

Christina M. Lucio (SBN 253677)
christina@emplawllp.com

Mitchell J. Murray (SBN 285691)
mitchell@emplawllp.com

Paul A. Brown (SBN 340841)
paul@emplawllp.com

EMPLAW, LLP
2235 Encinitas Blvd., Suite 210
Encinitas, CA 92024
Telephone: (760) 942-9433

Attorneys for Plaintiff JOSE SANDOVAL,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

JOSE SANDOVAL, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

ROD FRASER ENTERPRISES, INC., a
California corporation, doing business as
RODRIGO'S MEXICAN GRILL; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 30-2023-01338232-CU-OE_CXC

FIRST AMENDED COMPLAINT

Assigned for All Purposes To:

Hon. Peter Wilson

Dept.: CX-101

COMPLAINT FOR DAMAGES FOR:

- 1) **Failure to Pay Minimum Wages;**
- 2) **Failure to Pay Overtime;**
- 3) **Failure to Provide Lawful Meal Periods;**
- 4) **Failure To Authorize And Permit Rest Periods;**
- 5) **Failure to Timely Pay Wages Owed Upon Separation From Employment;**
- 6) **Failure to Furnish Accurate Itemized Wage Statements;**
- 7) **Violation of the Unfair Competition Law;**
- 8) **Failure to Reimburse Necessary Expenses;**
- 9) **Civil Penalties Pursuant to Private Attorneys' General Act, Labor Code section 2698 et seq.**

DEMAND FOR JURY TRIAL

1 Plaintiff JOSE SANDOVAL (“Plaintiff”)¹, individually, and on behalf of all others
2 similarly situated, asserts claims against Defendant ROD FRASER ENTERPRISES, INC., a
3 California corporation, doing business as RODRIGO’S MEXICAN GRILL; Defendant
4 RODERICK A. FRASER II, an individual; and DOES 1 through 50, inclusive (collectively
5 “RODRIGO’S” or “Defendants”) as follows:

6 **INTRODUCTION**

7 1. The purpose of this amendment is to clarify the allegations in the complaint, modify
8 the scope of the class, and assert claims under Labor Code section 2698 et seq. (“PAGA”) within
9 the context of the above-entitled action. This amendment also identifies Defendant RODERICK
10 A. FRASER II, an individual, the owner of Defendant Rod Fraser Enterprises, Inc., as a named
11 Defendant to the PAGA portion of this action.

12 2. This is a Class Action, pursuant to California Code of Civil Procedure section 382,
13 on behalf of Plaintiff and any and all persons who were classified as managers or supervisors,
14 however titled, working in Defendants’ restaurants in the State of California within four (4) years
15 prior to the filing of the Complaint in this action until the resolution of this lawsuit and who did not
16 satisfy the salary basis and/or whose job duties did not consist of over 50% administrative,
17 executive or professional duties (collectively referred to as the “Class” or “Class Members” or
18 “Managers”).

19 3. Plaintiff asserts claims on behalf of managers or supervisors working during the
20 relevant time period.

21 4. Plaintiff alleges that Defendants misclassified him and the other managers or
22 supervisors as exempt employees during the relevant time period. The Class Members were
23 misclassified because they did not meet the salary basis and duties requirements for the exemption
24 to apply.

25 5. Plaintiff also alleges, on behalf of himself and the Class Members, that Defendants’
26 failed to properly pay all wages earned (including overtime and minimum wages), required Class

27
28 ¹ Plaintiff Jose Sandoval is also known as “Jose Sandoval Camarena” during the relevant time period.

1 Members to work off the clock, failed to provide meal and rest periods, failed to timely pay wages
2 during employment and at separation, reimburse expenses, and failed to provide accurate wage
3 statements during the period of time that he and the Class Members were classified as non-exempt
4 employees. During such time, Defendants' systematically understaffed their restaurants, and as a
5 function of their labor budgets, scheduling and staffing practices, Plaintiff and the Class Members
6 suffered violations of the Labor Code. In addition, Defendants required Class Members to work
7 off the clock, rounded their time, and automatically deducted time from hours worked for purported
8 meal periods.

9 6. During the "liability period," as defined as the applicable statute of limitations for
10 each and every cause of action contained herein – i.e. Plaintiff's claims under the Unfair
11 Competition Law is four (4) years; Plaintiff's claims for either unpaid wages or actual damages is
12 three (3) years; and Plaintiff's claims for statutory penalties is one (1) year from the filing of this
13 action through the present (referred to as "the liability period(s)") – Defendants consistently
14 maintained and enforced against its Class Members unlawful practices and policies in violation of
15 California state wage and hour laws, including failing to lawfully and accurately pay Plaintiff and
16 Class Members for all hours worked, including minimum wages and overtime; failing to lawfully
17 provide meal and rest periods; failing to pay one hour of pay at the employee's regular rate of pay
18 when legally mandated meal or rest periods were not lawfully provided; failing to accurately pay
19 overtime; failing to reimburse necessary expenses; failing to provide accurate itemized wage
20 statements; and failing to keep accurate records.

21 7. Defendants implemented uniform policies and practices that deprived Plaintiff and
22 Class Members of earned wages, including minimum wages; straight time wages; overtime wages;
23 premium wages; failing to reimburse necessary expenses; and lawful meal and/or rest breaks.

24 8. Such actions and policies, as described above and further herein, were and continue
25 to be in violation of the California Labor Code. Plaintiff, on behalf of himself and all Class
26 members, bring this action pursuant to the California Labor Code, including without limitation
27 sections 201, 202, 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 510, 512, 516, 558, 1174,
28 1194, 1194.2, 1195, 1197, 1198, 2802, applicable IWC California Wage Orders and California

1 Code of Regulations, Title 8, section 11000 *et seq.*, seeking unpaid wages, unpaid meal and rest
2 period compensation, penalties, liquidated damages, and reasonable attorneys' fees and costs.

3 9. Plaintiff, on behalf of himself and others similarly situated, pursuant to Business and
4 Professions Code sections 17200-17208, also seeks restitution from Defendants for their failure to
5 pay to Plaintiff and Class Members all of their wages, including overtime and premium wages.

6 10. Plaintiff also brings an action pursuant to the PAGA on a representative basis on
7 behalf of all exempt restaurant employees, however titled, employed by Defendants in the State of
8 California (the "Aggrieved Employees") from one year prior to the filing of the PAGA notice to
9 the conclusion of this action. Plaintiff seeks to recover civil penalties and address Defendants'
10 violations of the California Labor Code and the IWC Wage Orders under PAGA. The aggrieved
11 employees are collectively referred to as the "Aggrieved Employees."

12 11. Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an
13 employee who brings a representative action and was affected by at least one of the violations
14 alleged in the complaint has standing to pursue penalties on behalf of the state and not only for that
15 violation, but for violations affecting other employees as well. Accordingly, Mr. Sandoval has
16 standing to pursue penalties on behalf of the state of violations affecting all aggrieved employees
17 of Defendants, regardless of their classification, job title, or locations in California.

18 12. In this case, Defendants violated various provisions of the California Labor Code
19 and IWC Wage Orders as to the Aggrieved Employees. Defendants' violations include: 1) failure
20 to pay minimum wages in violation of Labor Code section 1194, 1194.2, 1197, 1197.1, and the
21 Wage Order 5-2001; 2) failure to pay overtime owed in violation of Labor Code section 510, 558,
22 1194, and the Wage Order 5-2001; 3) failure to provide lawful meal periods or pay lawful premiums
23 in violation of the Labor Code section 226.7 and 512; 4) failure to authorize and permit rest periods
24 in violation of Labor Code section 226.7 and the Wage Order; 5) failure to timely pay wages owed
25 upon separation from employment in violation of Labor Code 201-203; 6) knowing and intentional
26 failure to comply with itemized wage statement provisions in violation of Labor Code 226, 226.3;
27 7) failure to comply with the notice requirements of Labor Code section 2810.5; 8) failure to
28 reimburse necessary expenses in violation of Labor Code section 2802; 9) failure to keep accurate

1 records in violation of Labor Code section 226 and 1174; 10) failure to provide lawful sick leave
2 in violation with Labor Code section 246 and Los Angeles Municipal Code section 187.01 et seq.;
3 11) failing to allow inspection or copying of personnel files within the statutorily prescribed time
4 periods set forth in Labor Code 226, 432, 1198.5, and 1174.

5 **JURISDICTION AND VENUE**

6 13. This action is brought as a Class Action on behalf of Plaintiff and similarly situated
7 employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The monetary
8 damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits of the
9 California Superior Court and will be established according to proof at trial.

10 14. This Court has jurisdiction over this action pursuant to the California Constitution
11 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
12 those given by statute to other courts. The statutes under which this action is brought do not give
13 jurisdiction to any other court.

14 15. This Court has jurisdiction over this Action pursuant to California Code of Civil
15 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

16 16. This Court has jurisdiction over Defendants because, upon information and belief,
17 each Defendant is either a resident of California, has sufficient minimum contacts in California, or
18 otherwise intentionally avails itself of the California market so as to render the exercise of
19 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
20 substantial justice. Defendants have done and are doing business throughout California.

21 17. The unlawful acts alleged herein have a direct effect on Plaintiff and the other
22 similarly situated employees within Orange County and throughout the state.

23 18. The California Superior Court also has jurisdiction in this matter because the
24 individual claims of the Class Members described herein are presently believed to be under the
25 seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the
26 aggregate potential damages and recovery by all of the claims of the Plaintiff's Class, including
27 attorneys' fees, placed in controversy by Plaintiff's class-wide claims, is presently believed to be
28 under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005.

1 Further, there is no federal question at issue, as the issues herein are based solely on California
2 statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil
3 Procedure, the California Civil Code, and the California Business and Professions Code.

4 19. Venue is proper in this Court because one or more of the Defendants reside, transact
5 business, or have offices in this County, and the acts or omissions alleged herein took place in this
6 County.

7 **PARTIES**

8 20. Plaintiff Jose Sandoval (also known as Jose Sandoval Camarena) is and during the
9 liability period has been, a resident of Orange County, California. Plaintiff was employed by
10 Defendants during the liability period as a manager or supervisor at multiple locations of Defendant
11 in Orange County, California.

12 21. Defendants classified Plaintiff as an exempt employee at various times during his
13 employment. At other times, he was classified as a non-exempt employee.

14 22. Plaintiff and the members of the putative class were employed by defendants in
15 manager or supervisor positions, however titled, (the “Class Members” or “Managers”) during the
16 liability period.

17 23. Defendant Rod Fraser Enterprises, Inc., doing business in California as Rodrigo’s
18 Mexican Grill, is a California corporation in good standing that is authorized to do business
19 throughout the state. Rod Fraser Enterprises, Inc.’s headquarters are located at 1320 N. Manzanita
20 Street, Orange, CA 92867. Defendant Rod Fraser Enterprises, Inc. operates in California from
21 numerous locations providing restaurant and dining services.

22 24. Defendant Roderick A. Fraser II is, upon information and belief, an owner of
23 Defendant Rod Fraser Enterprises, Inc. and the Chief Executive Officer during the relevant time.
24 Upon information and belief, Mr. Fraser is a resident of the State of California.

25 25. Whenever in this complaint reference is made to any act, deed, or conduct of
26 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through
27 one or more of Defendants’ officers, directors, agents, employees, or representatives, who was
28 actively engaged in the management, direction, control, or transaction of the ordinary business and

1 affairs of Defendants.

2 26. The true names and capacities of Defendants, whether individual, corporate,
3 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
4 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §
5 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
6 capacities of the Defendants designated hereinafter as DOES when such identities become known.

7 27. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are
8 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
9 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
10 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
11 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
12 liability of the Defendants as alleged herein.

13 28. Plaintiff is further informed and believes, and thereon alleges, that at all times
14 material herein, each Defendant was completely dominated and controlled by its co-Defendants
15 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint
16 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed
17 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
18 Whenever and wherever reference is made to individuals who are not named as Defendants in this
19 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times
20 acted on behalf of Defendants named in this complaint within the scope of their respective
21 employments.

22 **FACTUAL ALLEGATIONS**

23 29. At various times during the relevant time period, Defendants compensated Plaintiff
24 and the member of the Misclassified Manager Subclass as exempt employees. Defendants
25 compensated Plaintiff and the Misclassified Manager Subclass either on a per shift basis or on a
26 salary basis. In both cases, Defendants unlawfully failed to provide Plaintiff and the Class
27 Members with meal breaks, rest periods, minimum wages, and overtime as required by the Labor
28 Code and Wage Order.

1 30. Plaintiff and the Class Members were, and at all times pertinent hereto, should have
2 been classified as non-exempt employees within the meaning of the California Labor Code, and the
3 implementing rules and regulations of the IWC California Wage Orders. They are subject to the
4 protections of the IWC Wage Orders and the Labor Code. However, Defendants misclassified
5 them as exempt at various points during the relevant period.

6 31. During the periods of time when Defendants classified Plaintiff and the Class
7 Members as non-exempt employees (“Non-Exempt Manager Subclass”), Defendants
8 systematically understaffed their restaurants, and as a function of their labor budgets, scheduling
9 and staffing practices, Plaintiff and the Class Members suffered violations of the Labor Codes. In
10 addition, Defendants required Class Members to work off the clock, rounded their time, and
11 automatically deducted time from hours worked for purported meal periods. Thus, Plaintiff and
12 the Class Members suffered violations throughout employment regardless of exempt classification.

13 32. Plaintiff began his employment in 1995 with Defendants and was promoted to a
14 management position in or around 2007. Plaintiff worked as a Manager from approximately 2007
15 until around October 2022 when Plaintiff was taken off the schedule after Defendants refused to
16 accommodate Plaintiff’s request for modified work duties specified in Plaintiff’s doctor’s note.

17 33. Plaintiff provided managerial and restaurant/customer service functions at
18 numerous restaurant locations of Defendants in Southern California.

19 34. The members of the putative class are managers or supervisors employed by
20 Defendants at restaurants throughout the state of California during the liability period.

21 35. Plaintiff’s hours varied during employment; however, Plaintiff typically worked
22 four days a week for 14-hour shifts, averaging over 60 hours a week.

23 36. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
24 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
25 requirements of California’s wage and employment laws.

26 37. All Class Members, including Plaintiff, are similarly situated in that they are all
27 subject to Defendants’ uniform policies and systemic practices as specified herein.

28 38. Plaintiff and the Class Members were not properly compensated for all hours

1 worked and were not provided with lawful meal and rest periods, in part because they were
2 misclassified as exempt.

3 39. In addition, during the periods of time that Plaintiff and the Class Members were
4 classified as non-exempt, they were not paid minimum wage for each hour worked and were
5 frequently required to work off the clock.

6 40. Plaintiff also alleges that he and the Class Members were required to work off the
7 clock and that Defendants were aware of said off the clock work.

8 41. In addition, Defendants automatically deducted purported meal periods from hours
9 worked even if said meal periods were not lawfully provided.

10 42. Plaintiff further alleges that the Class Members had their hours worked rounded
11 against their interests and were subject to time shaving/manipulation.

12 43. In addition, Plaintiff and the Class Members frequently worked in excess of eight
13 (8) hours a day and/or over forty (40) hours in a workweek, but were not properly paid for such
14 time at a rate of time and one-half the employee's regular rate of pay per hour. Plaintiff and the
15 Class Members also often worked in excess of twelve (12) hours in one day and/or over eight (8)
16 hours on the seventh day of the workweek, but were not properly paid for such time at a rate of two
17 times the employee's regular rate of pay per hour.

18 44. Plaintiff and the Class Members were also regularly required to work shifts in excess
19 of five hours without being provided a lawful meal period and over ten hours in a day without being
20 provided a second lawful meal period as required by law.

21 45. Indeed, during the relevant time, as a consequence of Defendants' misclassification
22 of Plaintiff and the Class Members, and their labor budgets, staffing and scheduling practices, lack
23 of coverage, work demands, and Defendants' policies and practices, Defendants frequently failed
24 to provide Plaintiff and the Class Members timely, legally complaint uninterrupted 30-minute meal
25 periods on shifts over five hours as required by law.

26 46. On information and belief, Plaintiff and Class Members did not waive their rights to
27 meal periods under the law.

28 47. Plaintiff and the Class Members were not provided with valid lawful on-duty meal

1 periods.

2 48. Despite the above-mentioned meal period violations, Defendants failed to
3 compensate Plaintiff, and on information and belief, failed to compensate Plaintiff and the Class
4 Members, one additional hour of pay at their regular rate as required by California law when meal
5 periods were not timely or lawfully provided in a compliant manner.

6 49. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
7 should know, knew, and/or should have known that Plaintiff and the other Class Members were
8 entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7 but
9 were not receiving such compensation.

10 50. In addition, during the relevant time frame, Plaintiff and the Class Members were
11 systematically not authorized and permitted to take one net ten-minute paid, rest period for every
12 four hours worked or major fraction thereof, which is a violation of the Labor Code and IWC wage
13 order.

14 51. As a result of Defendants' misclassification of Plaintiff and the Class Members, as
15 well as their labor budgets, staffing and scheduling practices, lack of coverage, work demands, and
16 Defendants' policies and practices, Defendants failed to authorize and permit lawful rest periods
17 and frequently required Plaintiff and Class Members to forego their lawful, paid rest periods of a
18 net ten minutes for every four hours worked or major fraction thereof. Such requisite rest periods
19 were not timely authorized and permitted.

20 52. Moreover, Plaintiff and the Class Members were required to incur necessary
21 expenses in the discharge of their duties, including without limitation uniform maintenance and
22 replacement expenses, cell phone expenses, and mileage but were not reimbursed for such
23 necessary expenses.

24 53. In addition, Class Members were not allowed to leave the premises during the
25 limited purported rest breaks and meal breaks provided.

26 54. Despite the above-mentioned rest period violations, Defendants did not compensate
27 Plaintiff, and on information and belief, did not pay Class Members one additional hour of pay at
28 their regular rate as required by California law, including Labor Code section 226.7 and the

1 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
2 permitted.

3 55. Defendants also failed to provide accurate, lawful itemized wage statements to
4 Plaintiff and the Class Members in part because of the above specified violations. In addition, upon
5 information and belief, Defendants omitted an accurate itemization of total hours worked, the
6 applicable hourly rates, the number of hours worked at each rate, the name and address of the legal
7 entity that is the employer, gross pay and net pay figures from Plaintiff, and the Class Members'
8 wage statements. Such actions were and continue to be in violation of the California Labor Code
9 and applicable IWC Wage Orders.

10 56. Defendants have also made it difficult to determine applicable hourly rates of pay,
11 total hours worked, and account with precision for the unlawfully withheld wages and deductions
12 due to be paid to Class Members, including Plaintiff, during the liability period because they did
13 not implement and preserve a lawful record-keeping method to record all hours worked, meal
14 periods, and non-provided rest and meal periods owed to employees as required for Class Members
15 by 29 U.S.C. section 211(c), California Labor Code section 226, and applicable California Wage
16 Orders.

17 **CLASS ACTION ALLEGATIONS**

18 57. Plaintiff brings this action on his own behalf, as well as on behalf of each and every
19 other person similarly situated, and thus, seeks class certification under California Code of Civil
20 Procedure §382.

21 58. All claims alleged herein arise under California law for which Plaintiff seeks relief
22 as authorized by California law.

23 59. The **proposed Class** is comprised of and defined as:

- 24 a. **All persons currently or formerly employed by Defendants as managers or**
25 **supervisors, however titled, working in Defendants' restaurants in the State**
26 **of California within four (4) years prior to the filing of the Complaint in**
27 **this action until the resolution of this lawsuit and who did not satisfy the**
28 **salary basis and/or whose job duties did not consist of over 50%**

1 **administrative, executive or professional duties (collectively referred to as**
2 **the “Class” or “Class Members”)**

3 60. Plaintiff also seeks to represent Subclasses included in the Plaintiff’s Class, which
4 are composed of Class Members satisfying the following definitions:

5 a. All Class Members who were classified as exempt (collectively
6 **“Misclassified Manager Subclass”)**

7 b. All Class Members who were classified as non-exempt (collectively **“Non-**
8 **Exempt Manager Subclass”)**

9 c. All Class Members who were not paid at least minimum wage for all hours
10 worked (collectively **“Minimum Wage Subclass”**);

11 d. All Class Members who were not accurately paid overtime for hours worked
12 over eight in a day or over forty in a workweek (**collectively “Overtime Subclass”**);

13 e. All Class Members who worked more than five (5) hours in a workday and
14 were not provided with a timely, uninterrupted lawful meal period of net thirty (30) minutes, and
15 were not paid compensation of one hour premium wages at the employee’s regular rate in lieu
16 thereof (hereinafter collectively referred to as the **“First Meal Period Subclass”**);

17 f. All Class Members who worked more than ten (10) hours in a workday and
18 were not provided with a timely, uninterrupted lawful second meal period of net thirty (30) minutes,
19 and were not paid compensation of one hour premium wages at the employee’s regular rate in lieu
20 thereof (hereinafter collectively referred to as the **“Second Meal Period Subclass”**);

21 g. All Class Members who worked more than three and a half hours in a
22 workday and were not authorized and permitted to take a lawful net 10-minute rest period for every
23 four (4) hours or major fraction thereof worked per day and were not paid compensation of one
24 hour premium wages at the employee’s regular rate in lieu thereof (hereinafter collectively referred
25 to as the **“Rest Period Subclass”**);

26 h. All Class Members who did not receive all owed wages at the time of
27 separation or within 72 hours in the case of resignation (hereinafter collectively referred to as the
28 **“Waiting Time Subclass”**);

1 i. All Class Members who were not provided with accurate and complete
2 itemized wage statements (hereinafter collectively referred to as the “**Inaccurate Wage Statement**
3 **Subclass**”);

4 j. All Class Members who were employed by Defendants and subject to
5 Defendant’s Unfair Business Practices (hereinafter collectively referred to as the “**Unfair Business**
6 **Practices Subclass**”).

7 k. All Class Members who were not reimbursed for all necessary expenditures
8 (collectively “**Indemnification Subclass**”).

9 61. Plaintiff reserves the right, under Rule 3.765, California Rules of Court, to amend
10 or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate,
11 or if it should be deemed necessary by the Court or to further divide the Class Members into
12 additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the
13 Class Members or the Plaintiff’s Class includes the members of each of the Subclasses.

14 62. As set forth in further detail below, this action has been brought and may properly
15 be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure
16 because there is a well-defined community of interest in the litigation, and the proposed Class and
17 Subclasses are easily ascertainable through Defendants’ records.

18 a. Numerosity: The members of the Class and Subclasses are so numerous that
19 joinder of all members of the Class and Subclasses would be unfeasible and impractical. The
20 membership of the entire Class and Subclasses is unknown to Plaintiff at this time, however, the
21 Class is estimated to be over forty individuals. Accounting for employee turnover during the
22 relevant periods necessarily increases this number substantially. Plaintiff alleges Defendants’
23 employment records would provide information as to the number and location of all Class
24 Members. Joinder of all members of the proposed Class is not practicable.

25 b. The proposed class is easily ascertainable. The number and identity of the
26 class members are determinable from Defendants’ payroll records and time records for each class
27 member.

1 c. Commonality: There are common questions of law and fact as to the Class
2 and Subclasses that predominate over questions affecting only individual Class Members. These
3 common questions of law and fact include, without limitation:

4 1) Whether Defendants misclassified Plaintiff and the Misclassified Manager
5 Subclass as exempt from the protections of the Labor Code and Wage Order;

6 2) Whether Plaintiff and the Misclassified Manager Subclass satisfied the
7 salary basis for exemption;

8 3) Whether Plaintiff and the Misclassified Manager Subclass met the duties test
9 for exemption;

10 4) Whether Defendants were required to pay Class Members at least minimum
11 wage for each hour worked;

12 5) Whether Defendants knew or should have known that the members of the
13 Misclassified Manager Subclass were misclassified;

14 6) Whether Defendants knew or should have known that Class Members were
15 required to perform work off the clock;

16 7) Whether Defendants accurately calculated and paid all Class Members
17 overtime premiums for the hours which Plaintiff and Class Members worked in excess of eight (8)
18 hours per day and/or forty (40) hours per week;

19 8) Whether Defendants had a policy and practice of providing lawful, timely
20 meal periods in accordance with Labor Code § 512, as well as the applicable Industrial Welfare
21 Commission (“IWC”) wage order;

22 9) Whether Defendants on-duty meal periods were lawful;

23 10) Whether Defendants required Class Members to remain on the premises
24 during meal periods;

25 11) Whether Defendants had a policy and practice of complying with Labor
26 Code section 226.7 and IWC Wage Order on each instance that a lawful meal period was not
27 provided;

1 12) Whether Defendants failed to authorize and permit a lawful, net 10-minute
2 rest period to the Class Members for every four (4) hours or major fraction thereof worked;

3 13) Whether Defendants required Class Members to remain on the premises
4 during rest periods;

5 14) Whether Defendants had a policy and practice of complying with Labor
6 Code section 226.7 and the IWC Wage Order on each instance that a lawful rest period was not
7 provided;

8 15) Whether Defendants failed to timely pay all wages upon separation in
9 accordance with Labor Code sections 201-202;

10 16) Whether Defendants failed to reimburse Class Members for necessary
11 expenses in accordance with Labor Code section 2802;

12 17) Whether Defendants omitted required information from itemized wage
13 statements;

14 18) Whether Defendants failed to maintain accurate records of Class Members'
15 earned wages, work periods, meal periods and deductions;

16 19) Whether Defendants engaged in unfair competition in violation of section
17 17200 et seq. of the Business and Professions Code;

18 20) Whether Defendants reimbursed Plaintiff and the Class Members for
19 necessary expenses incurred;

20 21) Whether Defendants' conduct was willful and/or reckless;

21 22) Whether Defendants failed to provide accurate itemized wage statements in
22 violation of Labor Code § 226; and

23 23) The appropriate amount of damages, restitution, and/or monetary penalties
24 resulting from Defendants' violations of California law.

25 d. Typicality: Plaintiff is qualified to, and will fairly and adequately protect the
26 interests of each member of the Class and Subclasses with whom he has a well-defined community
27 of interest. Plaintiff's claims herein alleged are typical of those claims which could be alleged by
28 any member of the Class and/or Subclasses, and the relief sought is typical of the relief which

1 would be sought by each member of the Class and/or Subclasses in separate actions. All members
2 of the Class and/or Subclasses have been similarly harmed by Defendants' failure to provide lawful
3 meal and rest periods, failure to provide accurate wage statements, failure to timely pay wages at
4 termination, failure to pay minimum wages, failure to reimburse necessary expenses, and failure to
5 accurately pay all wages earned including all owed premium and overtime wages, all due to
6 Defendants' policies and practices that affected each member of the Class and/or Subclasses
7 similarly. Further, Defendants benefited from the same type of unfair and/or wrongful acts as to
8 each member of the Class and/or Subclasses.

9 e. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect the
10 interests of each member of the Class and/or Subclasses with whom he has a well-defined
11 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that
12 he has an obligation to make known to the Court any relationships, conflicts, or differences with
13 any member of the Class and/or Subclasses, and no such relationships or conflicts are currently
14 known to exist. Plaintiff's attorneys and the proposed counsel for the Class and Subclasses are
15 versed in the rules governing class action discovery, certification, litigation, and settlement and
16 experienced in handling such matters. Other former and current employees of Defendants may also
17 serve as representatives of the Class and Subclasses if needed.

18 f. Superiority: The nature of this action makes the use of class action
19 adjudication superior to other methods. A class action will achieve economies of time, effort,
20 judicial resources, and expense, which would not be achieved with separate lawsuits. The
21 prosecution of separate actions by individual members of the Class and/or Subclasses would create
22 a risk of inconsistent and/or varying adjudications with respect to the individual members of the
23 Class and/or Subclasses, establishing incompatible standards of conduct for the Defendants, and
24 resulting in the impairment of the rights of the members of the Class and/or Subclasses and the
25 disposition of their interests through actions to which they were not parties. Thus, a class action is
26 superior to other available means for the fair and efficient adjudication of this controversy because
27 individual joinder of all Class Members is not practicable, and questions of law and fact common
28 to the Class predominate over any questions affecting only individual Class Members. Each

1 member of the Class has been damaged and is entitled to recovery by reason of Defendants'
2 unlawful policies and practices, including Defendants' failure to provide lawful meal and rest
3 periods, failure to pay minimum wages, failure to provide accurate wage statements, failure to
4 timely pay wages at termination, failure to reimburse necessary expenses, and failure to accurately
5 pay all wages earned including all owed premium and overtime wages, all due to Defendants'
6 policies and practices that affected each member of the Class and/or Subclasses similarly. Class
7 action treatment will allow those similarly situated persons to litigate their claims in the manner
8 that is most efficient and economical for both parties and the judicial system. Plaintiff is unaware
9 of any difficulties that are likely to be encountered in the management of this action that would
10 preclude its maintenance as a class action.

11 g. Public Policy Considerations: Employers in the state of California violate
12 employment and labor laws every day. However, current employees are often afraid to assert their
13 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
14 because they believe their former employers may damage their future endeavors through negative
15 references and/or other means. The nature of this action allows for the protection of current and
16 former employees' rights without fear of retaliation or damage. Additionally, the citizens of
17 California have a significant interest in ensuring employers comply with California's labor laws
18 and in ensuring those employers who do not are prevented from taking further advantage of their
19 employees.

20 CLASS ACTION CLAIMS

21 FIRST CAUSE OF ACTION

22 FAILURE TO PAY MINIMUM WAGES

23 **(By Plaintiff and the Class Against Defendant Rod Fraser Enterprises, Inc. and DOES 1-50)**

24 63. Plaintiff incorporates each and every allegation set forth in all of the foregoing
25 paragraphs as if fully set forth herein.

26 64. Labor Code section 204 establishes the fundamental right of all employees in the
27 State of California to be paid wages, including minimum wage, straight time and overtime, in a
28 timely fashion for their work.

1 65. Labor Code section 1194(a) provides that notwithstanding any agreement to work
2 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
3 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
4 of the full amount of this minimum wage or overtime compensation, including interest thereon,
5 reasonable attorney's fees, and costs of suit.

6 66. Labor Code section 1197 provides: The minimum wage for employees fixed by the
7 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
8 and the payment of a lower wage than the minimum so fixed is unlawful.

9 67. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
10 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
11 Wage Order(s).

12 68. The applicable wage orders and California Labor Code sections 1197 and 1182.12
13 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by
14 state law.

15 69. Labor Code sections 1194(a) and 1194.2(a) provide that an employee who has not
16 been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid
17 balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount
18 equal to the unpaid wages and interest accrued thereon.

19 70. During all relevant periods, the California Labor Code and wage orders required that
20 Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all
21 hours worked.

22 71. The IWC Wage Orders define "hours worked" as "the time during which an
23 employee is subject to the control of an employer, and includes all the time the employee is suffered
24 or permitted to work, whether or not required to do so."

25 72. At all times relevant, Plaintiffs and Class Members consistently worked hours for
26 which they were not paid.

27 73. In part, this occurred because Defendants misclassified Plaintiff and the
28 Misclassified Manager Subclass as exempt employees and did not pay them for all hours worked.

1 74. In addition, Defendants frequently required Plaintiff and the Non-Exempt Manager
2 Subclass Members to work off the clock to perform job functions at the restaurant and while off
3 duty.

4 75. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
5 Misclassified Manager Subclass were not properly classified as exempt as they did not meet both
6 the salary basis and duties test for exemption.

7 76. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
8 Class Members were working off the clock and that they should have been paid for this time.

9 77. In addition, Defendants failed to pay at least minimum wage for all hours worked
10 because, upon information and belief, Defendants rounded hours worked against Plaintiff and the
11 Class Members' interests and automatically deducted time from hours worked for purported meal
12 periods (including those that were not lawfully provided).

13 78. Defendant's policy and practice of not paying all minimum wages violates
14 California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the
15 applicable wage order 5-2001.

16 79. Due to Defendants' violations of the California Labor Code and wage orders,
17 Plaintiff and the Minimum Wage Subclass members are entitled to recover from Defendant their
18 unpaid wages, statutory penalties, reasonable attorneys' fees and costs in this action, and pre-
19 judgment and post-judgment interest, as well as liquidated damages.

20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME OWED**

22 **(By Plaintiff and the Class Against Defendant Rod Fraser Enterprises, Inc. and DOES 1-50)**

23 80. Plaintiff incorporates each and every allegation set forth in all of the foregoing
24 paragraphs as if fully set forth herein.

25 81. During all relevant periods, Defendant required Plaintiff and the Class Members to
26 work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours
27 per workweek.

28 82. During all relevant periods, both the California Labor Code sections 1194, 1197,

1 510, 1198, and the pertinent wage order 5-2001 required that all work performed by an employee
2 in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in
3 excess of forty (40) hours in any workweek be compensated at one and one-half (1.5) times the
4 employee's regular rate of pay. Any work in excess of twelve (12) hours in one (1) day is required
5 to be compensated at the rate of no less than twice the regular rate of pay for an employee. In
6 addition, any work in excess of eight (8) hours on any seventh (7th) day of a workweek is required
7 to be compensated at the rate of no less than twice the regular rate of pay of an employee.

8 83. During all relevant periods, Defendants had a uniform policy of requiring Plaintiff
9 and the Class Members to work in excess of eight (8) hours in a workday and/or in excess of forty
10 (40) hours in a workweek without compensating them at a rate of one and one-half (1.5) times their
11 regular rate of pay. Upon information and belief, Defendants also failed to properly compensate
12 Plaintiffs and the Class Members for hours worked in excess of twelve (12) hours in one (1) day,
13 or eight (8) hours on the seventh (7th) day of a workweek.

14 84. The IWC Wage Orders define "hours worked" as "the time during which an
15 employee is subject to the control of an employer, and includes all the time the employee is suffered
16 or permitted to work, whether or not required to do so."

17 85. At all times relevant, Plaintiff and the Misclassified Manager Subclass consistently
18 worked hours for which they were not paid because Plaintiff and the Class Members were
19 misclassified as exempt from overtime.

20 86. In addition, as detailed herein, Plaintiff and the Non-Exempt Manager Subclass were
21 required to work off the clock—some of these hours were over eight (8) hours in one (1) workday
22 or in excess of forty (40) hours in a workweek and should have been paid at the overtime rate.

23 87. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
24 Class Members were working off the clock and that they should have been paid for this time.

25 88. In addition, upon information and belief, Defendants failed to incorporate all forms
26 of compensation, including without limitation bonuses, differentials, and incentives, into the
27 regular rate for overtime purposes.

28 89. As a result, Defendants failed to pay Plaintiff and the Class Members earned

overtime wages and such employees suffered damages as a result.

90. Defendants knew or should have known Plaintiff and the Class Members were undercompensated as a result of these practices.

91. Due to Defendant's violations of the California Labor Code, Plaintiff and the Class members are entitled to recover from Defendants their unpaid overtime wages, reasonable attorneys' fees and costs in this action, and pre-judgment and post-judgment interest, statutory penalties, and liquidated damages.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE LAWFUL MEAL PERIODS

(By Plaintiff and the Class Against Defendant Rod Fraser Enterprises, Inc. and DOES 1-50)

92. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

93. Pursuant to Labor Code § 512, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee.

94. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee for a work period of more than ten (10) hours without providing a second meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. A second meal break may only be waived by mutual consent, and if the employee did not waive his or her first meal period, and the employee's work day will not exceed twelve hours.

95. As set forth above, Defendants failed to provide Plaintiff and Class Members timely and uninterrupted first meal periods of not less than thirty (30) minutes within the first five hours of a shift.

96. Defendants also failed to provide Plaintiff and Class Members timely and uninterrupted second meal periods of not less than thirty (30) minutes on shifts longer than ten

1 hours.

2 97. On information and belief, Plaintiff and Class Members did not waive their rights
3 to meal periods under the law.

4 98. Plaintiff and the Class Members were not paid one hour of pay at their regular rate
5 for each day that a first or second meal period was not lawfully provided.

6 99. As a proximate result of the aforementioned violations, Plaintiff and the Class
7 Members have been damaged in an amount according to proof at time of trial.

8 100. Pursuant to Labor Code § 226.7, Plaintiff and Class Members are entitled to recover
9 one (1) hour of premium pay for each day in which a meal period violation occurred. They are also
10 entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

11 101. As a result of the unlawful acts of Defendants, Plaintiff and the Class they seek to
12 represent have been deprived of premium wages in amounts to be determined at trial, and are
13 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
14 under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code
15 section 3287.

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS**

18 **(By Plaintiff and the Class Against Defendant Rod Fraser Enterprises, Inc. and DOES 1-50)**

19 102. Plaintiff incorporates by reference and realleges each and every allegation contained
20 above, as though fully set forth herein.

21 103. Pursuant to the IWC wage orders applicable to Plaintiff's and Class Members'
22 employment by Defendants, "Every employer shall authorize and permit all employees to take rest
23 periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized
24 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
25 rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall
26 be counted as hours worked, for which there shall be no deduction from wages."

27 104. Labor Code §226.7(a) prohibits an employer from requiring any employee to work
28 during any rest period mandated by an applicable order of the IWC.

105. Defendants were required to authorize and permit employees such as Plaintiff and Class Members to take rest periods during shifts in excess of 3.5 hours, based upon the total hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof, with no deduction from wages.

106. Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class Member's employment with Defendants, Defendants failed and refused to authorize and permit Plaintiff and Class Members to take lawful, net ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof.

107. Defendants did not pay Plaintiff one additional hour of pay at his regular rate of pay for each day that a rest period violation occurred. On information and belief, the other members of the Class endured similar violations as a result of Defendants' rest period policies and practices and Defendant did not pay said Class Members premium pay as required by law.

108. By their failure to authorize and permit Plaintiff and the Class Members to take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other Class Members work(ed) work a third rest period for shifts in excess of ten (10) hours, and by their failure to provide compensation for such unprovided rest periods as alleged herein, Defendants willfully violated the provisions of Labor Code sections 226.7 and the applicable IWC Wage Order(s).

109. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil Code 3287.

FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION

(By Plaintiff and the Class Against Defendant Rod Fraser Enterprises, Inc. and DOES 1-50)

110. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

111. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due within seventy-two (72) hours of separation of employment.

112. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

113. Plaintiff and Class Members are entitled to compensation for all forms of wages earned, including but not limited to minimum wages, overtime, and premium meal and rest period compensation, but to date have not received such compensation, therefore entitling them to Labor Code § 203 penalties.

114. More than thirty (30) days have passed since affected Waiting Time Subclass Members have left Defendants' employ, and on information and belief, they have not received payment pursuant to Labor Code § 203.

115. Plaintiff and Waiting Time Subclass Members are thus entitled to 30 days' wages as a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

SIXTH CAUSE OF ACTION

KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS

(By Plaintiff and the Class Against Defendant Rod Fraser Enterprises, Inc. and DOES 1-50)

116. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

117. Labor Code section 226(a) reads in pertinent part: "Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee

1 identification number other than a social security number, (8) the name and address of the legal
2 entity that is the employer, and (9) all applicable hourly rates in effect during each the pay period
3 and the corresponding number of hours worked at each hourly rate by the employee....”.

4 118. Further, the IWC Wage Orders require in pertinent part: Every employer shall keep
5 accurate information with respect to each employee including the following: (3) Time records
6 showing when the employee begins and ends each work period. Meal periods, split shift intervals,
7 and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period
8 and applicable rates of pay....”

9 119. Labor Code section 1174 of the California also requires Defendants to maintain and
10 preserve, in a centralized location, among other items, records showing the names and addresses of
11 all employees employed and payroll records showing the hours worked daily by, and the wages
12 paid to, its employees. On information and belief and based thereon, Defendants have knowingly
13 and intentionally failed to comply with Labor Code section 1174, including by implementing the
14 policies and procedures and committing the violations alleged in the preceding causes of action and
15 herein. Defendants’ failure to comply with Labor Code section 1174 is unlawful pursuant to Labor
16 Code section 1175.

17 120. Defendants have failed to record many of the items delineated in applicable
18 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section 1174,
19 including by virtue of the fact that each wage statement which failed to accurately compensate
20 Plaintiff and Class Members for all hours worked and for missed and non-provided meal and rest
21 periods, or which failed to include compensation for all minimum wages earned or overtime hours
22 worked, was an inaccurate wage statement.

23 121. On information and belief, Defendants failed to implement and preserve a lawful
24 record-keeping method to record all hours worked, meal periods, and non-provided meal and rest
25 periods owed to employees, as required for Class Members under California Labor Code section
26 226 and applicable California Wage Orders. In order to determine if they had been paid the correct
27 amount and rate for all hours worked, Plaintiff and Class Members have been, would have been,
28 and are compelled to try to discover the required information missing from their wage statements

1 and to perform complex calculations in light of the inaccuracies and incompleteness of the wage
2 statements Defendants provided to them.

3 122. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
4 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage
5 Statement Class with an accurate itemized statement in writing accurately reflecting all of the
6 required information. Specifically, Defendants have also omitted accurate itemizations of total
7 hours worked, the name and address of the legal entity that is the employer, and gross pay from
8 Plaintiff and the Class Members' wage statements. In addition, Defendants have failed to provide
9 accurate itemized wage statements as a consequence of the above-specified violations for failure to
10 accurately pay all wages owed, accurately record all hours worked, and failure to pay meal and rest
11 period premiums as required by law.

12 123. Moreover, upon information and belief, as a pattern and practice, in violation of
13 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
14 accurate records pertaining to the total hours worked for Defendants by the members of the Wage
15 Statement Class, including but not limited to, beginning and ending of each work period, meal
16 period and split shift interval, the total daily hours worked, and the total hours worked per pay
17 period and applicable rates of pay.

18 124. Plaintiff and the members of the Wage Statement Class have suffered injury as a
19 result of Defendants' failure to maintain accurate records for the members of the Wage Statement
20 Class in that the members of the Wage Statement Class were not timely provided written accurate
21 itemized statements showing all requisite information, such that the members of the Wage
22 Statement Class were misled by Defendants as to the correct information regarding various items,
23 including but not limited to the identity of the employer, total hours worked by the employee, gross
24 pay, net wages earned and all applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate.

26 125. Pursuant to Labor Code section 226, and in light of Defendants' violations addressed
27 above, Plaintiff and the Wage Statement Class Members are each entitled to recover up to
28 a maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

1 SEVENTH CAUSE OF ACTION

2 **VIOLATION OF THE UNFAIR COMPETITION LAW**

3 **(By Plaintiff and the Class Against Defendant Rod Fraser Enterprises, Inc. and DOES 1-50)**

4 126. Plaintiff incorporates by reference and realleges each and every allegation contained
5 above, as though fully set forth herein.

6 127. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
7 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
8 general public. Plaintiff also seeks to enforce important rights affecting the public interest within
9 the meaning of the California Code of Civil Procedure § 1021.5.

10 128. Defendants' policies, activities, and actions as alleged herein are violations of
11 California law and constitute unlawful business acts and practices in violation of California
12 Business and Professions Code §§ 17200, *et seq.*

13 129. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be
14 predicated on the violation of any state or federal law.

15 130. The state law violations, including violations of the relevant IWC Wage Order,
16 detailed herein above are the predicate violations for this cause of action.

17 131. By way of example only, in the instant case, Defendants misclassified Plaintiff and
18 the members of the Misclassified Manager Subclass as exempt from the protections of the Wage
19 Order and Labor Code.

20 132. By way of further example, Defendants' systematically understaffed their
21 restaurants, and as a function of their labor budgets, scheduling and staffing practices, Plaintiff and
22 the Class Members suffered numerous violations of the Labor Code as set forth herein. In addition,
23 Defendants required Class Members to work off the clock, rounded their time, and automatically
24 deducted time from hours worked for purported meal periods.

25 133. Further, Defendants' policy of failing to lawfully provide Plaintiff and the Class
26 with timely meal and rest periods or pay one (1) hour of premium pay when a meal or rest period
27 was not lawfully provided violates Labor Code § 512, and § 226.7, and the IWC Wage Orders.

28 134. Defendants further violated the law through their policies of failing to fully and

1 accurately compensate Plaintiff and the Class Members for all hours worked, including minimum
2 wages and overtime as well as failing to provide accurate itemized wage statement as specified
3 above.

4 135. In addition, Defendants' policy of failing to reimburse necessary expenses violates
5 Labor Code Section 2802.

6 136. Plaintiff and the Class Members have been personally aggrieved by Defendants'
7 unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

8 137. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff
9 and the Class Members are entitled to restitution of the wages withheld and retained by Defendants
10 during a period that commences four (4) years prior to the filing of this complaint; an award of
11 attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of
12 costs.

13 EIGHTH CAUSE OF ACTION

14 FAILURE TO REMIBURSE NECESSARY EXPENSES

15 **(By Plaintiff and the Class Against Defendant Rod Fraser Enterprises, Inc. and DOES 1-50)**

16 138. Plaintiff incorporates by reference and realleges each and every allegation contained
17 above, as though fully set forth herein.

18 139. Plaintiff repeats and incorporates herein by reference each and every allegation set
19 forth above, as though fully set forth herein.

20 140. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Class Members
21 for necessary expenditures incurred in direct consequence of the discharge of his or her duties.

22 141. Plaintiff and the members of the Class were required to incur expenses in the
23 performance of their assigned job duties. For example, Plaintiff and the Class Members were
24 required to incur numerous out of pocket expenses, including without limitation, uniform
25 maintenance and replacement expenses, cell phone expenses, and mileage in direct consequence of
26 the discharge of their duties.

27 142. Upon information and belief, the Defendants did not reimburse Plaintiff or the
28 Plaintiff's subclass for such expenses.

1 143. As a result of the unlawful acts of Defendants, Plaintiff and the Subclass Members
2 have been deprived of unreimbursed sums in amounts to be determined at trial, and are entitled to
3 the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
4 pursuant to Labor Code §2802.

5 **NINTH CAUSE OF ACTION**

6 **PENALTIES UNDER PRIVATE ATTORNEYS' GENERAL ACT, LABOR CODE**

7 **SECTION 2698 ET SEQ.**

8 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

9 144. Plaintiff incorporates by reference and realleges each and every allegation contained
10 above, as though fully set forth herein.

11 145. Plaintiff gave timely written notice by online submission to the LWDA and by
12 certified mail to Defendants of Defendants' violations of numerous provisions of the California
13 Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were paid as required
14 by statute.

15 146. Plaintiff is "aggrieved employee" as defined in Labor Code Section 2699(a), as he
16 was employed by Defendants during the statutory period and suffered one or more of the Labor
17 Code violations set forth herein. He seeks to recover on behalf of himself and all other current and
18 former aggrieved employees of Defendants the civil penalties provided by PAGA, plus reasonable
19 attorneys' fees and costs.

20 147. 65 days have passed, and no response has been received from the LWDA.
21 Accordingly, the LWDA has permitted Plaintiff to proceed in a representative capacity.

22 148. Plaintiff has exhausted all administrative procedures required of them under the
23 Labor Code §§2698, 2699, 2699.3, and as a result, are justified as a matter of right in bringing
24 forward this cause of action.

25 149. Pursuant to Labor Code section 2699(a) Plaintiff seeks to recover civil penalties for
26 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint.

1 150. Plaintiff seeks to recover the PAGA civil penalties through a representative action
2 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th
3 969. Class certification of the PAGA claims is not required.

4 151. Pursuant to Labor Code section 2698 et seq. and 2699(a), Plaintiff seeks to recover
5 civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order
6 violations as set forth in this Complaint.

7 152. Specifically, Plaintiff, on behalf of himself and the Aggrieved Employees, seeks
8 penalties, under Labor Code §2699, for, without limitation, the claims set forth herein, including:

- 9 a. Defendants' failure to comply with the requirement of Labor Code §1182.12, 1194,
10 1197, 1198, and Wage Orders to pay at least minimum wage for every hour worked;
- 11 b. Defendants' failure to comply with the requirement of Labor Code §510, 1194,
12 1197, 1198, and Wage Orders to accurately pay all wages earned including overtime
13 wages;
- 14 c. Defendants' failure to comply with the requirement of Labor Code §216 to pay
15 wages after demand was made;
- 16 d. Defendants' failure to comply with the requirement of Labor Code §§204, and 210
17 to pay, without condition and within the time set by the applicable article, all wages,
18 or parts thereof;
- 19 e. Defendants' failure to comply with the requirement of Labor Code §225.5 to pay
20 wages due;
- 21 f. Defendants' failure to comply with the requirement of Labor Code §§201 and 202
22 to pay wages due to former employees;
- 23 g. Defendants' failure to comply with the requirement of Labor Code §203 to pay
24 waiting time penalties to former employees;
- 25 h. Defendants' failure to comply with the requirement of Labor Code §226.7, 512,
26 1198, and IWC Wage Orders to provide timely, uninterrupted 30 minute off-duty
27 meal periods;

- 1 i. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198,
2 and IWC Wage Orders to pay one hour of premium pay at the regular rate for each
3 lawful meal break that was not provided;
- 4 j. Defendants' failure to comply with the requirement of Labor Code §226.7, 512,
5 1198, and IWC Wage Orders to provide timely, uninterrupted net 10 minute rest
6 periods;
- 7 k. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198,
8 and IWC Wage Orders to pay one hour of premium pay at the regular rate for each
9 lawful rest break that was not provided;
- 10 l. Defendants' failure to maintain accurate required records in violation of Labor Code
11 §226, 1174, and Wage Orders;
- 12 m. Defendants' failure to properly pay sick leave under Labor Code section 246, et seq.
13 and the Los Angeles Municipal Code section 187.01, et seq.;
- 14 n. Defendants; failure to comply with the notice requirements of Labor Code section
15 2810.5;
- 16 o. Defendants' failure to provide accurate compliant wage statements under Labor
17 Code section 226;
- 18 153. Plaintiff seeks civil penalties for Defendants' violation of Labor Code provisions for
19 which a civil penalty is specifically provided, including but not limited to the following:
- 20 a. Pursuant to Labor Code §210, for violations of Labor Code §204, Defendants are
21 subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial
22 violation for each failure to pay each employee and two hundred (\$200) per
23 employee for violations in subsequent pay periods plus 25% of the amount
24 unlawfully withheld.
- 25 b. Pursuant to Labor Code §226.3, for violations of Labor Code §226 (a) Defendants
26 are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250)
27 per aggrieved employee for the initial pay period where a violation occurs and one
28

1 thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay
2 period.

3 c. Pursuant to Labor Code §558(a), “[a]ny employer or other person acting on behalf
4 of an employer who violated, or causes to be violated, a section of this chapter or
5 any provisions regulating hours and days of work in any order of the Industrial
6 Welfare Commission,” including Labor Code §§510 and 512, shall be subject to a
7 civil penalty, in addition to any other penalty provided by law, of fifty dollars (\$50)
8 for initial violations for each underpaid employee for each pay period for which the
9 employee was underpaid and one hundred dollars (\$100) for each subsequent
10 violation for each underpaid employee for each pay period for which the employee
11 was underpaid.

12 d. Pursuant to Labor Code §1174.5, for violations of Labor Code §1174(d), Defendants
13 are subject to a civil penalty of five hundred dollars (\$500).

14 e. Pursuant to Labor Code §1197.1, an employer who pays or causes to be paid to any
15 employee a wage less than the minimum fixed by an order of the commission, shall
16 be subject to a civil penalty as follows: for any initial violation that is intentionally
17 committed, one hundred dollars (\$100) for each underpaid employee for each pay
18 period for which the employee is underpaid; and for each subsequent violation of
19 the same offense, two hundred fifty dollars (\$250) for each underpaid employee for
20 each pay period for which the employee is underpaid regardless of whether the
21 initial violation was intentionally committed.

22 154. Further, as a result of the acts alleged hereinabove, Plaintiff seeks penalties under
23 Labor Code §§2698 et seq. and 2699 because of Defendants’ violation of numerous provisions of
24 the California Labor Code and IWC Wage Orders.

25 155. Under Labor Code §2699, Plaintiff and Aggrieved Employees are entitled to \$100
26 for any initial violation and \$200 for all subsequent violations of the above-mentioned provisions
27 of the California Labor Code.
28

1 156. Under Labor Code §2699, Plaintiff and Aggrieved Employees should be awarded
2 twenty-five percent (25%) of all penalties due under California law, interest, attorneys' fees and
3 costs.

4 157. Under Labor Code § 2699, the State of California should be awarded seventy-five
5 percent (75%) of the penalties due under California law.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff pray judgment against Defendants, as follows:

8 **Class Certification**

- 9 1. That this action be certified as a class action;
10 2. That Plaintiff be appointed as the representative of the Class;
11 3. That Plaintiff be appointed as the representative of the Subclasses; and
12 4. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

13 **On the First Cause of Action**

14 **(Failure to Pay Minimum Wages)**

- 15 1. For the unpaid balance of the full amount of any minimum wages, and regular wages
16 owed, as well as interest thereon,
17 2. Penalties according to statute,
18 3. Liquidated damages,
19 4. Reasonable attorneys' fees, and costs of suit;
20 5. For interest and
21 6. For such other and further relief as the Court deems proper.

22 **On the Second Cause of Action**

23 **(Failure to Pay Overtime)**

- 24 1. For the unpaid balance of the full amount of any overtime wages owed, as well as
25 interest thereon,
26 2. Penalties according to statute,
27 3. Liquidated damages,
28 4. Reasonable attorneys' fees, and costs of suit;

1 5. For interest and

2 6. For such other and further relief as the Court deems proper.

3 **On the Third Cause of Action**

4 **(Failure to Provide Lawful Meal Periods)**

5 1. For one (1) hour of premium pay for each day in which a required meal period was
6 not lawfully provided;

7 2. For reasonable attorneys' fees and costs pursuant to statute; and

8 3. For such other and further relief as the Court deems proper.

9 **On the Fourth Cause of Action**

10 **(Failure to Authorize and Permit Lawful Rest Periods)**

11 1. For one (1) hour of premium pay for each day in which a required rest period was
12 not lawfully authorized and permitted; and

13 2. For reasonable attorneys' fees and costs pursuant to statute; and

14 3. For such other and further relief as the Court deems proper.

15 **On the Fifth Cause of Action**

16 **(Failure to Timely Pay Wages At Separation)**

17 1. For unpaid wages;

18 2. For penalties pursuant to Labor Code § 203;

19 3. For interest;

20 4. For reasonable attorneys' fees and costs pursuant to statute; and

21 5. For such other and further relief as the Court deems proper.

22 **On the Sixth Cause of Action**

23 **(Failure to Provide Accurate Itemized Wage Statements)**

24 1. For statutory penalties, including penalties pursuant to Labor Code section 226;

25 2. For reasonable attorneys' fees and costs; and

26 3. For such other and further relief as the Court deems proper;

1 **On the Seventh Cause of Action**

2 **(Violation of the Unfair Competition Law)**

3 1. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of
4 sums to Plaintiff and Class Members for the Defendants' past failure to pay overtime and regular
5 wages, for Defendants' past failure to reimburse necessary expenses, and for premium wages for
6 meal and rest periods that were not provided to Plaintiff and Class Members over the last four (4)
7 years in an amount according to proof;

8 2. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to
9 recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194;

10 3. For pre-judgment interest on any unpaid overtime wages due from the day that such
11 amounts were due;

12 4. For costs of suit incurred herein that Plaintiff and Class Members are entitled to
13 recover under the Labor Code; and

14 5. For such other and further relief as the Court deems proper.

15 **On the Eighth Cause of Action**

16 **(Failure to Reimburse Necessary Expenses)**

17 1. For unreimbursed sums;

18 2. For reasonable attorneys' fees and costs pursuant to statute;

19 3. For interest; and

20 4. For such other and further relief as the Court deems proper.

21 **On the Ninth Cause of Action**

22 **(Penalties Under the Private Attorney Generals Act, Labor Code section 2698 et seq.)**

23 1. For penalties according to proof, pursuant to Labor Code §§2698 et seq. for the
24 violations specified above;

25 2. For penalties under Labor Code sections 210, 226.3, 1174.5, 1197.1, and 2699(a)
26 and (f);

27 3. For interest at the legal rate pursuant to Labor Code §§218.6, 1194, California Civil
28 Code §§3287, 3288, and/or any other applicable provision providing for pre-judgment interest;

1 4. For reasonable attorneys' fees, expenses, and costs under Labor Code §§1194, 226,
2 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable provisions providing
3 for attorneys' fees and costs; and

4 5. For such other and further relief as the Court deems proper.

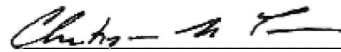
5 **DEMAND FOR JURY TRIAL**

6 Plaintiff, on behalf of the Class and Subclasses, respectfully demand a jury trial in this
7 matter.

8
9 Respectfully submitted,

10 **EMPLAW, LLP**

11
12 Dated: August 14, 2023

13 
Christina M. Lucio, Esq.

14 Attorneys for Plaintiff JOSE SANDOVAL,
15 on behalf of himself and all others similarly situated
16
17
18
19
20
21
22
23
24
25
26
27
28