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David W. Slayton,
Executive Officer/Clerk of Court,
By J. Covarrubias, Deputy Clerk

Attorney for Plaintiff MICHAEL BUSTOS, as an individual and on behalf of all similarly
situated employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

MICHAEL BUSTOS, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

HRB EXPERIENCE CENTURY CITY LLC
DBA HRB EXPERIENCE; and DOES 1 through
50, inclusive,

Defendant.

Case No.: **25STCV18895**

CLASS ACTION

COMPLAINT FOR DAMAGES

1. Violation of Cal. Labor Code §§ 204, 510, 1182.12, 1194, 1194.2, and 1197 (Recovery of Unpaid Minimum Wage and Overtime);
2. Violation of Cal. Labor Code §§ 226.7 and 512 (Meal Period Violations);
3. Violation of Cal. Labor Code § 226.7 (Rest Period Violations);
4. Violation of Cal. Labor Code § 351 (Failure to Furnish Tips and Gratuity);
5. Violation of Cal. Labor Code § 226 (Failure to Issue Accurate Itemized Wage Statements);
6. Violation of Cal. Labor Code §§ 201–203 (Failure to Pay Wages Due at Separation of Employment);
7. Violation of Cal. Labor Code § 2802 (Failure to Reimburse Necessary Business Expenses)
8. Violation of Cal. Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices).

DEMAND FOR JURY TRIAL

1 Plaintiff, MICHAEL BUSTOS (“Plaintiff”), individually, and on behalf of all others
2 similarly situated, complains and alleges on information and belief as follows:

3 **INTRODUCTION**

4 1. This is a class action brough on behalf of Plaintiff and the class he seeks to
5 represent (“Plaintiff Class” or “Class Members”). Plaintiff Class consists of all non-exempt,
6 hourly-paid employees, currently and/or formerly employed by Defendant HRB EXPERIENCE
7 CENTURY CITY LLC DBA HRB EXPERIENCE (“Defendant”) in the State of California
8 during the Class Period. The term “Class Period” is defined as four (4) years prior to the filing of
9 the initial complaint in this action through judgment. Plaintiff reserves the right to amend this
10 complaint to reflect a different “Class Period” as further discovery is conducted.

11 2. Plaintiff, individually, and on behalf of Plaintiff Class, seeks relief against
12 Defendant, for Defendant’ practices of violating the applicable Industrial Welfare Commission
13 Wage Order, Code of Regulations, and California Labor Codes, including: (1) Violation of Labor
14 Code §§ 204, 510, 1182.12, 1194, 1194.2, and 1997 for Recovery of Unpaid Minimum Wage,
15 Overtime, and Double Time, (2) Violation of Labor Code §§ 226.7, and 512, and California Wage
16 Order No. 5–2001 for Meal Period Violations, (3) Violation of Labor Code § 226.7, and California
17 Wage Order No. 5–2001 for Rest Period Violations, (4) Violation of Labor Code § 351 for Failure
18 to Furnish Tips and Gratuity, (5) Violation of Labor Code § 226 for Failure to Issue Accurate
19 Itemized Wage Statements, (6) Violation of Labor Code §§ 201, 202, and 203 for Failure to Pay
20 Wages Due at Separation of Employment, (7) Violation of Labor Code § 2802 for Failure to
21 Reimburse Necessary Business Expenditures, and (8) Violation of Cal. Bus. & Prof. Code §§
22 17200 et seq. for Unfair Business Practices as set forth more fully herein. These violations concern
23 current and past employees of Defendant. These violations concern current and past employees
24 of Defendant.

25 3. At all relevant times herein, Defendant has consistently maintained and enforced
26 against Plaintiff Class the unlawful practices and policies set forth herein.

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1 9. Plaintiff is informed and believes, and thereupon alleges, that Defendant is a
2 California Limited Liability Company operating sushi handroll bars and restaurants throughout
3 California, including Los Angeles County California, and was the employer of the Plaintiff. On
4 information and belief, and based thereon, Plaintiff alleges that Defendant is conducting business
5 in good standing in California, and at all times herein mentioned has regularly conducted business
6 in the State of California.

7 10. Plaintiff is ignorant of the true names, capacities, relationships and extent of
8 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
9 inclusive, but on information and belief, alleges that said Defendants are legally responsible for
10 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
11 capacities of the DOE Defendant when that information is ascertained.

12 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
13 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
14 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
15 are legally attributable to the other Defendants. Furthermore, Defendants operates as a joint
16 venture and/or single business enterprise, integrated enterprise, and/or are agents of one another,
17 are alter egos, joint employers, and conspire with one another to increase profits by engaging in
18 the conduct described in this complaint.

19 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
20 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
21 managing agent, and/or principal of the co-Defendant, and in performing the actions mentioned
22 below was acting, at least in part, within the course and scope of that authority as such agent,
23 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
24 the permission and consent of the co-Defendant. Plaintiff also alleges the acts of each Defendant
25 are legally attributable to the other Defendants.

26 **GENERAL ALLEGATIONS**

27 13. California Labor Code section 1194 provides that notwithstanding any agreement
28 to work for a lesser wage, an employee receiving less than the legal overtime compensation is

entitled to recover in a civil action the unpaid balance of their overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

14. Further, Business and Professions Code section 17203 provides that any person who engages in unfair competition may be enjoined in any court of competent jurisdiction. Business and Professions Code section 17204 provides that any person who has suffered actual injury and has lost money or property as a result of the unfair competition may bring an action in a court of competent jurisdiction.

15. Plaintiff and Plaintiff Class are, and at all times relevant herein, have been non-exempt employees within the meaning of the California Labor Code, and California Wage Order No. 5–2001 of the Industrial Welfare Commission. Defendant are, and at all times relevant herein, have been an “employer” within the meaning of state law and California Wage Order No. 5–2001 of the Industrial Welfare Commission.

16. During the Class Period, Defendant were required to pay Plaintiff and Class Members overtime compensation for any and all hours in excess of eight (8) hours in a workday or forty (40) hours in a workweek, and double time wages for any and all hours worked in excess of twelve (12) hours in a workday.

17. During the Class Period, Defendant were required to permit Plaintiff and Class Members to take one (1) uninterrupted thirty (30) minute meal period prior to the sixth (6th) hour of work. A second meal period of not less than thirty (30) minutes is required if an employee works more than ten (10) hours in a workday. Defendant were also required to permit Plaintiff and Class Members to take one (1) ten (10) minute rest period for every four (4) hours or major fraction thereof worked.

18. Due to the work requirements and demands of the Defendant, Plaintiff and Class Members were unable to take timely meal periods and the rest periods to which they were entitled. Defendant failed to implement meal and rest break policies and prioritized work responsibilities over providing requisite meal and rest breaks to Plaintiff and Class Members.

19. Defendant failed to schedule Plaintiff and Class Members in such a manner so as to ensure proper provision of meal and rest periods. Plaintiff and Class Members’ meal and rest

1 periods were often interrupted or cut short by work duties and at times Plaintiff and Class
2 Members were required to forego meal and rest periods altogether.

3 20. When Plaintiff and Class Members were prevented from taking compliant meal
4 and rest periods, Defendant failed to compensate with a premium pay for every missed meal
5 period and failed to compensate with a premium pay on all workdays on which one or more rest
6 periods were missed.

7 21. Additionally, Defendant withheld tips and gratuity from the Plaintiff and Class
8 Member's earnings.

9 22. Furthermore, during the Class Period, Defendant were required to provide Plaintiff
10 and Class Members with complete and accurate wage statements.

11 23. As discussed above, Plaintiff and Class Members were not paid for all hours
12 worked nor were they compensated premium pay for all meal and rest period violations.

13 24. Accordingly, Plaintiff and Class Members were provided inaccurate wage
14 statements as they omitted the aforementioned hours of work and rates of pay. Therefore,
15 Defendant furnished Plaintiff and Class Members wage statements with an inaccurate number of
16 hours worked, inaccurate gross and net wages, and inaccurate corresponding number of hours
17 worked at each hourly rate.

18 25. At the time of Plaintiff and Class Members' separation from employment,
19 Defendant were required to compensate Plaintiff and Class Members for all wages earned and
20 owed.

21 26. Defendant failed to compensate Plaintiff and Class Members for all wages owed
22 at the time their employment ended as Plaintiff and Class Members were not compensated for all
23 hours worked, nor at the proper overtime and/or double time rates for applicable hours and they
24 were owed as much at the time their employment ended. Plaintiff and Class Members were also
25 owed compensation in the form of premium pay for the times they did not receive compliant meal
26 and rest periods.

27 27. Plaintiff and Class Members are owed regular wages, overtime wages, double time
28 wages, premium payments, tips and gratuity, and waiting time penalties.

CLASS ALLEGATIONS

28. Plaintiff brings this action on behalf of Plaintiff and all other similarly situated persons, as a class action pursuant to California Code of Civil Procedure section 382. Plaintiff's proposed class consists of and is defined as follows: all individuals who worked for Defendant in a California location, as a non-exempt hourly employee, at a time during the period from four years prior to the filing of the initial complaint through the date of judgment ("Class Period") in this matter.

29. Plaintiff brings this action on behalf of Plaintiff and all other similarly situated persons, as a class action pursuant to California Civil Code of Procedure section 382 on behalf of themselves and all other similarly situated persons in the Class, which is composed of and defined as follows: All persons who are employed or have been employed by Defendant, being jointly and severally liable under integrated enterprise and joint employer theories, in the State of California who, within the four years of the filing of this Complaint, have worked as non-exempt employees and were not paid all lawful wages as regular time, overtime, and double-regular time.

a. All persons who were employed by Defendant in the State of California who, for the four (4) years prior to the filing of this class action to the present have worked as non-exempt employees and have been terminated or resigned, who were entitled to be paid all wages upon end of employment, and have not been paid wages pursuant to Labor Code section 203 and are owed restitution for waiting time penalties for unpaid wages;

b. All persons who are employed or have been employed by Defendant, being jointly and severally liable under integrated enterprise and joint employer theories, in the State of California who, for the four (4) years prior to the filing of this class action to the present have worked as non-exempt employees and have not been paid the legally mandated wage rates for all hours worked. Instead, Defendant failed to pay Plaintiff Class under a newly implemented tip policy for servers that is not fair and neutral and resulted, over a period of time, in failure to compensate the employees properly for all the time they have actually worked and all wages earned;

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1 c. All persons who were employed by Defendant in the State of California who, for
2 the four (4) years prior to the filing of this class action to the present have worked as non-
3 exempt employees who were entitled to be paid all wages, and were not paid all wages
4 owed, including, but not limited to, overtime;

5 d. All persons who were employed by Defendant in the State of California who, for
6 the four (4) years prior to the filing of this class action to the present have worked as non-
7 exempt employees who were entitled to the full amount of tips and gratuity owned, and
8 were not provided with payment of such earnings;

9 e. All persons who were employed by Defendant in the State of California who, for
10 the four (4) years prior to the filing of this class action to the present have worked as non-
11 exempt employees who were entitled to reimbursement for necessary business
12 expenditures, and were not reimbursed for the maintenance of their uniforms;

13 f. All persons who were employed by Defendant in the State of California who, for
14 the four (4) years prior to the filing of this class action to the present have worked as non-
15 exempt employees who were entitled to be provided accurate wage statements, and were
16 not provided an accurate payroll record as required under Labor Code section 226 and
17 Labor Code section 1174; and

18 g. All current and former California hourly non-exempt employees who work or
19 worked for Defendant during the liability period to be determined and who suffered injury,
20 including lost money, as a result of Defendant's unfair competition;

21 h. All persons who are employed or have been employed by Defendant in the State
22 of California who, for the four years prior to the filing of this class action to the present
23 have worked as non-exempt employees who were entitled to receive uninterrupted meal
24 periods and were not provided a meal period for every five (5) hours or major fraction
25 thereof worked per day, and were not provided one hour's pay for each day on which such
26 meal period was not provided; and

27 i. All persons who are employed or have been employed by Defendant in the State
28 of California who, for the four years prior to the filing of this class action to the present

1 have worked as non-exempt employees who were entitled to uninterrupted rest periods,
2 and have not been provided a rest period for every four (4) hours or major fraction thereof
3 worked per day, and were not provided compensation of one hour's pay for each day on
4 which such rest period was not provided;

5 30. Plaintiff reserves the right under California Rules of Court, rule 3.765, to amend
6 or modify the class description(s) with greater specificity or further division into subclasses or
7 limitation to particular issues.

8 31. This action has been brought and may be maintained as a class action pursuant to
9 Code of Civil Procedure section 382 because there is a well-defined community of interest in the
10 litigation and because the proposed class is easily ascertained by Defendant's personnel and
11 payroll records.

12 **Numerosity**

13 32. The potential members of the class as defined are so numerous that joinder of all
14 class members is impracticable. While the precise number of the Plaintiff Class is unknown,
15 Plaintiff is informed and believes that Defendant has employed more than fifty (50) employees
16 during the Class Period.

17 **Commonality**

18 33. There are common questions of law and fact arising out of Defendant's conduct, as
19 described herein, including, but not limited to:

- 20 a. Whether Defendant failed to pay all wages, including minimum, overtime, and
21 double time wages earned and due to Plaintiff and Class Members;
- 22 b. Whether Defendant failed, and continues to fail, to provide compliant meal periods
23 to Plaintiff and Class Members;
- 24 c. Whether Defendant failed, and continues to fail, to authorize and permit Plaintiff
25 and Class Members to take rest periods;
- 26 d. Whether Defendant failed, and continues to fail, to provide Plaintiff and Class
27 Members legally mandated tips and gratuity due to Plaintiff and Class Members;
- 28 e. Whether Defendant failed, and continues to fail, to provide Plaintiff and Class

Members wage statements containing all information required by Labor Code section 226(a);

f. Whether failed, and continues to fail, to reimburse Plaintiff and Class Members for all necessary business expenditures;

g. Whether Defendant failed to pay Plaintiff and Class Members all wages earned during the course of their employment upon separation; and

h. Whether Defendant engaged in unfair or unlawful business practices.

Typicality

34. The claims of the Plaintiff are typical of the claims of the Class, all of whom have incurred and/or will incur damages, as a result of Defendant's common course of conduct and common policies and practices. The claims of Plaintiff are typical because Defendant subjected all of its non-exempt employees to the identical violations of the California Industrial Welfare Commission Wage Orders, California Code of Regulations, California Labor Code, and California Business & Professions Code.

Adequacy of Representation

35. The Plaintiff will fairly and adequately represent and protect the interests of the Plaintiff Class. Plaintiff's interests are not in conflict with those of the Plaintiff Class. Plaintiff's attorneys are competent, well-versed, and experienced in litigating employment class actions and other complex litigation matters.

Superiority

36. Under the facts and circumstances set forth above, a class action is superior to any other method available for both the fair and efficient adjudication of the rights of each Class Member. Joinder of individual and relatively small claims of Class Members is not practical, and if each employee were required to file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual Plaintiff. Requiring each Class Member to pursue an individual remedy would also discourage the assertion of lawful claims by employees fearful of retaliation and permanent damage to their careers at present and/or subsequent employment.

Further, the substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual Class Members against Defendant herein further support class certification.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES

(Labor Code §§ 204, 510, 1182.12, 1194, 1194.2, 1197)

(Plaintiff Against all Defendants)

37. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

38. Pursuant to Labor Code section 1182.12, notwithstanding any other provision of the Labor Code, hourly minimum wage rates are set for all industries according to statute. Labor Code section 1194 requires that employers pay employees no less than minimum wage for each hour worked.

39. Labor Code § 1197 provides that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.” Under the California minimum wage law, each hour of work must be separately compensated at the applicable minimum hourly rate of least sixteen dollars (\$16.00) per hour.

40. Labor Code section 510, subdivision (a), mandates that any work in excess of eight (8) hours in a workday and any work in excess of forty (40) hours in a workweek be compensated at a rate of no less than one and one-half times the regular rate of pay. Also, that any work in excess of twelve (12) hours in a workday be compensated at a rate twice the regular rate of pay.

41. Plaintiff and Plaintiff Class members at times worked over eight (8) hours per day and forty (40) hours per week. Defendant failed to pay Plaintiff, and Plaintiff Class members minimum wage for all hours worked and overtime premium for hours worked in excess of over eight (8) hours per day and forty (40) hours per week for work performed for the Defendant. Defendant failed to pay Plaintiff and Plaintiff Class the legally mandated wage rates for all hours worked. At various times during employment with Defendant, Plaintiff and Class Members worked off-the-clock after their shifts as they were expected and required by Defendant.

1 Defendant instructed Plaintiff to clock out despite having to continue to work, including
2 performing closing tasks and duties, resulting in unpaid wages, in failure to compensate the
3 employees properly for all the time they have actually worked, thereby causing Plaintiff and
4 Plaintiff Class members to work in excess of eight (8) hours per day and/or forty (40) hours per
5 week. As such Plaintiff and Class Members seek overtime in an amount according to proof.
6 Pursuant to Labor Code section 1194 and 1197, the Class members seek the payment of all
7 overtime compensation which they earned and accrued four (4) years prior to filing this complaint,
8 according to proof. Pursuant to Labor Code sections 1194, subdivision (a), 1194.2, and 1197 an
9 employee receiving less than the legal minimum wage or overtime wage is entitled to recover in
10 a civil action the amount of unpaid wages, attorney fees, costs of suit, and liquidated damages in
11 an amount equal to the unlawfully unpaid wages and interest thereon.

12 42. Defendant willfully violated the Labor Code by failing to pay Plaintiff and Class
13 Members all wages including both minimum wage and overtime. Plaintiff and Class Members
14 were denied all their wages as a result of Defendant's newly implemented tip policy for servers
15 that is not fair and neutral and resulted, over a period of time, in failure to compensate the
16 employees properly for all the time they have actually worked. Defendant has regularly violated
17 the Labor Code with respect to meeting the requirements of paying wages earned, including,
18 overtime, double-time and remuneration when calculating the employees' regular rate of pay, as
19 herein before alleged. Defendant has intentionally excluded remuneration that must be included
20 in all employees' regular rate of pay in order to avoid payment of overtime wages and other
21 benefits in violation of the Labor Code and the order issued by the IWC.

22 43. Pursuant to Labor Code sections 510, 1182.12, 1194 and 1197, the Plaintiff Class
23 seeks the payment of all minimum, overtime, tips and gratuity, and double time wages which they
24 earned and accrued four (4) years prior to filing this complaint, according to proof.

25 44. Additionally, Plaintiff and Class Members are entitled to liquidated damages
26 pursuant to Labor Code section 1194.2, attorney fees and costs pursuant to California Labor Code
27 sections 218.5 1194, 1197, and prejudgment interest.

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SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS OR PREMIUM COMPENSATION

IN LIEU THEREOF

(Labor Code §§ 226.7 and 512)

(Plaintiff Against all Defendants)

45. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

46. Labor Code sections 226.7 and 512, and Industrial Welfare Commission (IWC) Wage Order No. 5–2001, section 11, provide that no employer shall employ any person for a work period of more than five (5) hours without providing an uninterrupted meal period of at least thirty (30) minutes. Further, when an employer fails to provide an employee a required meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday that a required meal period is not provided. Section (a) of IWC Wage Order 5–2001 requires the employer to relieve employees of all duties for meal periods. If an employer fails to relieve employees of all work duties for meal periods, the meal period is considered “on duty” and in order to be legally compliant an employer must establish the criteria for an on-duty meal period.

47. Plaintiff alleges that Defendant failed or refused to provide legally compliant meal periods. Defendant failed to schedule Plaintiff and Class Members in such a manner as to ensure provision of proper meal periods and instructed them to take their first meal period after their sixth (6th) hour of work had already commenced.

48. Defendant failed to provide premium compensation of one (1) hour of regular pay to Plaintiff and Class Members for their missed, short, or late meal periods as required by law. As such, Defendant intentionally and improperly denied compliant meal periods to Plaintiff and Class Members in violation of Labor Code sections 226.7 and 512 and IWC Wage Order No. 5–2001.

49. At all times relevant hereto, Plaintiff and Class Members worked more than five (5) hours in a workday. Pursuant to Labor Code section 226.7, Plaintiff and Class Members are

entitled to damages in the amount equal to one (1) hour of wages at their regular rate of pay for each missed or untimely meal period, in an amount according to proof at trial.

50. Pursuant to Labor Code section 226.7, Plaintiff individually, and on behalf of the Plaintiff Class, requests recovery of meal period compensation which they are owed beginning four (4) years prior to filing this complaint, as well as the assessment of any statutory penalties against the Defendant in a sum as provided by law. Pursuant to Labor Code section 218.5, Code of Civil Procedure section 1021.5, and any other provision of law, Plaintiff requests the court award reasonable attorney fees and costs incurred by them in this action.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS OR PREMIUM COMPENSATION IN LIEU THEREOF

(Labor Code § 226.7)

(Plaintiff Against all Defendants)

51. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

52. Labor Code section 226.7 and IWC Wage Order No. 5–2001, section 12, require that employers allow all employees a ten (10) minute rest period for every four (4) hours worked, or major fraction thereof. Further, when an employer fails to provide an employee with required rest periods, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday that at a required rest period is not provided.

53. Plaintiff alleges that Defendant failed or refused to provide legally compliant rest periods. Defendant failed to schedule Plaintiff and Class Members in such a manner as to ensure provision of proper rest periods and make available rest periods and failed to relieve employees from all work duties thereby preventing employees from taking the requisite rest periods. Thus, Defendant denied Plaintiff and Class Members their lawfully required rest periods resulting in Plaintiff and Class Members being forced to work during rest periods and forego them altogether.

54. Further, Defendant failed to provide premium compensation of one (1) hour of regular pay to Plaintiff and Class Members for each day a rest period was missed as required by

1 law. As such, Defendant intentionally and improperly denied rest periods to Plaintiff and Class
2 Members in violation of Labor Code section 226.7 and IWC Wage Order No. 5–2001.

3 55. Throughout the class period, Plaintiff and Class Members worked more than three
4 and one-half (3 ½) hours per shift with no rest breaks. Pursuant to Labor Code section 226.7,
5 Plaintiff and Class Members are entitled to damages in the amount equal to one (1) hour of wages
6 at their regular rate of pay for each workday in which a rest period was missed, in an amount
7 according to proof at trial.

8 56. Pursuant to Labor Code section 226.7, Plaintiff individually, and on behalf of the
9 Plaintiff Class, requests recovery of rest period compensation which they are owed beginning
10 four (4) years prior to filing this complaint, as well as the assessment of any statutory penalties
11 against the Defendant in a sum as provided by law. Pursuant to Labor Code section 218.5, Code
12 of Civil Procedure section 1021.5, and any other provision of law, Plaintiff requests the court
13 award reasonable attorney fees and costs incurred by them in this action.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO FURNISH TIPS AND GRATUITY**

16 **(Labor Code § 351)**

17 **(Plaintiff Against all Defendants)**

18 57. Plaintiff incorporates all previous paragraphs of this complaint as though fully set
19 forth herein.

20 58. Labor Code §351 states that: No employer or agent shall collect, take, or receive
21 any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct
22 any amount from wages due an employee on account of a gratuity, or require an employee to
23 credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the
24 employee from the employer. Every gratuity is hereby declared to be the sole property of the
25 employee or employees to whom it was paid, given, or left for.

26 59. At various times during his employment with Defendant, Plaintiff had his tips and
27 gratuity earned from patrons withheld from his earnings.

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60. Defendant knowingly, willfully, and intentionally engaged in a scheme to withhold tips and gratuities from Plaintiff through the implementation of new policies and management controls over the distribution of such gratuities. These newly implemented policies directly caused delays and errors in Plaintiff's paystubs.

61. Instead of providing Plaintiff with his lawfully owed tips and gratuities, Defendant refused to distribute Plaintiff's earned gratuities.

62. Plaintiff has incurred and continues to incur legal expenses and attorney fees. Plaintiff is presently aware of the presently unaware of the precise amount of these expenses; however, these expenses will be proved at trial.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

(Plaintiff Against all Defendants)

63. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

64. Labor Code section 226, subdivision (a), requires that “at the time of each payment of wages,” employers furnish employees with “an accurate itemized statement” that includes, inter alia, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

65. Defendant knowingly and intentionally failed to provide Plaintiff and Class Members wage statements in compliance with Labor Code section 226, because said statements contained inaccurate gross wages earned, an inaccurate number of total hours worked, inaccurate net wages earned, and an inaccurate number of hours worked at each hourly rate.

66. IWC Wage Order No.1-2001, paragraph 7(a) requires that every employer shall keep accurate information with respect to each employee, including time records showing when each employee begins and ends each work periods, the total daily hours worked by each employee and the total hours worked in each payroll period, and applicable rates of pay. Plaintiff is informed

1 and believes that Defendant willfully and intentionally failed to make and/or keep records which
2 accurately reflect the hours worked by Plaintiff and Class Members. Specifically, Plaintiff
3 believes that Defendant's records do not accurately reflect where Plaintiff and Class Members
4 worked due to Defendant's newly implemented tip policy for servers that is not fair and neutral
5 and resulted, over a period of time, in failure to compensate the employees properly for all the
6 time they have actually worked. Consequently, Plaintiff and Class Members' wage statements
7 reflected an inaccurate number of total hours worked, an inaccurate number of hours worked at
8 each hourly rate, and inaccurate gross and net wages earned.

9 67. Pursuant to Labor Code section 226, subsection (c)(2)(a)(b), "[a]n employee is
10 deemed to suffer injury ... if the employer fails to provide a wage statement [and] an employee
11 is deemed to suffer injury if the employer failed to provide accurate and complete information as
12 required." Labor Code section 226, subdivision (c)(1), provides that employees suffering injury
13 as a result of the employers failure to comply with section 226, subsection (a), are "entitled to
14 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
15 a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
16 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled
17 to an award of costs and reasonable attorney's fees."

18 68. Because Defendant furnished inaccurate and incomplete wage statements, Plaintiff
19 and Class Members are entitled to penalties, attorney fees, and costs pursuant to Labor Code
20 sections 2699, subdivisions (f)(2) and (g)(1), and section 226, subdivision (c)(1), and prejudgment
21 interest.

22 **SIXTH CAUSE OF ACTION**

23 **FAILURE TO PAY WAGES DUE AT SEPARATION OF EMPLOYMENT**

24 **(Labor Code § 201–203)**

25 **(Plaintiff Against all Defendants)**

26 69. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
27 fully set forth herein.

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1 70. At the time that Plaintiff and any of the Class Members' employment ended, they
2 were entitled to timely compensation of regular, overtime, and double time wages for all hours
3 worked, premium compensation for all missed meal and rest periods.

4 71. At the cessation of Plaintiff and certain Class Members' employment, Defendant
5 failed or refused to compensate Plaintiff and certain Class Members for all hours worked and any
6 missed meal or rest periods.

7 72. Plaintiff and certain members of the Plaintiff Class who ended their employment
8 with Defendant during the Class Period, were entitled to be promptly paid both minimum wage
9 and lawful overtime compensation and other premiums, as required by Labor Code section 201-
10 203. Defendant refused and/or failed to promptly compensate Plaintiff and Class Members wages
11 owed as a result of their failure to pay Plaintiff and Class Members both minimum wage and
12 overtime compensations. Pursuant to Labor Code section 203, such Plaintiff and Class Members
13 seek the payment of penalties pursuant to Labor Code section 203, according to proof.

14 73. Pursuant to Labor Code section 203 subdivision (a), "If an employer willfully fails
15 to pay...any wages of an employee who is discharged or who quits, the wages of the employee
16 shall continue as a penalty from the due date thereof at the same rate until paid or until an action
17 therefor is commenced; but the wages shall not continue for more than 30 days."

18 74. Plaintiff and members of the Plaintiff Class whose employment was terminated
19 within four (4) years prior to the filing of this complaint are entitled to thirty (30) days of pay at
20 their regular hourly rate as waiting time penalties.

21 75. Plaintiff individually, and on behalf of the Plaintiff Class, requests compensation
22 for all wages owed, as well as the assessment of any civil penalties in a sum provided by law
23 pursuant to Labor Code sections 201, subdivision (a), and 203, subdivisions (a) and (b).

24 **SEVENTH CAUSE OF ACTION**

25 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

26 **(Labor Code § 2802(a))**

27 **(Plaintiff Against all Defendants)**

28 ///

1 76. Plaintiff incorporates all previous paragraphs of this complaint as though fully set
2 forth herein.

3 77. Labor Code §2802(A) states: An employer shall indemnify his or her employee
4 for all necessary expenditures or losses incurred by the employee in direct consequence of the
5 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
6 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
7 unlawful.

8 78. Plaintiff was not reimbursed by Defendant for necessary expenditures as a direct
9 consequence of the discharge of his duties.

10 79. Defendant knowingly, willingly, and intentionally attempted to offset the cost of
11 doing business on Plaintiff. Defendant had a practice of requiring Plaintiff to shoulder the burden
12 of Defendant's cost of doing business by failing to reimburse plaintiff for necessary business
13 expenditures.

14 80. Plaintiff alleges that during the course of his employment, Defendant controlled
15 his appearance by requiring him to wear a uniform during his shifts, marked with the Defendant's
16 company logo.

17 81. As hereinabove mentioned, Defendant failed to indemnify Plaintiff for all
18 necessary expenditures or losses in-direct consequence of the discharge of his duties. Specifically,
19 Defendant's failure to indemnify Plaintiff for expenditures he incurred on its behalf, including,
20 but not limited to, maintaining his uniforms that Defendant required Plaintiff wear during his
21 shifts constitutes a violation of Labor Code §2802(A).

22 82. As a proximate result of Defendant's conduct, Plaintiff has sustained and
23 continues to sustain substantial losses in earnings and other employment benefits and continues
24 to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to his
25 damage in a sum according to proof.

26 83. Defendant's conduct as described above was willful, despicable, knowing, and
27 intentional; accordingly, Plaintiff seeks an award of punitive and exemplary damages in an
28 amount according to proof.

84. Plaintiff has incurred and continues to incur legal expenses and attorney fees. Plaintiff is presently unaware of the precise amount of these expenses and fees; however, these expenses and fees will be proved at trial.

EIGHTH CAUSE OF ACTION

UNFAIR/UNLAWFUL BUISNESS PRACTICES
(Business and Professions Code §§ 17200 et seq.)
(Plaintiff Against all Defendants)

85. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

86. Business and Professions Code section 17200 prohibits unfair competition by way of unlawful, unfair, or fraudulent business acts or practices. Business and Professions Code section 17204 allows “a person who has suffered injury in fact and has lost money or property as a result of the unfair competition” to prosecute a civil action for violation of the Business and Professions Code.

87. Pursuant to Labor Code section 90.5, subdivision (a), it is the policy of California to “vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions ... and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards.”

88. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4) years prior to the filing of this complaint, Defendant have committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent business practices and acts described in this complaint, including, but not limited to, violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197 and the provisions of IWC Wage Order 5–2001.

89. The violations of these laws and regulations, as well as of fundamental California public policies protecting workers, serve as unlawful predicate acts and practices for purposes of Business and Professions Code sections 17200 et seq.

1 90. As a result of these unlawful, unfair, and fraudulent business practices, Plaintiff,
2 on information and belief, alleges that Defendant are able to unfairly compete with, and gained
3 an unfair advantage over, other comparable companies in the State of California in violation of
4 Business and Professions Codes 17200 et seq.

5 91. Plaintiff is informed and believes, and thereon alleges, that Defendant performed
6 the unlawful, unfair, and fraudulent business practices with the intent of gaining an unfair
7 competitive advantage and thereby injuring Plaintiff, Class Members, competing shipping centers
8 in the State of California, and the general public.

9 92. Plaintiff's success in this action will enforce important rights affecting the public
10 interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf
11 of Plaintiff.

12 93. Business and Professions Code sections 17203 provides that "[t]he court may
13 make such orders or judgments ... as may be necessary to prevent the use or employment by any
14 person of any practice which constitutes unfair competition." Injunctive relief is necessary and
15 appropriate to prevent Defendant from repeating their unlawful, unfair, and fraudulent business
16 acts and practices alleged above.

17 94. Business and Professions Code section 17203 provides that the Court may "restore
18 to any person in interest any money or property... which may have been acquired by means of
19 such unfair competition." Plaintiff and Class Members are entitled to restitution pursuant to
20 Business and Professions Code section 17203 for wages and payments unlawfully withheld from
21 employees, including the fair value of the meal and rest periods and other losses alleged herein,
22 during the four-year period prior to the filing of this complaint. All remedies are cumulative
23 pursuant to Business and Professions Code section 17205.

24 95. Business and Professions Code section 17202 provides: "Notwithstanding section
25 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
26 forfeiture, or penal law in a case of unfair competition." Plaintiff and Class Members are entitled
27 to enforce all applicable penalty provisions of the Labor Code pursuant to Business and
28 Professions Code section 17202.

1 relief, costs, and attorney's fees Plaintiff and Class Members are entitled to;

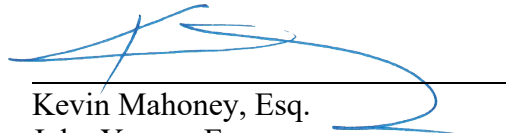
2 10. For reasonable attorney fees and costs pursuant to Labor Code section 226,
3 subdivision (e), section 218.5, 2802(c), section 1194, and section 1197; Code of Civil
4 Procedure section 1021.5, and other applicable laws and statutes;

5 11. For civil penalties for each violation as provided by law including, but not limited to,
6 those civil penalties provided by PAGA; and

7 12. That the Court award such other and further relief as this Court may deem appropriate.
8

9 Dated: June 27, 2025

MAHONEY LAW GROUP, APC

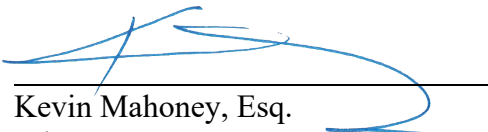
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11 
12 Kevin Mahoney, Esq.
13 John Young, Esq.
14 Attorneys for Plaintiff MICHAEL BUSTO

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff, on behalf of Plaintiff and all Class Members, hereby demands a jury trial on all
17 causes of action and claims with respect to which they have a right to a jury trial.
18

19 Dated: June 27, 2025

MAHONEY LAW GROUP, APC

20
21 
22 Kevin Mahoney, Esq.
23 John Young, Esq.
24 Attorneys for Plaintiff MICHAEL BUSTOS
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