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JUSTIN LOPEZ, and all others similarly situated

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

13 JUSTIN LOPEZ, on behalf of himself and all
14 others similarly situated, and the general public,
15 and as an "Aggrieved Employee" on behalf of
16 other "Aggrieved Employees" under the Private
Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 EDWARD WALTER SUNSERI, a natural
20 person doing business as Sunseri's Bar and
Beverage Catering; MICHAEL SERENO, a
21 natural person; and DOES 1-50, inclusive,

22 *Defendant(s).*

Case No. 22STCV37939

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code § 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
7. Civil Penalties (Lab. Code §§ 2698, et seq.)

JURY TRIAL DEMANDED



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1 Plaintiff, Justin Lopez (hereafter “Plaintiff” or “Lopez”), on behalf of himself and all
2 others similarly situated, the general public, and as an “aggrieved employee” on behalf of other
3 “aggrieved employees” and the State of California under the Labor Code Private Attorneys
4 General Act of 2004, complains and alleges as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants Edward Walter
9 Sunseri, a natural person doing business as Sunseri’s Bar and Beverage Catering, Michael
10 Sereno, a natural person, and Does 1 through 50, inclusive (collectively “Defendants”).

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

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

16 (B) Provide all meal periods;

17 (C) Authorize and permit all rest breaks;

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

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

20 (F) Issue only accurate and complete itemized wage statements; and

21 (G) Timely pay wages upon termination of employment;

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

25 **II. THE PARTIES**

26 3. Plaintiff Justin Lopez is a resident of California. At all relevant times, Plaintiff
27 was an “employee” within the meaning of Title 8 California Code of Regulations section 11050
28 and an “aggrieved employee” within the meaning of Labor Code section 2699(c).

4. Defendant Edward Walter Sunseri is a natural person doing business as Sunseri’s
Bar and Beverage Catering and a citizen of California based on Plaintiff’s information and belief.

5. Defendant Michael Sereno is a natural person and a citizen of California based



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1 on Plaintiff's information and belief.

2 6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
3 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
4 is informed and believes and thereon alleges that said Defendants are legally responsible for the
5 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
6 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE
7 Defendants when ascertained.

8 7. Plaintiff is informed and believes and thereon alleges that, at all relevant times
9 herein, all Defendants were the agents, employees and/or servants, masters, or employers of the
10 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
11 within the course and scope of such agency, employment, direction and control, and with the
12 approval and ratification of each of the other Defendants.

13 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
14 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
15 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
16 Members or otherwise complying with their rights in accordance with applicable California labor
17 laws as alleged herein.

18 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
19 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
20 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
21 described class in accordance with applicable laws as alleged herein.

22 III. CLASS ALLEGATIONS

23 10. This action has been brought and may be maintained as a class action pursuant to
24 California Code of Civil Procedure section 382 because there is a well-defined community of
25 interest among the persons who comprise the readily ascertainable class defined below and
26 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
27 a class action.

28 11. **Class Definition:** The Class is defined as follows: All persons Defendants
employed in California as hourly, non-exempt employees, including bartenders, individuals
performing work comparable to the aforementioned, compensated comparably to the
aforementioned, individuals in similar positions, at any time during the period beginning four



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1 years prior to the filing of this action and ending on the date that final judgment is entered in this
2 action (“Class” or “Class Members”).

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

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

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

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

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

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

20 D. Whether Defendants knowingly and intentionally failed to provide the
21 class with accurate and complete itemized wage statements;

22 E. Whether Defendants willfully failed to provide the class with timely final
23 wages;

24 F. Whether Defendants engaged in unfair competition within the meaning of
25 Business and Professions Code sections 17200, *et seq.*, with respect to the Class; and

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

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



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

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

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

IV. STATEMENT OF FACTS

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

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

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments



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which prepare food for consumption on or off the premises;

(3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;

(4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;

(5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;

(6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and

(7) Establishments providing veterinary or other animal care services.

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

20. On approximately December 31, 2009, the Defendants began to employ Plaintiff in greater Los Angeles County in the position of hourly, non-exempt bartender. The Defendants continuously employed him in that capacity until on or about June 2, 2022, when his employment ended.

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

22. Defendants employed Plaintiff and the Class Members for periods in excess of eight hours in a workday and 40 hours in a workweek. Defendants also employed Plaintiff and the Class Members in excess of 12 hours in a workday. The Defendants failed to compensate



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1 Plaintiff and all other Class Members at the correct rates of pay for all hours worked over eight
2 in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The
3 Defendants charged their customers a mandatory gratuity which they distributed among Plaintiff
4 and the other Class Members as compensation for their work in lieu of the tips the Defendants
5 discouraged their customers and their guests from paying. However, the Defendants did not factor
6 these mandatory gratuities - essentially service charges which Defendant paid to Plaintiff and the
7 other Class Members as wages - when calculating the regular rates of pay and overtime premium
8 wages of Plaintiff and the Class Members. Therefore, Defendants denied Plaintiff and the Class
9 Members all overtime wages they earned for work in excess of eight hours per day and 40 hours
10 per week. Furthermore, Defendants denied Plaintiff and the Class Members all doubletime wages
they earned for work in excess of 12 hours per day.

11 23. At all relevant times, the Defendants failed to provide Plaintiff and all other Class
12 Members with all timely 30-minute, off-duty meal periods. The Defendants required Plaintiff and
13 all Class Members to remain in their assigned work areas at all times. The Defendants prohibited
14 Plaintiff and the other Class Members from leaving their work areas unless another employee was
15 available to cover their position. Generally, no one was available to cover because it was the
16 practice of the Defendants to understaff their events. Consequently, the Defendants prevented
17 Plaintiff and all other Class Members from taking their duty free 30-minute meal periods. The
18 Defendants also failed to pay premium wages for days on which they failed to provide Plaintiff
and all other Class Members with meal periods as required by law.

19 24. At all relevant times, the Defendants failed to authorize and permit Plaintiff and
20 all other Class Members to take 10-minute, off-duty, paid rest breaks every four hours worked or
21 major portion thereof. The Defendants required Plaintiff and all Class Members to remain in their
22 assigned work areas at all times. The Defendants prohibited Plaintiff and the other Class Members
23 from leaving their work areas unless another employee was available to cover their position.
24 Generally, no one was available to cover because it was the practice of the Defendants to
25 understaff their events. Consequently, the Defendants prevented Plaintiff and all other Class
26 Members from taking their 10-minute rest breaks. The Defendants also failed to pay premium
27 wages for days on which they failed to authorize and permit Plaintiff and all other Class Members
28 to take rest breaks as required by law.

25 25. At all relevant times, the Defendants failed to issue to Plaintiff and all other Class



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Members complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on the wage statements they issued to Plaintiff and all other Class Members the unpaid wages discussed above. The wage statements fail to state all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and related information.

26. At all relevant times, the Defendants also failed to timely pay Plaintiff and all other Class Members all earned wages as described above during and at the conclusion of employment.

27. At all relevant times, the Defendants failed to maintain accurate employee records of Plaintiff and all other Class Members.

28. For the reasons stated herein, Plaintiff alleges that as a result of Defendants' unlawful practices and policies, Plaintiff and the Class Members were:

- A. Not paid all earned wages;
- B. Not provided with all off duty meal periods;
- C. Not authorized and permitted to take all rest break periods;
- D. Not paid one hour's pay for each workday in which Defendants failed to authorize and permit them to take one or more timely rest periods;
- E. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely meal periods;
- F. Not paid all wages earned, including, but not limited to, minimum, regular, overtime, and doubletime wages for work performed while clocked out;
- G. Not provided with accurate and complete wage statements; and
- H. Not timely paid all earned and unpaid wages at the time their employment ended.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES AT THE CORRECT RATES

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

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

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

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



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

3 31. Section 2 of the Wage Order defines “hours worked” as “the time during which an
4 employee is subject to the control of an employer and includes all the time the employee is
5 suffered or permitted to work, whether or not required to do so.”

6 32. Section 3 of the Wage Order states:

7 (A) Daily Overtime - General Provisions

8 (1) The following overtime provisions are applicable to
9 employees 18 years of age or over and to employees 16 or
10 17 years of age who are not required by law to attend
11 school and are not otherwise prohibited by law from
12 engaging in the subject work. Such employees shall not be
13 employed more than eight (8) hours in any workday or
14 more than 40 hours in any workweek unless the employee
15 receives one and one-half (1 ½) times such employee’s
16 regular rate of pay for all hours worked over 40 hours in
17 the workweek. Eight (8) hours of labor constitutes a day’s
18 work. Employment beyond eight (8) hours in any workday
19 or more than six (6) days in any workweek is permissible
20 provided the employee is compensated for such overtime
21 at not less than:

22 (a) One and one-half (1 ½) times the employee’s
23 regular rate of pay for all hours worked in excess of
24 eight (8) hours up to and including 12 hours in any
25 workday, and for the first eight (8) hours worked on
26 the seventh (7th) consecutive day of work in a
27 workweek.

28 (b) Double the employee’s regular rate of pay for all
 hours worked in excess of 12 hours in any workday
 and for all hours worked in excess of eight (8) hours
 on the seventh (7th) consecutive day of work in a
 workweek.

 (c) The overtime rate of compensation required to be
 paid to a nonexempt full-time salaried employee
 shall be computed by using the employee’s regular
 hourly salary as one-fortieth (1/40) of the
 employee’s weekly salary.



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

4 34. Labor Code section 510 states:

5 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
6 in one workday and any work in excess of 40 hours in any one workweek and the
7 first eight hours worked on the seventh day of work in any one workweek shall be
8 compensated at the rate of no less than one and one-half times the regular rate of
9 pay for an employee. Any work in excess of 12 hours in one day shall be
10 compensated at the rate of no less than twice the regular rate of pay for an
11 employee. In addition, any work in excess of eight hours on any seventh day of a
workweek shall be compensated at the rate of no less than twice the regular rate of
pay of an employee. Nothing in this section requires an employer to combine more
than one rate of overtime compensation in order to calculate the amount to be paid
to an employee for any hour of overtime work.

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

14 36. Labor Code section 1197 makes it unlawful for an employer to pay an employee
15 less than the minimum wage required under the applicable Wage Order for all hours worked
16 during a payroll period.

17 37. Labor Code section 1198 makes it unlawful for an employer to employ an
18 employee under conditions that violate the Wage Order.

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

23 39. At all relevant times during the applicable limitation period, Defendants employed
24 Plaintiff and the Class Members for periods in excess of eight hours in a workday and 40 hours
25 in a workweek. Defendants also employed Plaintiff and the Class Members in excess of 12 hours
26 in a workday and on the 7th day of the workweek. The Defendants failed to compensate Plaintiff
27 and all other Class Members at the correct rates of pay for all hours worked over eight in a day,
28 over 40 in a week, and for the first eight hours of the seventh day of the workweek. The



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1 Defendants charged their customers a mandatory gratuity which they distributed among Plaintiff
2 and the other Class Members as compensation for their work in lieu of the tips the Defendants
3 discouraged their customers and their guests from paying. However, the Defendants did not factor
4 these wages in when calculating the regular rates of pay of Plaintiff and the Class Members.
5 Therefore, Defendants denied Plaintiff and the Class Members all overtime wages they earned
6 for work in excess of eight hours per day and 40 hours per week. Furthermore, Defendants denied
7 Plaintiff and the Class Members all doubletime wages they earned for work in excess of 12 hours
8 per day.

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

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

17 **B. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
18 **LABOR CODE**

19 42. In relevant part, Labor Code section 558.1 states:

- 20 (a) Any employer or other person acting on behalf of an employer,
21 who violates, or causes to be violated, any provision regulating
22 minimum wages or hours and days of work in any order of the
23 Industrial Welfare Commission, or violates, or causes to be
24 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
25 held liable as the employer for such violation.
- 26 (b) For purposes of this section, the term "other person acting on
27 behalf of an employer" is limited to a natural person who is an
28 owner, director, officer, or managing agent of the employer, and
the term "managing agent" has the same meaning as in subdivision
(b) of Section 3294 of the Civil Code.

At all relevant times, Defendant Michael Sereno was an employer of Plaintiff and all other Class
Members, and/or "owner," "managing agent," and/or "officer" of the Defendants and the other
employers identified above. Defendant Sereno directly or indirectly, or through an agent or other



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1 person, employed and exercised control over the wages, hours, and/or working conditions of
2 Plaintiff and the Class Members, and caused the violations to the Labor Code and the Wage Order
3 described above. On behalf of himself and all other Class Members, Plaintiff seeks an award of
4 unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys' fees, costs,
5 and related relief against Defendant Sereno that is the same as the award of against the other
6 Defendants on the same grounds for which Plaintiff seeks against the Defendants.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL PERIODS**

9 **Lab. Code §§ 226.7 and 512**

10 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

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

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

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

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

22 An employer shall not employ an employee for a work period of more than
23 five hours per day without providing the employee with a meal period of
24 not less than 30 minutes, except that if the total work period per day of the
25 employee is no more than six hours, the meal period may be waived by
26 mutual consent of both the employer and employee.

27 An employer shall not employ an employee for a work period of more than
28 10 hours per day without providing the employee with a second meal period
of not less than 30 minutes, except that if the total hours worked is no more
than 12 hours, the second meal period may be waived by mutual consent of
the employer and the employee only if the first meal period was not waived.

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



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Meal Periods

- (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 employee and the employer. 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 work day that the meal period is not provided.

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

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

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

50. Defendants intentionally failed to provide Plaintiff and the Class Members with



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1 all required 30-minute duty-free meal periods in accordance with the Wage Order. The
2 Defendants required Plaintiff and all other Class Members to remain in their assigned work areas
3 at all times. The Defendants prohibited Plaintiff and the other Class Members from leaving their
4 work areas unless another employee was available to cover their position. Generally, no one was
5 available to cover because it was the practice of the Defendants to understaff their events.
6 Consequently, the Defendants prevented Plaintiff and all other Class Members from taking their
duty free 30-minute meal periods.

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

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

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

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

21 **PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
22 **LABOR CODE**

23 55. In relevant part, Labor Code section 558.1 states:

24 (a) Any employer or other person acting on behalf of an employer, who
25 violates, or causes to be violated, any provision regulating minimum
26 wages or hours and days of work in any order of the Industrial
27 Welfare Commission, or violates, or causes to be violated, Sections
28 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf



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of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Defendant Michael Sereno was an employer of Plaintiff and all other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. He directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Defendant Sereno that is the same as the award against the other Defendants on the same grounds for which Plaintiff seeks against the Defendants.

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7

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

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

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

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

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

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

Rest Periods

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each



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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 work day that the rest period is not provided.

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

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

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

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

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

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



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1 64. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
2 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
3 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
4 Wage Order from the California Division of Labor Standards Enforcement. The Defendants
5 required Plaintiff and all other Class Members to remain in their assigned work areas at all times.
6 The Defendants prohibited Plaintiff and the other Class Members from leaving their work areas
7 unless another employee was available to cover their position. Generally, no one was available
8 to cover because it was the practice of the Defendants to understaff their events. Consequently,
9 the Defendants prevented Plaintiff and all other Class Members from taking their duty free 10-
10 minute rest breaks. Moreover, Defendants failed to pay Plaintiff and the Class Members
11 premium wages on workdays they failed to authorize and permit them to take 10-minute rest
12 periods every four hours worked or major fraction thereof.

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

17 66. Defendants failed to provide Plaintiff with all required rest breaks in accordance
18 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
19 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
20 which resulted in Defendants not providing the Class Members with all rest breaks required by
21 California law.

22 67. Defendants failed to pay Plaintiff the additional wages required by California
23 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
24 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
25 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
26 Class Members with additional wages for all rest breaks not provided to them as required by
27 California Labor Code § 226.7.

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

 69. By reason of the above, Plaintiff and the Class Members are entitled to premium



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1 wages for workdays in which one or more rest breaks were not provided to them pursuant to
2 California Labor Code § 226.7.

3 **PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
4 **LABOR CODE**

5 70. In relevant part, Labor Code section 558.1 states:

6 (a) Any employer or other person acting on behalf of an employer, who
7 violates, or causes to be violated, any provision regulating minimum
8 wages or hours and days of work in any order of the Industrial
9 Welfare Commission, or violates, or causes to be violated, Sections
203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
employer for such violation.

10 (b) For purposes of this section, the term “other person acting on behalf
11 of an employer” is limited to a natural person who is an owner,
12 director, officer, or managing agent of the employer, and the term
13 “managing agent” has the same meaning as in subdivision (b) of
Section 3294 of the Civil Code.

14 At all relevant times, Defendant Michael Sereno was an employer of Plaintiff and all other Class
15 Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other
16 employers identified above. Defendant Sereno directly or indirectly, or through an agent or other
17 person, employed and exercised control over the wages, hours, and/or working conditions of the
18 Class Members, and caused the violations to the Labor Code and the Wage Order described above.
19 On behalf of himself and all other Class Members, Plaintiff seeks an award of unpaid wages,
20 interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related
21 relief against Defendant Sereno that is the same as the award against the other Defendants on the
same grounds for which Plaintiff seeks against the Defendants.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

24 **Lab. Code § 226**

25 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

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



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- 1 A. Gross wages earned;
- 2 B. Total hours worked by the employee, except for any employee whose
- 3 compensation is solely based on a salary and who is exempt from payment of overtime under
- 4 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 5 C. The number of piece rate units earned and any applicable piece rate if the
- 6 employee is paid on a piece-rate basis;
- 7 D. All deductions, provided that all deductions made on written orders of the
- 8 Employee may be aggregated and shown as one item;
- 9 E. Net wages earned;
- 10 F. The inclusive dates of the period for which the employee is paid;
- 11 G. The name of the employee and his or her social security number, except
- 12 that by January 1, 2008, only the last four digits of his or her social security number or an
- 13 employee identification number other than a social security number may be shown on the itemized
- 14 statement;
- 15 H. The name and address of the legal entity that is the employer; and
- 16 I. All applicable hourly rates in effect during the pay period and the
- 17 corresponding number of hours worked at each hourly rate by the employee.

18 73. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury

19 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if

20 the employer fails to provide accurate and complete information as required by California Labor

21 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement

22 alone one or more of the following:

- 23 A. The amount of the gross wages or net wages paid to the employee during
- 24 the pay period or any of the other information required to be provided on the itemized wage
- 25 statement pursuant to California Labor Code § 226(a);
- 26 B. Which deductions the employer made from gross wages to determine the
- 27 net wages paid to the employee during the pay period;
- 28 C. The name and address of the employer and, if the employer is a farm labor
- contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
- and address of the legal entity that secured the services of the employer during the pay period;
- D. The name of the employee and only the last four digits of his or her social



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1 security number or an employee identification number other than a social security number; and

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

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

6 75. As alleged herein, at all relevant times during the applicable limitations period,
7 Defendants violated California Labor Code section 226 because they did not properly and
8 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
9 the corresponding number of hours worked at each rate by the employee and other requirements
10 of California Labor Code section 226. Defendants failed to state in the wage statements they
11 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
12 including, but not limited to, regular and overtime wages for work they performed off-the-clock
13 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
14 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
15 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
16 Members that state all regular wages earned, all overtime wages earned, all doubletime wages
17 earned, all meal period premium wages earned, and all rest break premium wages earned.

18 76. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
19 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
20 the other Class Members with accurate wage statements but intentionally provided wage
21 statements that Defendants knew were not accurate.

22 77. As a result of being provided with inaccurate wage statements by Defendants,
23 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
24 wage statements were violated and they were misled about the amount of wages they had actually
25 earned and were owed. In addition, the absence of accurate information on their wage statements
26 prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery
27 and mathematical computations to determine the amounts of wages owed, has caused difficulty
28 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
inaccurate information about wages to state and federal government agencies. Further, Plaintiff
and the other Class Members were not able to ascertain from the wage statements whether
Defendants complied with their obligations under California Labor Code section 226(a).



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1 **PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
2 **LABOR CODE**

3 78. In relevant part, Labor Code section 558.1 states:

- 4 (a) Any employer or other person acting on behalf of an employer, who
5 violates, or causes to be violated, any provision regulating minimum
6 wages or hours and days of work in any order of the Industrial
7 Welfare Commission, or violates, or causes to be violated, Sections
8 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
9 employer for such violation.
10 (b) For purposes of this section, the term “other person acting on behalf
11 of an employer” is limited to a natural person who is an owner,
12 director, officer, or managing agent of the employer, and the term
13 “managing agent” has the same meaning as in subdivision (b) of
14 Section 3294 of the Civil Code.

15 At all relevant times, Defendant Michael Sereno was an employer of Plaintiff and all other Class
16 Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other
17 employers identified above. He directly or indirectly, or through an agent or other person,
18 employed and exercised control over the wages, hours, and/or working conditions of the Class
19 Members, and caused the violations to the Labor Code and the Wage Order described above. On
20 behalf of himself and all other Class Members, Plaintiff seeks an award of unpaid wages, interest,
21 restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief
22 against Defendant Sereno that is the same as the award against the other Defendants on the same
23 grounds for which Plaintiff seeks against the Defendants.

24 **FIFTH CAUSE OF ACTION**

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

26 **Lab. Code §§ 201, 202, and 203**

27 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

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

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



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1 82. Labor Code § 202 provides that all earned and unpaid wages of an employee who
2 quits after providing at least 72-hours' notice before quitting are due and payable at the time of
3 quitting and that all earned and unpaid wages of an employee who quits without providing at
4 least 72-hours' notice before quitting are due and payable within 72 hours.

5 83. The Defendants failed to pay Plaintiff and all other Class Members whose
6 employment ended all the earned, but unpaid wages described above by the conclusion of their
7 employment with Lopez, including unprovided meal period premium wages, unprovided rest
8 break premium wages, and overtime wages. Additionally, the Defendants failed to issue to
9 Plaintiff and all other Class members whose employment ended their final paychecks until one
10 week after the termination.

11 84. By failing to pay such earned wages to Plaintiff and the Class Members,
12 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
13 § 201 or § 202.

14 85. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
15 and the Class Members all their earned and unpaid wages (described above) have been willful
16 in that, at all relevant times, Defendants have deliberately maintained policies and practices that
17 violate the requirements of the Labor Code and the Wage Order, even though at all relevant
18 times, they have had the ability to comply with those legal requirements.

19 86. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf
20 of themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
21 penalties for each Class Member.

22 **PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
23 **LABOR CODE**

24 87. In relevant part, Labor Code section 558.1 states:

- 25 (a) Any employer or other person acting on behalf of an employer, who
26 violates, or causes to be violated, any provision regulating minimum
27 wages or hours and days of work in any order of the Industrial
28 Welfare Commission, or violates, or causes to be violated, Sections
203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
employer for such violation.
- (b) For purposes of this section, the term "other person acting on behalf
of an employer" is limited to a natural person who is an owner,



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1 director, officer, or managing agent of the employer, and the term
2 “managing agent” has the same meaning as in subdivision (b) of
Section 3294 of the Civil Code.

3 At all relevant times, Defendant Michael Sereno was an employer of Plaintiff and all other Class
4 Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other
5 employers identified above. He directly or indirectly, or through an agent or other person,
6 employed and exercised control over the wages, hours, and/or working conditions of the Class
7 Members, and caused the violations to the Labor Code and the Wage Order described above. On
8 behalf of himself and all other Class Members, Plaintiff seeks an award of unpaid wages, interest,
9 restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against
10 Defendant Sereno that is the same as the award against the other Defendants on the same grounds
for which Plaintiff seeks against the Defendants.

11 **SIXTH CAUSE OF ACTION**

12 **UNFAIR COMPETITION**

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

14 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

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

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

23 91. As a result of Defendants’ unfair competition as alleged herein, Plaintiff and the
24 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
25 Members were deprived of missed meal period premium wages, missed rest period premium
26 wages, doubletime wages, overtime wages, and comparable money and property.

27 92. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
28 Class Members are entitled to restitution of all monies rightfully belonging to them that



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1 Defendants did not pay them or otherwise retained by means of their unlawful and unfair
2 business practices.

3 93. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
4 connection with their unfair competition claims pursuant to California Code of Civil Procedure
5 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

6 **SEVENTH CAUSE OF ACTION**

7 **CIVIL PENALTIES**

8 **Lab Code §§2698, *et seq.***

9 **(By Plaintiff and the Aggrieved Employees against all Defendants)**

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

11 95. The "Aggrieved Employees" are all members of the Class defined above who
12 Defendants employed during the period beginning December 5, 2022, and ending on the date
13 that final judgment is entered in this action.

14 96. Labor Code § 204 states:

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

24 ...

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

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



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

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

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

10 98. During the applicable time period, Defendants violated California Labor Code §§
11 201, 202, 203, 204, 226, 226.7, 510, 512, and 1194.

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

15 100. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
16 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
17 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, and 1194 during the applicable limitations period
in the following amounts:

18 101. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for
19 each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each
20 Aggrieved Employee for each subsequent, willful, or intentional violation (penalty amounts
21 established by California Labor Code § 210).

22 102. For violations of California Labor Code § 226(a), two hundred fifty dollars
23 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
24 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
established by California Labor Code § 226.3).

25 103. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for
26 each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each
27 Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established
28 by California Labor Code § 558).



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

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

106. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated November 23, 2022, Plaintiff filed written notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of the notice to the LWDA dated November 23, 2022, is attached as Exhibit A. Plaintiff accompanied her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing her that it does not intend to investigate these allegations.

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

V. PRAYER FOR RELIEF

108. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for relief and judgment against Defendants as follows:

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

B. An order that Plaintiff be appointed class representative;

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

D. Unpaid wages, including minimum, regular, overtime, doubletime, missed meal period, and missed rest period;



SPIVAK LAW
EMPLOYEE RIGHTS

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

VI. DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: February 10, 2023

By:



DAVID G. SPIVAK,
JENICA P. LEONARD, Attorneys for
Plaintiff(s), JUSTIN LOPEZ, and all
others similarly situated



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EXHIBIT A



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

November 23, 2022

Attn: PAGA Administrator
Labor and Workforce Development Agency
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Justin Lopez / Sunseri's Bar and Beverage Catering

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Justin Lopez (hereafter "Lopez" or "Complainant") provides notice that Edward Walter Sunseri, a natural person doing business as Sunseri's Bar and Beverage Catering, Michael Sereno, and related entities (collectively "the Sunseri Catering Employers" or "the Employers") violated his rights and those of all other individuals the Sunseri Catering Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including bartenders, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the "Aggrieved Employees") under Labor Code sections 201, 202, 203, 204, 226.7, 510, 512, 1194, and other Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Lopez hereby provides this notice to the Labor & Workforce Development Agency and the Sunseri Catering Employers and their agents and representatives.

At all relevant times, the Sunseri Catering Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Lopez and all other Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter "the Wage Order") section 2, subdivision (F) and "Aggrieved Employees" within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately December 31, 2009, the Sunseri Catering Employers began to employ Lopez in Los Angeles County in the position of hourly, non-exempt bartender. The Sunseri Catering Employers continuously employed him in that capacity until on or about June 2, 2022, when his employment ended.

At all relevant times, the Sunseri Catering Employers issued wages to Lopez and all other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Sunseri Catering Employers classified Lopez and all other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Sunseri Catering Employers regularly scheduled Lopez and all other Aggrieved Employees to work shifts over 8 hours in a day and over 40 hours in a week. The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek.

The Sunseri Catering Employers employed Lopez and all other Aggrieved Employees for periods in excess of eight hours in a workday and 40 hours in a workweek. The Sunseri Catering Employers also employed Lopez and all other Aggrieved Employees in excess of 12 hours in a workday. The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Sunseri Catering Employers charged their customers a mandatory gratuity which they distributed among Plaintiff and the other Aggrieved Employees as compensation for their work in lieu of the tips the Sunseri Catering Employers discouraged their customers and their guests from paying. However, the Sunseri Catering Employers did not factor these wages in when calculating the regular rates of pay of Lopez and all other Aggrieved Employees. Therefore, the Sunseri Catering Employers denied Lopez and all other Aggrieved Employees all overtime wages they earned for work in excess of eight hours per day and 40 hours per week. Furthermore, the Sunseri Catering Employers denied Lopez and all other Aggrieved Employees all doubletime wages they earned for work in excess of 12 hours per day.

At all relevant times, the Sunseri Catering Employers failed to provide Lopez and all other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Sunseri Catering Employers required Lopez and all other Aggrieved Employees to remain in their assigned work areas at all times. The Sunseri Catering Employers prohibited Lopez and the other Aggrieved Employees from leaving their work area unless someone else was available to cover their position. Generally, no one was available to provide such cover because of the Sunseri Catering Employers' understaffing practices. Consequently, the Sunseri Catering Employers prevented Lopez and all other Aggrieved Employees from taking their duty free 30-minute meal periods. The Sunseri Catering Employers also failed to pay premium wages for days on which they failed to provide Lopez and all other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Sunseri Catering Employers failed to authorize and permit Lopez and all other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Sunseri Catering Employers required Lopez and all other Aggrieved Employees to remain in their assigned work areas at all times. The Sunseri Catering Employers prohibited Lopez and the other Aggrieved Employees from leaving their work area unless someone else was available to cover their position. Generally, no one was available to provide such cover because of the Sunseri Catering Employers' understaffing practices. Consequently, the Sunseri Catering Employers prevented Lopez and all other Aggrieved Employees from taking their 10-minute rest breaks. The Sunseri Catering Employers also failed to pay premium wages for days on which they failed to authorize and permit Lopez and all other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Sunseri Catering Employers failed to issue to Lopez and all other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay and all wages earned. The Sunseri Catering Employers knowingly and intentionally failed to state on the wage statements they issued to Lopez and all other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

The Sunseri Catering Employers also failed to timely pay Lopez and all other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

For the reasons stated herein, Lopez alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all other Aggrieved Employees:

- (a) The Sunseri Catering Employers failed to pay Lopez and all other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Sunseri Catering Employers failed to provide Lopez and all other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Sunseri Catering Employers failed to authorize and permit Lopez and all other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees at one hour's pay for each day in which the Sunseri Catering Employers failed to provide them with one or more meal periods as required by law;
- (e) The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees at one hour's pay for each day in which the Sunseri Catering Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Sunseri Catering Employers knowingly and intentionally failed to provide Lopez and all other Aggrieved Employees with accurate wage statements;
- (g) The Sunseri Catering Employers willfully failed to timely pay Lopez and all other Aggrieved Employees all earned and unpaid wages during their employment with the Sunseri Catering Employers and when their employment ended; and

- (h) The Sunseri Catering Employers failed to maintain accurate employment records pertaining to Lopez and all other Aggrieved Employees.

Accordingly, Lopez now seeks civil penalties on behalf of himself and all other Aggrieved Employees based on the Sunseri Catering Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

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

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

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

- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Sunseri Catering Employers, Lopez, and all other Aggrieved Employees were covered by the Wage Order because the Sunseri Catering Employers operated, and Lopez, and all other Aggrieved Employees, worked for one or more catering businesses. Accordingly, Lopez and all other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (c) 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.

In relevant part, Labor Code section 510 states:

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

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

If an employee's only straight-time compensation is based on an hourly rate of pay, the hourly rate is his regular rate. However, if he also receives other compensation, his regular rate is computed by dividing his total compensation by his total hours worked. The regular rate of pay under California law includes "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (*quoting* 29 U.S.C. § 207(e)). This requirement includes, but is not limited to, commissions and non-discretionary bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court*, 131 Cal.App.4th 893, 904-905 (2005).

Labor Code § 350(e) defines "Gratuity" to include "any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron." At all relevant times, the Sunseri Catering Employers required Lopez and all other Aggrieved Employees to work events where the Sunseri Catering Employers charged its customers a mandatory gratuity for their services. The Sunseri Catering Employers paid Lopez and all other Aggrieved Employees a percentage of the mandatory gratuity as partial compensation for their services to the customer. However, the Sunseri Catering Employers falsely characterized this compensation as a "gratuity" in their records to customers and on Lopez's and all other Aggrieved Employees' paychecks. This mandatory gratuity is not a gratuity at all, but a mandatory service charge based on the agreement between the Sunseri Catering Employers and the customer. The Sunseri Catering Employers did not leave the amount of the mandatory gratuity to the customer's discretion, but rather it is a contractually agreed upon sum that the Sunseri Catering Employers required the customer to pay for their services. Therefore, the "mandatory gratuity" charge specified in the agreement between the Sunseri Catering Employers and its customers are not gratuities within the meaning of the Labor Code.

The state and federal wage-hour enforcement authorities treat mandatory service charges as amounts owed the establishment by the patron and, consequently, not as voluntary gratuities that necessarily belong to a particular employee. 29 C.F.R. § 531.55; F.O.H. § 30d03 (compulsory service charge is not considered a tip); Wage-Hour Opinion Letter No. FLSA 2005-31 (Sept. 2, 2005) (15% "imposed gratuity" added to every chauffeur reservation is not a tip). Moreover, when an employer distributes any portion of these amounts to non-exempt employees, the amounts must be included in the employees' regular rates of pay for purposes of computing their overtime compensation. The DLSE does not regard mandatory service charges, such as the

Sunseri Catering Employers' mandatory service charges, as gratuities. They are considered part of the employer's gross receipts and may be incorporated as part of its wage obligations to employees. As a result, they must be included as part of the regular rate of pay for the purpose of computing overtime. D.L.S.E. Management Memo 89-2 (June 9, 1989). See also 29 C.F.R. §§ 531.55(b).

The Sunseri Catering Employers employed Lopez and all other Aggrieved Employees for periods in excess of eight hours in a workday and 40 hours in a workweek. The Sunseri Catering Employers also employed Lopez and all other Aggrieved Employees in excess of 12 hours in a workday. The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Sunseri Catering Employers charged their customers a mandatory gratuity which they distributed among Lopez and all other Aggrieved Employees as compensation for their work in lieu of the tips the Sunseri Catering Employers discouraged their customers and their guests from paying. However, the Sunseri Catering Employers did not factor these wages in when calculating the regular rates of pay of Lopez and all other Aggrieved Employees. Therefore, the Sunseri Catering Employers denied Lopez and all other Aggrieved Employees all overtime wages they earned for work in excess of eight hours per day and 40 hours per week. Furthermore, the Sunseri Catering Employers denied Lopez and all other Aggrieved Employees all doubletime wages they earned for work in excess of 12 hours per day.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes but is not limited to bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th

893, 904–905. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Sunseri Catering Employers, Lopez and all other Aggrieved Employees earned automatic or mandatory gratuities, meal period premium wages, and rest period premium wages during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Sunseri Catering Employers failed to pay to Lopez and all other Aggrieved Employees meal period premium wages, rest period premium wages, overtime, and double time premium pay on such automatic or mandatory gratuities, meal period premium wages, rest period premium wages, and other non-discretionary compensation.

At all relevant times during the applicable limitations period, the Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Lopez now seeks civil penalties on behalf of himself and all other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and

4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (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 the 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. . . .

- (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.

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Sunseri Catering Employers failed to provide Lopez and all other Aggrieved Employees with all timely meal periods. The Sunseri Catering Employers denied Lopez and all other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Sunseri Catering Employers required Lopez and all other Aggrieved Employees to remain in their assigned work areas at all times. The Sunseri Catering Employers prohibited Lopez and the other Aggrieved Employees from leaving their work area unless someone else was available to cover their position. Generally, no one was available to provide such cover because of the Sunseri Catering Employers’ understaffing practices. Consequently, the Sunseri

Catering Employers prevented Lopez and all other Aggrieved Employees from taking their duty-free 30-minute meal periods. Furthermore, the Sunseri Catering Employers failed to pay premium wages for days on which they failed to provide Lopez and all other Aggrieved Employees with timely meal periods. Accordingly, Lopez now seeks civil penalties for these Labor Code violations that the Sunseri Catering Employers have committed against him and all other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (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 ½) 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.

In addition, Labor Code section 226.7 states:

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

The Sunseri Catering Employers failed to authorize and permit Lopez and all other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Sunseri Catering Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Sunseri Catering Employers required Lopez and all other Aggrieved Employees to remain in their assigned work areas at all times. The Sunseri Catering Employers prohibited Lopez and the other Aggrieved Employees from leaving their work area unless someone else was available to cover their position. Generally, no one was available to provide such cover because of the Sunseri Catering Employers' understaffing practices. Consequently, the Sunseri Catering Employers prevented Lopez and all other Aggrieved Employees from taking their 10-minute rest breaks. Moreover, the Sunseri Catering Employers failed to pay Lopez and all other Aggrieved Employees premium wages on workdays the Sunseri Catering Employers failed to provide Lopez and all other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Lopez now seeks civil penalties for these Labor Code violations that the Sunseri Catering Employers have committed against him and all other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;

2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. 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 social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Sunseri Catering Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Sunseri Catering Employers failed to state in the wage statements they issued to Lopez and all other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Sunseri Catering Employers knowingly and intentionally failed to state on the wage statements they issued to Lopez and all other Aggrieved Employees the earned, but unpaid wages described above. The wage

statements do not state all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

Accordingly, Lopez seeks civil penalties for the Labor Code violations that the Sunseri Catering Employers have committed against him and all other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees for wages earned, including unprovided meal period premium wages, unprovided rest break premium wages, overtime wages, doubletime wages, and other compensation, at the intervals stated above. As a result, the Sunseri Catering Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Lopez now seeks civil penalties for the Labor Code violations that the Sunseri Catering Employers have committed against him and all other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

/ / /

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, 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 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the 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 wages shall not continue for more than 30 days.

The Sunseri Catering Employers failed to pay Lopez and all other Aggrieved Employees whose employment ended all earned, but unpaid wages described above by the conclusion of their employment including unprovided meal period premium wages, unprovided rest break premium wages, overtime wages, doubletime wages, and other compensation. Additionally, the Sunseri Catering Employers failed to issue to Lopez and all other Aggrieved Employees whose employment ended their final paychecks until one week following the termination. By failing to pay Lopez and all other Aggrieved Employees as set forth above at the end of employment, the Sunseri Catering Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all other Aggrieved Employees, Lopez seeks civil penalties from the Sunseri Catering Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision(c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:
- (1) Full name, home address, occupation and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
 - (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
 - (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to

employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees for all hours worked at the correct rates of pay, including all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and related compensation. As a result, the Sunseri Catering Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Lopez and all other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Lopez seeks civil penalties on behalf of himself and all other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Person Acting on Behalf of Employers who Violates Labor Code
(Labor Code § 558.1)

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an 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, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or

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managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil
(b) Code.

At all relevant times, Michael Sereno was an employer of Lopez and all other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of the Sunseri Catering Employers and the other employers identified above. Michael Sereno directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all other Aggrieved Employees, Lopez seeks the same civil penalties against Michael Sereno on the same grounds for which he seeks civil penalties against the Sunseri Catering Employers.

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Justin Lopez will seek both reasonable attorneys’ fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Justin Lopez

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10617 Garvey Ave.
El Monte, CA 91733-2203

Edward Walter Sunseri
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Glendora, CA 91740

Michael Sereno
875 E 24th St.
Upland, CA 91784

Michael Sereno
P.O. Box 83
Glendora, CA 91740

1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

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

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

9 On Friday, February 10, 2023, I served the foregoing document described
10 as **FIRST AMENDED COMPLAINT** on interested parties by placing a true and correct
11 copy thereof enclosed in a sealed envelope, with postage fully prepaid,
addressed as follows:

12 Cynthia M. Germano, Esq.
13 Cecilia Martin, Esq.
14 Patricia Alshabazz
Best Best and Krieger
PO Box 1028
Riverside, CA 92502-1028
15 Cynthia.Germano@bbklaw.com
16 Cecilia.Martin@bbklaw.com
Patricia.Alshabazz@bbklaw.com

17
18 (BY MAIL) I caused such an envelope to be mailed by placing it for
collection and mailing, in the course of ordinary business practice, with other
19 correspondence of The Spivak Law Firm, 1801 Century Park East, 25th Fl, Los
Angeles, CA 90067.

20
21 XXXX(BY EMAIL) I caused the documents to be sent to the persons at the electronic
service addresses listed above from my electronic service address
22 nora@spivaklaw.com.

23 EXECUTED on Friday, February 10, 2023, at Burbank, California.

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

25 (Federal) I declare that I am employed in the office of a member of the
26 bar of this court at whose direction the service was made.

27


NORA GREER