable for the violations herein alleged.

3 57. Wherefore, Plaintiff Arellano and the Class request relief as described herein and
4 below.

5 **SECOND CAUSE OF ACTION**
6 **FAILURE TO PAY OVERTIME WAGES**
7 (CAL. LABOR CODE §§ 510, 1194, 1194.2 & WAGE ORDER 5)
(PLAINTIFF ARELLANO AGAINST DEFENDANTS)

8 58. Plaintiff Arellano incorporates all preceding paragraphs as though fully set forth
9 herein.

10 59. Cal. Labor Code § 510(a) states:

11 Eight hours of labor constitutes a day's work. Any work in excess of
12 eight hours in one workday and any work in excess of 40 hours in
13 any one work week and the first eight hours worked on the seventh
14 day of work in any one workweek shall be compensated at the rate of
15 no less than one and one-half times the regular rate of pay for an
employee. Any work in excess of 12 hours in one day shall be
compensated at the rate of no less than twice the regular rate of pay
for an employee. In addition, any work in excess of eight hours on
any seventh day of a workweek shall be compensated at the rate of
no less than twice the regular rate of pay of an employee.

16 The identical provision is found in the applicable IWC Wage Order 5-2001, which is authorized
17 under Cal. Labor Code § 1185.

18 60. IWC Wage Order 5-2001, authorized under Cal. Labor Code § 1185, establishes for
19 restaurant workers the eight (8) hour workday and forty (40) hour work week, and provides that
20 work in excess of eight (8) hours in one workday, forty (40) hours in one work week, and for up to
21 eight (8) hours on the seventh (7th) workday in one work week is to be compensated at one and
22 one-half (1½) times the employees' regular rate of pay. IWC Wage Order 5-2001 also provides
23 that work in excess of twelve (12) hours in one workday or in excess of eight (8) hours on the
24 seventh (7th) workday in one work week is to be compensated at two (2) times the employees'
25 regular rate of pay.

1 61. Cal. Labor Code § 500 defines, “workday” and “day” to mean any consecutive 24-
2 hour period commencing at the same time each calendar day, and defines “workweek” and “week”
3 to mean “any seven consecutive days starting with the same calendar day each week.”

4 62. As described herein, Defendants violated Cal. Labor Code § 510 and Wage Order 5,
5 by employing Plaintiff Arellano and the Class in excess of the limits provided above without time
6 and one half or double time pay of employees’ regular rates of pay. In particular, Plaintiff Arellano
7 and the Class worked overtime and/or double-time without compensation or without overtime
8 and/or double-time compensation while working prior to clocking in at the beginning of each
9 workday, while working through rest and meal periods for which they are required to clock out,
10 and while continuing to work after clocking out at the end of each workday. During workweek(s)
11 or workday(s) that Plaintiff Arellano and other similarly situated current or former employees
12 performed the off-the-clock and on-the-clock work alleged herein during the relevant time period,
13 were denied overtime premium wage for the off the clock work when Plaintiff Arellano and other
14 similarly situated employees were required to work eight (8) hours in day or forty (40) hours in a
15 week, in violation of Cal. Labor Code §§ 510, 1194, 1194.2.

16 63. For instance, Plaintiff Arellano was not compensated overtime wages for all hours
17 worked in excess of eight (8) hours a day or forty (40) hours per week because Defendants did not
18 record and account for fifteen (15) minutes a day at the end of Plaintiff Arellano’s work shift three
19 (3) to four (4) times a week because before leaving for the day Plaintiff Arellano was required to
20 either: (1) complete prepping enough toppings for hamburgers for the afternoon shift; (2) finish
21 washing dishes and cleaning her work area before the afternoon shift arrives; (3) finish preparing
22 and storing lemonade in the refrigerator; or because (4) due to Defendants policy of understaffing
23 work shifts Plaintiff Arellano was required to continue working and wait for a replacement
24 because an employee in the afternoon shift was late. Defendants’ policy and practice of failing to
25 record this off the clock time is not limited to these circumstances or frequency. This policy and
26 practice of failing to record the off the clock time alleged herein resulted in Defendants failure to
27 pay Plaintiff Arellano and other similarly situated current and former employees’ overtime wages
28 for all hours worked in excess of eight (8) hours in a day and forty (40) hours per week.

64. As a result of Defendants' policy or practices described above, Plaintiff Arellano and other current or former similarly situated employees were required to perform off the clock work that Defendants either knew or should have known they were performing

65. Plaintiff Arellano and the Class may enforce these provisions pursuant to Cal. Labor Code § 1194(a), as well as Business and Professions Code §§ 17200 *et seq.*

66. Cal. Labor Code § 1194(a) states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit.

67. As a result, Plaintiff Arellano and the Class are entitled to the unpaid balance of the full amount of the above noted overtime compensation, interest, reasonable attorney's fees and costs of suit. Under Cal. Labor Code § 558.1, any natural person who is an owner, director, officer, or managing agent of an employer, acting on behalf of the employer, who violates or causes to be violated any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Cal. Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation. Therefore, Defendant Shaffer is liable for the violations herein alleged.

68. Wherefore, Plaintiff Arellano and the Class request relief as described herein and below.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE REST BREAKS
OR COMPENSATION IN LIEU THEREOF
(CAL. LABOR CODE § 226.7 & WAGE ORDER 5)
(PLAINTIFFS AGAINST DEFENDANTS)

69. Plaintiffs incorporates all preceding paragraphs as though fully set forth herein.

70. Cal. Labor Code § 226.7 states:

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

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one

additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

71. IWC Wage Order 5-2001 § 12 states:

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

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

A similar provision is contained in Cal. Labor Code § 512.

72. Employees are entitled to at least one rest break for shifts from three and half (3.5) to six (6) hours, two rest breaks for shifts greater than six (6) hours up to ten (10) hours, and three rest breaks for shifts greater than ten (10) hours. For normal shifts the first rest break must occur before the meal break and the second rest break after the meal break, unless other factors render such schedule impracticable.

73. Defendants did not provide, permit or authorize employees, including Plaintiffs, to take proper rest breaks in accordance with law. Defendants maintain a practice of forcing employees, including Plaintiffs, to take late rest breaks, work during rest breaks in order to manage heavy workload and understaffing, as well as interrupting such employees during rest breaks, when they are given, in order to assist customers. As such, Defendants violated California law by failing to provide rest breaks mandated by Cal. Labor Code § 226.7 and Wage Orders 5 and others, and by failing to provide one hour pay at the employees' regular rate of compensation for each workday that a required rest break was not provided. The one hour of additional wages has been held to be "wages" pursuant to California law.

74. For instance, Plaintiffs were not provided or authorized to take a proper rest break(s) in accordance with the law because Defendants did not schedule or permit Plaintiffs and

1 other similarly situated employees to take rest breaks in order to manage a heavy workload and
2 understaffing. Defendants' policy and practice of failing to schedule and permit proper rest breaks
3 occurred throughout Plaintiffs' employment and is not limited to these circumstances or
4 frequency. This policy and practice resulted in Defendants failure to provide and authorize
5 Plaintiffs and other similarly situated current and former employees to take proper rest break(s)

6 75. By failing to keep adequate time records required by Cal. Labor Code §§ 226 and
7 1174(d), Defendants have injured Plaintiffs and the Class and made it difficult to calculate the
8 unpaid rest break compensation due Plaintiffs and the Class.

9 76. As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been
10 deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of
11 such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Cal. Labor
12 Code §§ 203, 226, 226.7, 512, 1194, Wage Order 5, and others.

13 77. Under Cal. Labor Code § 558.1, any natural person who is an owner, director,
14 officer, or managing agent of an employer, acting on behalf of the employer, who violates or
15 causes to be violated any provision regulating minimum wages or hours and days of work in any
16 order of the Industrial Welfare Commission, or violates, or causes to be violated, Cal. Labor Code
17 §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
18 Therefore, Defendant Shaffer is liable for the violations herein alleged.

19 78. Wherefore, Plaintiffs and the Class request relief as described herein and below.

20 **FOURTH CAUSE OF ACTION**
21 **FAILURE TO PROVIDE MEAL PERIODS**
22 **OR COMPENSATION IN LIEU THEREOF**
23 **(CAL. LABOR CODE §§ 226.7, 512 F& WAGE ORDER 5)**
(PLAINTIFFS AGAINST DEFENDANTS)

24 79. Plaintiffs incorporates all preceding paragraphs as though fully set forth herein.

25 80. Cal. Labor Code § 226.7 states:

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

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

81. IWC Wage Order 5-2001 § 11 states:

(A) 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 employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

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

A similar provision is contained in Labor Code § 512.

82. Employees are entitled to at least one meal period for shifts between five (5) and ten (10) hours, and two meal periods for shifts greater than ten (10) hours. For normal shifts the first meal period must occur before the fifth (5th) hour, and the second meal period before the tenth (10th) hour, unless other factors render such schedule impracticable.

83. Defendants did not provide, permit or authorize employees, including Plaintiffs, to take proper meal periods in accordance with law during all workweek(s) or workday(s) were Defendants maintained a practice of forcing employees, including Plaintiffs, to take late meal periods, work during meal periods in order to manage heavy workload and understaffing, as well as interrupting such employees during meal periods, when they are given, in order to assist customers.

89. Wherefore, Plaintiffs and the Class request relief as described herein and below.

90. Plaintiffs incorporates all preceding paragraphs as though fully set forth herein.

1 91. Cal. Labor Code § 226(a) states:

2 Every employer shall, semimonthly or at the time of each payment of
3 wages, furnish each of his or her employees, either as a detachable
4 part of the check, draft, or voucher paying the employee's wages, or
separately when wages are paid by personal check or cash, an
accurate itemized statement in writing showing:

- 5 i) gross wages earned,
- 6 ii) total hours worked by the employee, except for any employee whose
7 compensation is solely based on a salary and who is exempt from
8 payment of overtime under subdivision (a) of Section 515 or any
9 applicable order of the Industrial Welfare Commission,
- 10 iii) the number of piece-rate units earned and any applicable piece rate if
the employee is paid on a piece-rate basis,
- 11 iv) all deductions, provided that all deductions made on written orders of
the employee may be aggregated and shown as one item,
- 12 v) net wages earned,
- 13 vi) the inclusive dates of the period for which the employee is paid,
- 14 vii) the name of the employee and his or her social security number,
except that by January 1, 2008, only the last four digits of his or her
15 social security number or an employee identification number other
than a social security number may be shown on the itemized
16 statement,
- 17 viii) the name and address of the legal entity that is the employer, and
- 18 ix) all applicable hourly rates in effect during the pay period and the
corresponding number of hours worked at each hourly rate by the
19 employee. The deductions made from payments of wages shall be
recorded in ink or other indelible form, properly dated, showing the
20 month, day, and year, and a copy of the statement or a record of the
deductions shall be kept on file by the employer for at least three
21 years at the place of employment or at a central location within the
State of California.

22 92. Defendants failed to provide “accurate itemized statements” to Plaintiffs and other
23 current or former because wage statements did not account for “all hours worked” as Defendants
24 failure to account and compensate for the off the clock time experienced by Plaintiffs and similarly
25 situated current and former employees, failure to provide premium wages for late, short, or missed
26 meal and/or rest periods as required under California law.

27

28

1 93. Cal. Labor Code §§ 226(e) and (g) provide for the remedy for the violations
2 described above:

3 (e) An employee suffering injury as a result of a knowing and
4 intentional failure by an employer to comply with subdivision (a) is
5 entitled to recover the greater of all actual damages or fifty dollars
6 (\$50) for the initial pay period in which a violation occurs and one
7 hundred dollars (\$100) per employee for each violation in a
8 subsequent pay period, not exceeding an aggregate penalty of four
9 thousand dollars (\$4,000), and is entitled to an award of costs and
10 reasonable attorney's fees.

11 (g) An employee may also bring an action for injunctive relief to
12 ensure compliance with this section and is entitled to an award of
13 costs and reasonable attorney's fees.

14 94. Cal. Labor Code § 1174 and Section 7 of Wage Order 5, require that Defendants
15 maintain and preserve, in a centralized location, among other items, records showing the names
16 and addresses of all employees employed, payroll records showing the hours worked daily by and
17 the wages paid to its employees. The Wage Orders also require that the employer keep accurate
18 information showing when each employee begins and ends each work period, meal periods, and
19 total daily hours worked." Defendants have created a uniform practice of knowingly and
20 intentionally failing to comply with Cal. Labor Code § 1174. Defendants' failure to comply with
21 Cal. Labor Code § 1174 is unlawful pursuant to Cal. Labor Code § 1175. When an employer fails
22 to keep such records, employees may establish the hours worked solely by their testimony and the
23 burden of overcoming such testimony shifts to the employer. See *Hernandez v. Mendoza*,
24 (1988)199 Cal.App.3d 721.

25 95. By failing to keep adequate time records required by Cal. Labor Code §§ 226 and
26 1174 (d), Defendants have injured Plaintiffs and the Class and made it difficult to calculate the
27 unpaid wages due, and Plaintiffs and the Class are entitled to up to \$4,000.00 in penalties.

28 96. Under Cal. Labor Code § 558.1, any natural person who is an owner, director,
officer, or managing agent of an employer, acting on behalf of the employer, who violates or
causes to be violated any provision regulating minimum wages or hours and days of work in any
order of the Industrial Welfare Commission, or violates, or causes to be violated, Cal. Labor Code

1 §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
2 Therefore, Defendant Shaffer is liable for the violations herein alleged.

3 97. Wherefore, Plaintiffs and the Class request relief as described herein and below.

4 **SIXTH CAUSE OF ACTION**
5 **FAILURE TO TIMELY PAY WAGES DUE AT TERMINATION OR RESIGNATION**
6 (CAL. LABOR CODE §§ 201, 202, 203)
(PLAINTIFFS AGAINST DEFENDANT SHAFFER ENTERPRISE)

7 98. Plaintiffs incorporates all preceding paragraphs as though fully set forth herein.

8 99. Cal. Labor Code § 201 states:

9 (a) If an employer discharges an employee, the wages earned and
unpaid at the time of discharge are due and payable immediately...

10 100. Cal. Labor Code § 202 states:

11 (a) If an employee not having a written contract for a definite period
quits his or her employment, his or her wages shall become due and
12 payable not later than 72 hours thereafter, unless the employee has
given 72 hours previous notice of his or her intention to quit, in
13 which case the employee is entitled to his or her wages at the time of
quitting...

14 101. Defendants terminated Plaintiffs on or about September 22, 2022. Defendants
15 willfully failed to timely pay Plaintiffs and the class of similarly situated employees of their wages
16 due for work performed, and this failure continued through the time in which Plaintiffs and the
17 class of similarly situated employees quit or were discharged from their employment with
18 Defendants. As a result, Defendants violated Cal. Labor Code §§ 201 and 202.

19 102. Cal. Labor Code § 203 states:

20 If an employer willfully fails to pay, without abatement or reduction,
21 in accordance with Sections 201, 201.5, 202, and 205.5, any wages
of an employee who is discharged or who quits, the wages of the
22 employee shall continue as a penalty from the due date thereof at the
same rate until paid or until an action therefor is commenced; but the
23 wages shall not continue for more than 30 days... Suit may be filed
for these penalties at any time before the expiration of the statute of
24 limitations on an action for the wages from which the penalties arise.

25 103. Rights to penalties pursuant to Cal. Labor Code § 203 vest thirty (30) working days
26 (or approximately six (6) calendar weeks) after the obligation to pay final wages pursuant to Cal.
27 Labor Code §§ 201 and 202. The statute of limitations for an action for the wages at issue is four
28

1 (4) years pursuant to California Business and Professions Code § 17208 and California case law
2 provides a three (3) year statute of limitations pursuant to the Cal. Labor Code. This same statute
3 of limitation applies by reference to Cal. Labor Code § 256. As noted above, Defendants violated
4 Cal. Labor Code §§ 201 and 202 by failing to pay non-exempt employees who quit, were
5 involuntarily terminated, released after a specific job assignment or time duration, or were
6 otherwise discharged all of the wages due pursuant to the timelines provided in those sections.
7 Defendants willfully failed to pay all wages due as the failure to pay was not inadvertent or
8 accidental.

9 104. Plaintiffs and the class of similarly situated employees are entitled to compensation
10 for all forms of wages earned, including, but not limited to, compensation for work done “off-the-
11 clock,” work at hourly rates below the minimum wage, overtime premium wages; additional wages
12 for unprovided rest breaks and meal periods, but to date have not received such compensation.

13 105. More than thirty (30) working days have passed since Plaintiffs and the class of
14 similarly situated employees have left Defendants’ employ and, despite this, they have not received
15 payment pursuant to Cal. Labor Code § 203. As a consequence of Defendants’ willful conduct in
16 not paying all earned wages, Plaintiffs and the Class are entitled to thirty (30) working days’ wages
17 as a penalty under Cal. Labor Code § 203 for failure to pay legal wages.

18 106. Wherefore, Plaintiffs and the class of similarly situated employees request relief as
19 described herein and below.

20 **SEVENTH CAUSE OF ACTION**
21 **WRONGFUL TERMINATION AND/OR RETALIATION**
22 (CAL. LAB. CODE §§ 98.6, 1102)
(PLAINTIFFS AGAINST DEFENDANT SHAFFER ENTERPRISE)

23 107. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

24 108. Labor Code § 98.6(a) protects employees from wrongful termination and/or
25 retaliation when complaining orally or in writing about unpaid wages, or for exercising (on behalf
26 of oneself or other employees) any of the rights provided under the Labor Codes or Orders of the
27 Industrial Welfare Commission, including, but not limited to, the right to demand payment of
28

1 wages due, the right to express opinions, or the exercise of any other right protected by the Labor
2 Code.

3 109. California Labor Code § 98.6(b)(1) provides further that any employee who is
4 discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated
5 against for bringing an action for unpaid wages shall be entitled to reinstatement.

6 110. Pursuant to Labor Code § 98.7(g) the enforcement of Labor Code § 98 does not
7 require that an individual exhaust administrative remedies or procedures.

8 111. Labor Code § 1102, et seq., specifically prohibits retaliatory action by an employer
9 against an employee for disclosing information to a government or law enforcement agency where
10 the employee has a reasonable cause to believe that the information discloses a violation of state
11 law.

12 112. Plaintiffs bring this cause of action on behalf of themselves and all current or former
13 employees who have been wrongfully terminated, retaliated, harassed and/or discriminated against
14 for exercising their rights protected under state law.

15 113. Plaintiffs verbally complained to Defendant Shaffer Enterprise that they were not
16 compensated properly under state law for the hours they were required to work and that they
17 should be paid in full for all hours worked but their requests were denied by Defendant Shaffer
18 Enterprise.

19 114. In response to and because of Plaintiff Arellano's request for personnel file and
20 wage records pursuant to Cal. Labor Code § 226, complaints about unpaid wages, requests for full
21 payment for all hours worked, demands that Defendant Shaffer Enterprise comply with wage and
22 hour laws, and among other things, Defendant Shaffer Enterprise willfully retaliated,
23 discriminated, created a hostile work environment, and/or harassed Plaintiff Arellano which
24 included but was not limited to unnecessarily checking Plaintiff Arellano work, underpaying her,
25 and manipulating her schedule so as to afford her reduced income in an effort to penalize Plaintiff
26 Arellano for engaging in protected activity and Defendant Shaffer Enterprises belief that Plaintiff
27 Arellano is a prospective complainant and/or witness of Defendant Shaffer Enterprise's
28 discriminatory and retaliatory conduct towards similarly situated current and former employees.

1 115. On September 23, 2022, Plaintiff Elizarraraz requested his employment records
2 pursuant to California Labor Code 226. In response to and because of Plaintiff Elizarraraz's
3 request for his employment records, complaints about unpaid wages, demands that Defendant
4 Shaffer Enterprise comply with wage and hour laws, and among other things, Defendant Shaffer
5 Enterprise wrongfully terminated, retaliated, discriminated, created a hostile work environment,
6 and/or intimidated Plaintiff Elizarraraz, which included but was not limited to unnecessarily
7 checking Plaintiff Elizarraraz's work, arbitrarily enforcing Chick-fil-A's free meal policy against
8 Plaintiff Elizarraraz's despite years of unenforcement, restricting Plaintiff Elizarraraz's overtime
9 hours so as to afford him a reduced income, and terminating Plaintiff Elizarraraz for consuming
10 food while allowing other employees to consume food without reprimand, all in an effort to
11 penalize Plaintiff Elizarraraz for engaging in protected activity and Defendant Shaffer Enterprise's
12 belief that Plaintiff Elizarraraz is a prospective complainant and/or witness of Defendant Shaffer
13 Enterprise's discriminatory and retaliatory conduct against Plaintiff Arellano and similarly situated
14 current and former employees.

15 116. On September 23, 2022, Plaintiff Villegas requested her employment records
16 pursuant to California Labor Code 226. In response to and because of Plaintiff Villegas' request for
17 her employment records, as well as for complaints about unpaid wages, demands that Defendant
18 Shaffer Enterprise comply with wage and hour laws, and among other things, Defendant Shaffer
19 Enterprise willfully retaliated, discriminated, created a hostile work environment, and/or intimidated
20 Plaintiff Villegas' which included but was not limited to unnecessarily checking Plaintiff Villegas
21 work and disciplined for meritless reasons in an effort to penalize Plaintiff Villegas for engaging in
22 protected activity and Defendant Shaffer Enterprise's belief that Plaintiff Villegas is a prospective
23 complainant and/or witness of Defendants' discriminatory and retaliatory conduct against Plaintiff
24 Arellano and similarly situated current and former employees.

25 117. On information and belief, other current and former aggrieved employees have or
26 were retaliated, discriminated, and harassed, and/or wrongfully terminated for asserting their rights
27 under state law.
28

1 118. Similarly situated aggrieved employees are concerned that Defendant Shaffer
2 Enterprise will retaliate, discriminate, harass, intimate, create a hostile work environment, and/or
3 wrongfully terminate them if they complain about Defendant Shaffer Enterprise's violation of
4 wage and hour laws. As a result, other aggrieved employees are dissuaded from raising violations
5 of wage and hour laws with state agencies as a result of Defendant Shaffer Enterprise's acts.

6 119. Defendant Shaffer Enterprise's retaliatory and discriminatory acts have also created
7 a chilling effect among Defendant Shaffer Enterprise's employees regarding identifying and
8 complaining about wage and hour law violations.

9 120. Plaintiffs' conduct and the conduct of similarly situated aggrieved employees is the
10 kind which the public policies identified are designed to protect.

11 121. Plaintiffs' and similarly situated employees aggrieved employees were damaged by
12 the retaliation and/or wrongful termination in violation of state law pursuant to Cal Labor Code §§
13 98.6, 1102 et seq.

14 122. In doing the acts set forth above, Defendant Shaffer Enterprise knew that Plaintiffs
15 had the right to assert their rights under state law to complain internally to Defendant Shaffer
16 Enterprise about state labor code violations, and/or report the wage and hour violations to state
17 agency in charge of investigating wage and hour violations. Defendant Shaffer Enterprise
18 nonetheless acted toward Plaintiffs' and similarly situated aggrieved employees with conscious and
19 intentional disregard of their rights by retaliating, discriminating, harassing, and/or wrongfully
20 terminating for engaging in protected activity. Defendant Shaffer Enterprise's conduct as alleged
21 herein is conduct a civilized person should not have to tolerate, and was undertaken with fraud,
22 malice, and in oppression of Plaintiffs and similarly situated aggrieved employees. This conduct
23 warrants the imposition of punitive damages.

24 123. As a direct and proximate result of Defendant Shaffer Enterprise's unlawful
25 conduct, Plaintiffs have suffered actual damages according to proof and attorney's fees and costs.

26 **EIGHTH CAUSE OF ACTION**
27 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
28 **(PLAINTIFF ARELLANO AND PLAINTIFF ELIZARRAZ AGAINST DEFENDANT**
SHAFFER ENTERPRISE)

1 124. Plaintiff Arellano and Plaintiff Elizarraz incorporate all preceding paragraphs as
2 though fully set forth herein.

3 125. The wage and hour laws contained in the California Labor Code show a well-
4 established public policy for paying wages for all hours worked. Labor Code § 98.6 establishes a
5 public policy against discharging, discriminating, and/or retaliating against an employee for
6 asserting his or her right to demand payment of wages due, the right to express opinions, and/or the
7 exercise of any other rights protected by the Labor Code.

8 126. Labor Code § 1102, et seq., specifically prohibits retaliatory action by an employer
9 against an employee for disclosing information to a government agency where the employee has a
10 reasonable cause to believe that the information discloses a violation of state law. Employees may
11 also not be terminated for reporting alleged illegal activity to higher management.

12 127. Defendant Shaffer Enterprise's conduct, as alleged herein constitutes wrongful
13 termination in violation of public policy against Plaintiff Arellano and Elizarraz and similarly
14 situated employees.

15 128. As a direct result of the unlawful employment practices of Defendant Shaffer
16 Enterprise, as alleged herein, Plaintiff Arellano and Elizarraz, and similarly situated aggrieved
17 employees have suffered lost wages, lost benefits, and emotional distress.

18 **NINTH CAUSE OF ACTION**
19 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**
20 **(CAL. BUS. & PROF. CODE §§ 17200 *ET SEQ.*)**
(PLAINTIFFS AGAINST DEFENDANT SHAFFER ENTERPRISE)

21 129. Plaintiffs incorporates all preceding paragraphs as though fully set forth herein.

22 130. On information and belief, by their practices and policies described above,
23 Defendants engaged in unlawful activity prohibited by California Business and Professions Code
24 §§ 17200 et seq. The actions of Defendants as alleged within this Complaint, constitute unlawful
25 and unfair business practices, within the meaning of California Business and Professions Code
26 §§ 17200 et seq. and Plaintiff and the Class have suffered injury and have lost money or property
27 as a result of Defendants failure to comply with well-established labor laws.
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- a. violation of Cal. Labor Code § 201 by failing to pay all wages earned and unpaid at the time of certain Plaintiff and the Class' discharge from employment by Defendants;
- b. violation of Cal. Labor Code § 202 by failing to pay all wages earned within 72 hours of the time of quitting of certain Plaintiff and the Class from their employment by Defendants;
- c. violation of Cal. Labor Code § 206 by failing to pay without condition and within the time set by the applicable article, all wages, or parts thereof, conceded by Defendants to be due;
- d. violation of Cal. Labor Code §§ 221-223 by requiring repayment of wages, withholding wages, or secretly paying a lower wage to Plaintiff and the Class while purporting to pay the wage designated by statute or by contract;
- e. violation of Cal. Labor Code § 226 by failing to provide Plaintiff and the Class with accurate wage statements;
- f. violation of Cal. Labor Code §§ 98.6, 1102 and public policy by willfully retaliating, discriminating, creating a hostile work environment, and/or harassing employees for engaging in protected activity.
- g. violation of the record keeping requirements set forth in Cal. Labor Code §§ 226, 1174, and Wage Order 5;
- h. committing a criminal misdemeanor in violation of Cal. Labor Code § 226.6 by knowingly and intentionally violating the provisions of Cal. Labor Code § 226;
- i. violation of Cal. Labor Code § 226.7 by violating the rest and meal period statutes and failing to pay Plaintiff and the Class one hour additional of wages at the regular rate of compensation for each work day that the rest or meal period is not provided;
- j. violation of Wage Order 5 by failing to pay minimum and overtime wages for all "hours worked," and failing to comply with the rest and meal period requirements;
- k. violation of Cal. Labor Code §§ 1182.11 and 1197 by failing to pay at least the minimum wage for all hours worked by Plaintiff and the Class;
- l. violation of Cal. Labor Code § 1194 by failing to pay overtime wages for all hours worked by Plaintiff and the Class;
- m. violation of Cal. Labor Code § 1194.2 by failing to pay liquidated damages for failure to pay minimum wages for all hours worked by Plaintiff and the Class;
- n. violation of Wage Order 5 and Cal. Labor Code § 2802 by failing to reimburse Plaintiffs and the Class for necessary business expenses;
- o. violation of other state labor laws alleged in this action.

1 131. Defendants' activities also constitute unfair practices in violation of California
2 Business and Professions Code §§ 17200 et seq., because Defendants' practices violate the above
3 noted laws, and/or violate an established public policy and/or the practice is immoral, unethical,
4 oppressive, unscrupulous, and substantially injurious to Plaintiffs and the Class.

5 132. As a result of Defendants' violations of the Cal. Labor Code, Plaintiffs and the
6 Class have suffered injury-in-fact and have lost money or property as a result of Defendants'
7 practices. This injury-in-fact and loss of money or property consists of the lost wages and other
8 restitutionary remedies provided by the Cal. Labor Code as detailed in this complaint and other
9 resulting harms. A tally of these damages cannot readily be determined as the employment records
10 are held exclusively or nearly exclusively in Defendants' control. Plaintiffs and the Class are
11 entitled to restitution, an injunction, declaratory and other equitable relief against such unlawful
12 practices to prevent future damage for which there is no adequate remedy at law, and to avoid a
13 multiplicity of lawsuits. By this class action, Plaintiffs and the Class are also seeking, in the
14 alternative, restitutionary disgorgement of such monies into a fluid recovery fund.

15 133. As a result of their unlawful acts, Defendants have reaped and continue to reap
16 unfair benefits and unlawful profits at the expense of Plaintiffs and the Class. Defendants should be
17 enjoined from this activity and made to disgorge these ill-gotten gains and restore to Plaintiffs and
18 the Class the wrongfully withheld wages pursuant to California Business and Professions Code
19 § 17203. Defendants should also be enjoined from their unlawful acts with respect to the
20 employment of minors without complying with California's child labor laws, including Cal. Labor
21 Code §§ 1288, 1297, 1303, 1391, 1391.1, 1391.2, and 1392. Plaintiffs is informed and believes,
22 and based thereon alleges, that Defendants are unjustly enriched through these unlawful practices
23 through their failure to pay legal wages, and/or other remedies. Plaintiffs is informed and believes,
24 and based thereon alleges, that Plaintiffs and the Class are prejudiced by Defendants' unfair trade
25 practices.

26 134. As a direct and proximate result of the unfair business practices of Defendants, and
27 each of them, Plaintiffs, individually and on behalf of all employees similarly situated, are entitled
28 to equitable and injunctive relief, including full restitution and/or disgorgement of all wages which

1 have been unlawfully withheld from Plaintiffs and the Class as a result of the business acts and
2 practices described herein, and enjoining Defendants to cease and desist from engaging in the
3 practices described herein for the maximum time permitted pursuant to California Business and
4 Professions Code § 17208, including any tolling. Plaintiffs also seek injunctive relief and
5 restitution of all benefits Defendants have received from Defendants retaliation against Plaintiffs
6 and other similarly situated current and former employees.

7 135. The unlawful conduct alleged herein is continuing, and there is no indication that
8 Defendants will not continue such activity in the future. Plaintiffs allege that if Defendants are not
9 enjoined from the conduct set forth in this Complaint, Defendants will continue to violate
10 California labor laws. Plaintiffs further request that the Court issue a preliminary and permanent
11 injunction.

12 136. Wherefore, Plaintiffs and the Class request injunctive, declaratory, and
13 restitutionary relief as described herein and below.

14 **TENTH CAUSE OF ACTION**
15 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT OF 2004**
16 **(“PAGA”)**
17 **(CAL. LABOR CODE §§ 2698, *ET SEQ.*)**
18 **(PLAINTIFFS AGAINST ALL DEFENDANTS)**

19 137. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

20 138. Plaintiffs bring this on behalf of other aggrieved employees, as expressly authorized
21 by Labor Code §§ 2699 et seq. PAGA is an enforcement action that empowers an aggrieved
22 employee to seek penalties on behalf of themselves, current and former employees and the State,
23 without the need to certify a class.

24 139. Plaintiffs are aggrieved employee as defined in Labor Code § 2699(a). Plaintiffs
25 bring this claim for relief on behalf of other current or former aggrieved employees affected by the
26 labor law violations alleged in this complaint.

27 140. The pre-lawsuit notice requirements set forth in Labor Code § 2699.3 have been
28 satisfied by written notice by first-class mail to Defendants and to the Labor and Workforce
Development Agency, detailing the Labor Code and IWC Wage Order violations averred herein.

1 Plaintiffs submitted that notice to the Labor and Workforce Development Agency (“LWDA”) and
2 Defendants on November 30, 2022. More than 65 days have passed, and Plaintiffs have not
3 received a notice or other response from the LWDA.

4 141. Many of the predicate act violations which serve as the basis for this PAGA claim
5 (e.g. rest and meal period violations, failure to compensate for all “hours worked”) relate to the
6 non-payment of wages or violations of the IWC Wage Orders.

7 142. Plaintiffs are aggrieved by Defendants’ labor and payroll practices that: (a) fail to
8 pay minimum and overtime wages; (b) fail to provide timely and/or complete rest and meal breaks,
9 or premium wages in lieu thereof; (c) fail to pay all wages owed to employees upon termination of
10 employment; and (d) violated other practices as described in this complaint or are referenced in

11 143. California Labor Code § 2699.5

12 144. Plaintiffs seek civil penalties as provided under applicable Labor Code sections for
13 violations of the Labor Code alleged herein pursuant to Labor Code § 2699(a). To the extent that
14 any violation alleged herein does not carry a penalty, Plaintiffs seeks civil penalties pursuant to
15 Labor Code § 2699(f) for violations of those sections.

16 145. Labor Code § 2699(f) provides:

17 For all provisions of this code except those for which a civil penalty
18 is specifically provided, there is established a civil penalty for a
19 violation of these provisions, as follows: . . . (2) If, at the time of the
20 alleged violation, the person employs one or more employees, the
21 civil penalty is one hundred dollars (\$100) for each aggrieved
22 employee per pay period for the initial violation and two hundred
23 dollars (\$200) for each aggrieved employee per pay period for each
24 subsequent violation.

25 146. Plaintiffs seek penalties due from Defendants on behalf of the State of California, as
26 provided by Labor Code § 2699(i), including but not limited to, penalties due pursuant to Labor
27 Code § 558(a) as a result of Defendants’ violations of the provisions of the Labor Code and
28 applicable Wage Orders.

147. Defendants are liable in this PAGA claim under Labor Code §§ 558, 558.1, 1197.1,
and 2699(f), as the employer or other persons acting on behalf of the employer who caused the
violations described herein. Defendant Shaffer and Defendant Barrie are liable for causing the

violations described herein because he created, ratified, and/or implemented Defendant Shaffer Enterprise's illegal policies, thereby causing the violations alleged herein.

148. Plaintiffs, on behalf of other current or former aggrieved employees and the State of California, requests relief as described below.

IX. PRAYER

Wherefore, Plaintiff prays for judgment as follows:

- a. That the Court determine that this action may be maintained as a class action with the named Plaintiff appointed as Class Representatives.
- b. For the attorneys appearing on the above caption to be named Class Counsel.
- c. For compensatory damages in an amount according to proof, including minimum wages, double minimum wages, double and regular overtime wages, liquidated damages, and premium rest and meal period premium wages, with interest thereon.
- d. For a declaratory judgment that each of the Defendants violated the rights of Plaintiff and Class under the Cal. Labor Code, and California Business and Professions Code, as set forth in the preceding paragraphs.
- e. That Defendants be ordered to make restitution to Plaintiff and the Class due to their unfair competition, including restitutionary disgorgement of their wrongfully obtained revenues, earnings, profits, compensation, and benefits, pursuant to California Business and Professions Code §§ 17203 and 17204.
- f. That Defendants be enjoined from continuing the unlawful course of conduct, alleged herein.
- g. That Defendants further be enjoined to cease and desist from unfair competition in violation of California Business and Professions Code § 17200 et seq.
- h. That Defendants further be enjoined from retaliating against Plaintiff and the Class
- i. For restitution of all benefits Defendants have received from Defendants retaliation against Plaintiff and the Class.
- j. That Defendants be enjoined from further acts of restraint of trade or unfair competition.

- 1 k. For an award to Plaintiff and the Class of statutory damages or, in the alternative,
- 2 actual damages.
- 3 l. For premium pay, premium wages, liquidated damages and statutory penalties
- 4 pursuant to the Cal. Labor Code.
- 5 m. For attorneys’ fees, interests, and costs of suit pursuant to Cal. Labor Code §§ 226,
- 6 1194, 2802, and pursuant to the private attorney provisions of California Code of
- 7 Civil Procedure § 1021.5.
- 8 n. For all other relief provided by the Cal. Labor Code and California Business and
- 9 Professions Code.
- 10 o. For an order imposing all statutory and/or civil penalties provided by law, including
- 11 but not limited to, penalties under Cal. Labor Code § 2699, the civil penalties
- 12 associated with the predicate violations listed in Labor Code § 2699.5 and 2699(f)
- 13 relating to all facts alleged in the complaint;
- 14 p. An award to Plaintiff and the aggrieved employees of reasonable attorneys’ fees,
- 15 costs, and interest thereon pursuant to, without limitation, Code of Civil Procedure §
- 16 1021.5, 281.5, and Cal. Labor Code § 2699(g);
- 17 q. For all provisions of the labor code violated as described above except those for
- 18 which a civil penalty is specifically provided, a civil penalty of one hundred dollars
- 19 (\$100) for each aggrieved employee per pay period for the initial violation and two
- 20 hundred dollars (\$200) for each aggrieved employee per pay period for each
- 21 subsequent violation.
- 22 r. For such other and further relief as the court deems just and proper pursuant to the
- 23 procedures detailed in labor code §§ 2698 et seq.
- 24 s. For such other and further relief as the Court deems just and proper.
- 25

26 **DEMAND FOR JURY TRIAL**

27 Plaintiffs hereby demand trial of their claims and those of the Class by jury to the extent
28 authorized by law.

1 Dated: June 27, 2023

MALLISON & MARTINEZ

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3 By: 

4 Stan S. Mallison
5 Hector R. Martinez
6 Gonzalo Quezada
7 Attorneys for Plaintiffs
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