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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

EDWIN RODRIGUEZ HERNANDEZ,
individually, and on behalf of other
members of the general public similarly
situated, and as an aggrieved employee
pursuant to the Private Attorneys General
Act ("PAGA"),

Plaintiff,

vs.

BUBBA GUMP SHRIMP CO.
RESTAURANTS, INC., a Delaware
corporation; LANDRY'S PAYROLL, INC.,
a Texas corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.: 22STCV35567

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of Labor Code § 1198 and California Code of Regulations, Title 8, Section 11050 Subdivision 5(A) (Failure to Provide Reporting Time Pay);

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- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Edwin Rodriguez Hernandez, individually and on behalf of all other members
2 of the public similarly situated, and as an aggrieved employee and on behalf of all aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice.

23 3. Venue is proper in this Court, because Defendants employ persons within the
24 County of Los Angeles, and have violated the requirements of the California Labor Code and
25 applicable Wage Order in this county which give rise to the penalties sought in this action.
26 Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the
27 California Labor Code and applicable IWC Wage Order in several restaurant locations within
28 the County of Los Angeles, including Defendants’ restaurant locations in Santa Monica (301

1 Santa Monica Pier, Santa Monica, California 90401), Long Beach (87 Aquarium Way, Long
2 Beach, California 90802), and Universal City (1000 Universal Studios Blvd., Universal City,
3 California 91608). Pursuant to California Civil Code of Procedure section 393, venue is
4 proper for the recovery of a penalty or forfeiture imposed by statute in the county in which the
5 cause, or some part of the cause, arose. Because Defendants have employees in Los Angeles
6 County and Plaintiff could bring this action to recover penalties in Los Angeles County, venue
7 is proper.

8 **THE PARTIES**

9 4. Plaintiff Edwin Rodriguez Hernandez is a resident of Anaheim, in Orange
10 County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee
11 from approximately April 2014 to December 2021. Plaintiff worked for Defendants as a
12 Busser at their restaurant located in Newport Beach, California. Plaintiff typically worked
13 eight (8) or more hours per day, five (5) or more days per week, from 9:00 a.m. to 10:00 p.m.
14 Plaintiff's job duties included, without limitation, bussing plates, cleaning tables, wiping
15 seats, sweeping, and mopping floors.

16 5. BUBBA GUMP SHRIMP CO. RESTAURANTS, INC. was and is, upon
17 information and belief, a Delaware corporation, and at all times hereinafter mentioned, an
18 employer whose employees are engaged throughout this county and the State of California.

19 6. LANDRY'S PAYROLL, INC. was and is, upon information and belief, a Texas
20 corporation, and at all times hereinafter mentioned, an employer whose employees are
21 engaged throughout this county and the State of California.

22 7. Plaintiff is unaware of the true names or capacities of the Defendants sued
23 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
24 amend the complaint and serve such fictitiously named Defendants once their names and
25 capacities become known.

26 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
27 were the partners, agents, owners, or managers of BUBBA GUMP SHRIMP CO.
28 RESTAURANTS, INC. and LANDRY'S PAYROLL, INC. at all relevant times.

1 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the
2 acts and omissions alleged herein was performed by, or is attributable to, BUBBA GUMP
3 SHRIMP CO. RESTAURANTS, INC.; LANDRY'S PAYROLL, INC.; and/or DOES 1
4 through 10 (collectively, "Defendants" or "BUBBA GUMP"), each acting as the agent,
5 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
6 Defendants and was acting within the course and scope of such agency, employment, joint
7 venture, or concerted activity with legal authority to act on the others' behalf. The acts of any
8 and all Defendants were in accordance with, and represent, the official policy of Defendants.

9 10. At all relevant times, Defendants, and each of them, ratified each and every act
10 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
11 and abetted the acts and omissions of each and all the other Defendants in proximately causing
12 the damages herein alleged.

13 11. Plaintiff is informed and believes, and thereon alleges, that each of said
14 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
15 omissions, occurrences, and transactions alleged herein.

16 12. Under California law, Defendants are jointly and severally liable as employers
17 for the violations alleged herein because they have each exercised sufficient control over the
18 wages, hours, working conditions, and employment status of Plaintiff and class members.
19 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
20 controlled their work schedule and/or conditions of employment, determined their rate of pay,
21 and maintained their employment records. Defendants suffered or permitted Plaintiff and
22 class members to work and/or "engaged" Plaintiff and class members so as to create a
23 common-law employment relationship. As joint employers of Plaintiff and class members,
24 Defendants are jointly and severally liable for the civil penalties and all other relief available
25 to Plaintiff and class members under the law.

26 13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
27 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
28 members because Defendants have:

- 1 (a) jointly exercised meaningful control over the work performed by
2 Plaintiff and class members;
- 3 (b) jointly exercised meaningful control over Plaintiff's and class members'
4 wages, hours, and working conditions, including the quantity, quality
5 standards, speed, scheduling, and operative details of the tasks
6 performed by Plaintiff and class members;
- 7 (c) jointly required that Plaintiff and class members perform work which is
8 an integral part of Defendants' businesses; and
- 9 (d) jointly exercised control over Plaintiff and class members as a matter of
10 economic reality in that Plaintiff and class members were dependent on
11 Defendants, who shared the power to set the wages of Plaintiff and class
12 members and determined their working conditions, and who jointly
13 reaped the benefits from the underpayment of their wages and
14 noncompliance with other statutory provisions governing their
15 employment.

16 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
17 there has existed a unity of interest and ownership between Defendants such that any
18 individuality and separateness between the entities has ceased.

19 15. BUBBA GUMP SHRIMP CO. RESTAURANTS, INC.; LANDRY'S
20 PAYROLL, INC.; and DOES 1 through 10 are therefore alter egos of each other.

21 16. Adherence to the fiction of the separate existence of Defendants would permit
22 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
23 from liability for the wrongful acts committed by them under the name BUBBA GUMP.

24 17. Plaintiff further alleges, upon information and belief, that Defendants BUBBA
25 GUMP SHRIMP CO. RESTAURANTS, INC. and LANDRY'S PAYROLL, INC. are alter
26 egos of each other for the following reasons:

- 27 (a) According to the most recent "Statement of Information" forms filed
28 with the California Secretary of State, BUBBA GUMP SHRIMP CO.

1 RESTAURANTS, INC. and LANDRY'S PAYROLL, INC. share
2 common officers, including, but not limited to, CEO Tilman J. Fertitta,
3 CFO Rick H. Liem, Secretary Steven L. Scheinthal;

4 (b) On the California Secretary of State's website
5 (<https://bizfileonline.sos.ca.gov/>), BUBBA GUMP SHRIMP CO.
6 RESTAURANTS, INC. and LANDRY'S PAYROLL, INC. share the
7 same principal address and/or mailing address of "1510 WEST LOOP
8 SOUTH, HOUSTON, TEXAS, 77027"; and

9 (c) On information and belief, BUBBA GUMP SHRIMP CO.
10 RESTAURANTS, INC. and LANDRY'S PAYROLL, INC. utilize the
11 same standardized employment forms and issue the same employment
12 policies.

13 GENERAL ALLEGATIONS

14 18. Defendants operate approximately seven (7) seafood restaurant locations in
15 California. Upon information and belief, Defendants maintain a single, centralized Human
16 Resources ("HR") department at their company headquarters in Houston, Texas, which is
17 responsible for the recruiting and hiring of new employees, and communicating and
18 implementing Defendants' company-wide policies, including timekeeping policies and meal
19 and rest period policies, to employees throughout California.

20 19. In particular, Plaintiff and class members, on information and belief, received
21 the same standardized documents and/or written policies. Upon information and belief, the
22 usage of standardized documents and/or written policies, including new-hire documents,
23 indicate that Defendants dictated policies at the corporate level and implemented them
24 company-wide, regardless of their employees' assigned locations or positions. Upon
25 information and belief, Defendants set forth uniform policies and procedures in several
26 documents provided at an employee's time of hire.

27 20. Upon information and belief, Defendants maintain a centralized Payroll
28 department at their company headquarters in Houston, Texas, which processes payroll for all

1 non-exempt, hourly paid employees working for Defendants at their various locations in
2 California, including Plaintiff and class members. Based upon information and belief,
3 Defendants issue the same formatted wage statements to all non-exempt, hourly paid
4 employees in California, irrespective of their work locations. Upon information and belief,
5 Defendants process payroll for departing employees in the same manner throughout the State
6 of California, regardless of the manner in which each employee's employment ends.

7 21. Defendants continue to employ non-exempt or hourly paid employees in
8 California.

9 22. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
11 and advisors knowledgeable about California labor and wage law, employment and personnel
12 practices, and about the requirements of California law.

13 23. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
14 members were not paid for all hours worked because all hours worked were not recorded.

15 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to receive certain wages for
17 overtime compensation and that they were not receiving certain wages for overtime
18 compensation.

19 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to receive at least minimum
21 wages for compensation and that they were not receiving at least minimum wages for work
22 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
23 and class members were not paid at least minimum wages for work done off-the-clock.

24 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to meal periods in
26 accordance with the California Labor Code and applicable IWC Wage Order or payment of
27 one (1) additional hour of pay at their regular rates of pay when they were not provided with
28 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members

1 were not provided with all meal periods or payment of one (1) additional hour of pay at their
2 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
3 period.

4 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to rest periods in
6 accordance with the California Labor Code and applicable IWC Wage Order or payment of
7 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
8 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
9 and class members were not authorized and permitted to take compliant rest periods, nor did
10 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
11 pay at their regular rates of pay when they were not authorized and permitted to take a
12 compliant rest period.

13 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to receive complete and
15 accurate wage statements in accordance with California law. In violation of the California
16 Labor Code, Plaintiff and class members were not provided complete and accurate wage
17 statements.

18 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that they had a duty to maintain accurate and complete payroll records in
20 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
21 knowingly, and intentionally failed to do so.

22 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to timely payment of all
24 wages earned upon termination of employment. In violation of the California Labor Code,
25 Plaintiff and class members did not receive payment of all wages due, including, but not
26 limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting
27 time pay, within permissible time periods.

28 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to timely payment of wages
2 during their employment. In violation of the California Labor Code, Plaintiff and class
3 members did not receive payment of all wages, including, but not limited to, overtime wages,
4 minimum wages, meal and rest period premiums, and/or reporting time pay, within
5 permissible time periods.

6 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to receive all reporting time
8 pay when Plaintiff and class members were required to report to work but were put to work
9 for less than half of their usual or scheduled shift. In violation of the California Labor Code
10 and applicable IWC Wage Order, Plaintiff and class members were not paid all reporting time
11 pay.

12 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to be paid a split-shift
14 premium when they returned to work for an additional shift in the same day, after having been
15 clocked out for more than an hour. In violation of the California Labor Code and applicable
16 IWC Wage Order, Defendants did not pay Plaintiff and class members all split-shift premiums
17 due.

18 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and/or class members were entitled to suitable seating and/or
20 were entitled to sit when it did not interfere with the performance of their duties and also have
21 seats nearby to use during a lull in tasks that do require moving about or standing. In
22 violation of the California Labor Code and applicable IWC Wage Order, Defendants failed to
23 provide Plaintiff and/or class members with suitable seating.

24 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to receive full
26 reimbursement for all business-related expenses and costs they incurred during the course and
27 scope of their employment and that they did not receive full reimbursement of applicable
28 business-related expenses and costs incurred.

1 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, Defendants knew or should have known that Defendants had a duty to provide
3 Plaintiff and class members with written notice of the material terms of their employment with
4 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

5 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
6 mentioned, Defendants knew or should have known that they had a duty to compensate
7 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
8 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
9 falsely represented to Plaintiff and class members that they were properly denied wages, all in
10 order to increase Defendants' profits.

11 **PAGA REPRESENTATIVE ALLEGATIONS**

12 38. At all times herein set forth, PAGA provides that any provision of law under
13 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
14 assessed and collected by the LWDA for violations of the California Labor Code and
15 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
16 civil action brought on behalf of themselves and other current or former employees pursuant
17 to procedures outlined in California Labor Code section 2699.3.

18 39. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
19 person who was employed by the alleged violator and against whom one or more of the
20 alleged violations was committed."

21 40. Plaintiff and other current and former employees of Defendants are "aggrieved
22 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
23 or former employees and one or more of the alleged violations were committed against them.

24 41. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
25 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
26 following requirements have been met:

- 27 (a) The aggrieved employee or representative shall give written notice by
28 online filing with the LWDA and by certified mail to the employer of

1 the specific provisions of the California Labor Code alleged to have
2 been violated, including the facts and theories to support the alleged
3 violation.

4 (b) An aggrieved employee's notice filed with the LWDA pursuant to
5 2699.3(a) and any employer response to that notice shall be
6 accompanied by a filing fee of seventy-five dollars (\$75).

7 (c) The LWDA shall notify the employer and the aggrieved employee or
8 representative by certified mail that it does not intend to investigate the
9 alleged violation ("LWDA Notice") within sixty (60) calendar days of
10 the postmark date of the aggrieved employee's notice. Upon receipt of
11 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
12 (65) calendar days of the postmark date of the aggrieved employee's
13 notice, the aggrieved employee may commence a civil action pursuant
14 to California Labor Code section 2699 to recover civil penalties.

15 42. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
16 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
17 provision other than those listed in Section 2699.5 after the following requirements have been
18 met:

19 (a) The aggrieved employee or representative shall give written notice by
20 online filing with the LWDA and by certified mail to the employer of
21 the specific provisions of the California Labor Code alleged to have
22 been violated (other than those listed in Section 2699.5), including the
23 facts and theories to support the alleged violation.

24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(c) and any employer response to that notice shall be
26 accompanied by a filing fee of seventy-five dollars (\$75).

27 (c) The employer may cure the alleged violation within thirty-three (33)
28 calendar days of the postmark date of the notice sent by the aggrieved

1 employee or representative. The employer shall give written notice
2 within that period of time by certified mail to the aggrieved employee or
3 representative and by online filing with the LWDA if the alleged
4 violation is cured, including a description of actions taken, and no civil
5 action pursuant to Section 2699 may commence. If the alleged violation
6 is not cured within the 33-day period, the aggrieved employee may
7 commence a civil action pursuant to Section 2699.

8 43. On December 1, 2022, Plaintiff provided written notice by online filing to the
9 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
10 Code alleged to have been violated, including facts and theories to support the alleged
11 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
12 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
13 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
14 Plaintiff PAGA Case Number LWDA-CM-922310-22. A true and correct copy of Plaintiff's
15 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

16 44. As of the filing date of this complaint, over 65 days have passed since Plaintiff
17 sent the notice described above to the LWDA, and the LWDA has not responded that it
18 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

19 45. Thus, Plaintiff has satisfied the administrative prerequisites under California
20 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
21 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
22 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

23 46. Labor Code section 558(a) provides "[a]ny employer or other person acting on
24 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
25 provision regulating hours and days of work in any order of the Industrial Welfare
26 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
27 dollars (\$50) for each underpaid employee for each pay period for which the employee was
28 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each

1 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
2 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
3 to any other civil or criminal penalty provided by law.”

4 47. Defendants, at all times relevant to this complaint, were employers or persons
5 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
6 rights by violating various sections of the California Labor Code as set forth above.

7 48. As set forth below, Defendants have violated numerous provisions of both the
8 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
9 Order.

10 49. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
11 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
12 private attorney general, seeks assessment and collection of civil penalties for himself, all
13 other aggrieved employees, and the State of California against Defendants for violations of
14 California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d),
15 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

16 **CLASS ACTION ALLEGATIONS**

17 50. Plaintiff brings this action on his own behalf, as well as on behalf of each and
18 all other persons similarly situated, and thus seeks class certification under California Code of
19 Civil Procedure section 382.

20 51. All claims alleged herein arise under California law for which Plaintiff seeks
21 relief authorized by California law.

22 52. Plaintiff’s proposed class consists of and is defined as follows:
23 All persons who worked for Defendants as non-exempt, hourly
24 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial (“Class”).

25 53. Plaintiff’s proposed subclass consists of and is defined as follows:
26 All persons who worked for Defendants as non-exempt, hourly
27 paid employees in California and who received at least one wage
28 statement within one (1) year prior to the filing of the initial
complaint until the date of trial (“Subclass”).

1 54. Members of the Class and Subclass are referred to herein as “class members.”

2 55. Plaintiff reserves the right to redefine the Class and Subclass and to add
3 additional subclasses as appropriate based on further investigation, discovery, and specific
4 theories of liability.

5 56. There are common questions of law and fact as to class members that
6 predominate over questions affecting only individual members, including, but not limited to:

- 7 (a) Whether Defendants required Plaintiff and class members to work over
8 eight (8) hours per day, over twelve (12) hours per day, or over forty
9 (40) hours per week and failed to pay all legally required overtime
10 compensation to Plaintiff and class members;
- 11 (b) Whether Defendants failed to pay Plaintiff and class members at least
12 minimum wages for all hours worked;
- 13 (c) Whether Defendants failed to provide Plaintiff and class members with
14 meal periods;
- 15 (d) Whether Defendants failed to authorize and permit Plaintiff and class
16 members to take rest periods;
- 17 (e) Whether Defendants provided Plaintiff and class members with
18 complete and accurate wage statements as required by California Labor
19 Code section 226(a);
- 20 (f) Whether Defendants maintained accurate payroll records as required by
21 California Labor Code section 1174(d);
- 22 (g) Whether Defendants failed to pay earned overtime wages, minimum
23 wages, meal and rest period premiums, and/or reporting time pay due to
24 Plaintiff and class members upon their discharge;
- 25 (h) Whether Defendants failed to timely pay overtime wages, minimum
26 wages, meal and rest period premiums, and/or reporting time pay to
27 Plaintiff and class members during their employment;
- 28 (i) Whether Defendants required Plaintiff and class members to report to

1 work, but failed to provide them with work or provided them with less
2 than half their usual or scheduled day's work, without properly
3 compensating them as required by California Code of Regulations, Title
4 8, section 11050(5);

- 5 (j) Whether Defendants required Plaintiff and class members to return to
6 work for an additional shift in the same day, after having been clocked
7 out for more than an hour, without paying Plaintiff and class members
8 an addition hour of pay at the minimum wage as required by California
9 Code of Regulations, Title 8, section 11050(4)(C);
- 10 (k) Whether Defendants failed to provide Plaintiff and/or class members
11 with suitable seating;
- 12 (l) Whether Defendants failed to reimburse Plaintiff and class members for
13 necessary and required business-related expenditures and/or losses
14 incurred by them in the scope of their employment;
- 15 (m) Whether Defendants failed to provide written notice of information
16 material to Plaintiff's and class members' employment with Defendants;
- 17 (n) Whether Defendants engaged in unlawful and unfair business practices
18 in violation of California Business & Professions Code sections 17200,
19 *et seq.*; and
- 20 (o) The appropriate amount of damages, restitution, or monetary penalties
21 resulting from Defendants' violations of California law.

22 57. There is a well-defined community of interest in the litigation and the class
23 members are readily ascertainable:

- 24 (a) Numerosity: The class members are so numerous that joinder of all
25 members would be unfeasible and impractical. The membership of the
26 entire class is unknown to Plaintiff at this time; however, the class is
27 estimated to be greater than one hundred (100) individuals and the
28 identity of such membership is readily ascertainable by inspection of

Defendants' employment records.

- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- (d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.
- (e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class

actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime (Against all Defendants)

58. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

59. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

60. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

61. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

62. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and class members working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

63. California Labor Code section 510 codifies the right to overtime compensation

1 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
2 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
3 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
4 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
5 in a day on the seventh (7th) day of work.

6 64. During the relevant time period, Defendants willfully failed to pay all overtime
7 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
8 class members were not paid overtime premiums for all of the hours they worked in excess of
9 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
10 hours in a week, because all hours worked were not recorded.

11 65. First, Defendants had, and continue to have, a company-wide policy and/or
12 practice of discouraging and impeding Plaintiff and class members from recording hours
13 worked that were outside their scheduled shifts, in order to limit the amount of overtime
14 employees could accrue. On information and belief, Defendants' policy of discouraging and
15 limiting overtime, coupled with Defendants' practice of assigning heavy workloads and
16 understaffing (*see infra*), led Plaintiff and class members to work off-the-clock before and
17 after their scheduled shift times. For example, Plaintiff and class members were required to
18 travel to grocery stores to pick up ingredients and supplies on their way to work but they were
19 not compensated for their travel time. As a further example, Plaintiff was pressured to clock
20 out at the end of his scheduled shift and continue working to complete tasks such as
21 vacuuming and cleaning tables for up to 20 minutes per instance.

22 66. Moreover, during the relevant time period, Defendants implemented, on a
23 company-wide basis, an employer-imposed requirement that Plaintiff and class members
24 undergo mandatory COVID-19 temperature checks before clocking in for their scheduled
25 shifts. Plaintiff was required to undergo a daily temperature check, before being permitted to
26 clock in for his shift. Even though Defendants required these temperature checks, Defendants
27 did not provide Plaintiff and class members with a mechanism to record this time so they
28 could be compensated for the time spent undergoing mandatory temperature checks. Thus,

1 Defendants failed to track this time spent working before and after scheduled shifts, and failed
2 to fully compensate Plaintiff and class members for this time.

3 67. Second, Defendants had, and continue to have, a company-wide policy and/or
4 practice of understaffing their restaurant locations while assigning heavy workloads.
5 Defendants' policies and/or practices resulted in a failure to provide Plaintiff and class
6 members with adequate meal period coverage, and thus, Plaintiff and class members were not
7 always afforded uninterrupted 30-minute meal periods during shifts when they were entitled
8 to receive a meal period. Defendants also had a practice of failing to adhere to a schedule for
9 meal periods, which has further caused Plaintiff and class members to not be relieved of their
10 duties for complaint meal periods. For example, Plaintiff's meal periods were interrupted by
11 Defendants' managers, requesting that he resume cleaning and clearing tables. On other
12 occasions, Plaintiff missed his meal periods entirely due to the heavy workload. Thus,
13 Plaintiff and class members missed meal periods and/or had meal periods cut short or
14 interrupted in order to complete their assigned workloads. Defendants did not compensate
15 Plaintiff and class members for the time they spent working off the clock during meal periods.

16 68. Third, on information and belief, because Defendants frown upon employees
17 accruing meal period penalties, Defendants' management pressured Plaintiff and class
18 members to clock out for meal periods and/or adjusted their time records to reflect compliant
19 meal periods, even when they did not receive a compliant meal period. In addition,
20 Defendants' company-wide timekeeping system prevented Plaintiff and class members from
21 recording all hours worked when their meal periods were shortened or interrupted, because the
22 system locked out Plaintiff and class members once they clock out for a meal period, and did
23 not permit them to clock back in from a meal period before 30 minutes elapsed. Thus,
24 Defendants did not record all hours worked during meal periods and Plaintiff and class
25 members performed work during meal periods for which they were not paid.

26 69. Defendants knew or should have known that as a result of these company-wide
27 practices and/or policies, Plaintiff and class members were performing assigned duties off-the-
28 clock before and after their shifts and during meal periods, and were suffered or permitted to

1 perform work for which they were not paid. Because Plaintiff and class members sometimes
2 worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of
3 this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class
4 members were not paid overtime wages for all of the overtime hours they actually worked.

5 70. Defendants' failure to pay Plaintiff and class members the balance of overtime
6 compensation, as required by California law, violates the provisions of California Labor Code
7 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
8 members are entitled to recover from Defendants their unpaid overtime compensation, as well
9 as interest, costs, and attorneys' fees.

10 **SECOND CAUSE OF ACTION**

11 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 12 **Minimum Wages** 13 **(Against all Defendants)**

14 71. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
15 and every allegation set forth above.

16 72. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
17 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
18 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
19 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the
20 time during which an employee is subject to the control of an employer, and includes all the
21 time the employee is suffered or permitted to work, whether or not required to do so." Cal.
22 Code Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

23 73. As stated, during the relevant time period, Defendants had a company-wide
24 policy and/or practice requiring Plaintiff and class members to perform various work-related
25 tasks while off-the-clock before and after their shifts, including traveling to grocery stores to
26 pick up ingredients and supplies, performing additional job duties such as vacuuming and
27 cleaning tables, and undergoing mandatory COVID-19 temperature checks.

28 74. Moreover, as set forth above, due to Defendants' policies and/or practices of

1 understaffing their restaurant locations while assigning heavy workloads and failing to adhere
2 to a schedule for meal periods, Plaintiff and class members have been impeded from taking all
3 uninterrupted meal periods to which they are entitled and have been required to work off-the-
4 clock during meal periods. Moreover, as stated, in order to prevent employees from accruing
5 meal period penalties, upon information and belief, Defendants' management has pressured
6 employees to clock out for meal periods even when meal periods were missed, short, and/or
7 interrupted and/or adjusted their time records to reflect compliant meal periods. In addition,
8 Defendants' company-wide timekeeping system has prevented Plaintiff and class members
9 from entering time worked during meal periods because the system locks out Plaintiff and
10 class members for a full 30-minutes. Thus, Defendants systematically have failed to pay
11 Plaintiff and class members for actual hours worked during unpaid meal periods because these
12 hours were not correctly recorded.

13 75. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
14 and class members. To the extent that these off-the-clock hours did not qualify for overtime
15 premium payment, Defendants did not pay at least minimum wages for those hours worked
16 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
17 1198.

18 76. As result, Defendants regularly failed to pay at least minimum wages to
19 Plaintiff and class members for all of the hours they worked in violation of California Labor
20 Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code
21 section 1194.2, Plaintiff and class members are entitled to recover from Defendants liquidated
22 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

23 **THIRD CAUSE OF ACTION**

24 **Violations of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period** 25 **Violations** 26 **(Against all Defendants)**

27 77. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 78. At all relevant times herein set forth, California Labor Code section 512(a)
2 provides that an employer may not require, cause, or permit an employee to work for a period
3 of more than five (5) hours per day without providing the employee with a meal period of not
4 less than thirty (30) minutes, except that if the total work period per day of the employee is
5 not more than six (6) hours, the meal period may be waived by mutual consent of both the
6 employer and the employee. Under California law, first meal periods must start after no more
7 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

8 79. At all relevant times herein set forth, California Labor Code sections 226.7,
9 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
10 meal period mandated by an applicable order of the IWC.

11 80. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
12 the applicable IWC Wage Order also require employers to provide a second meal period of
13 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
14 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
15 hours worked is no more than twelve (12) hours, the second meal period may be waived by
16 mutual consent of the employer and the employee only if the first meal period was not waived.

17 81. First, during the relevant time period, as set forth above, Defendants had, and
18 continue to have, company-wide policies and/or practices of understaffing their restaurant
19 locations which, combined with heavy workloads and a failure to adhere to a schedule for
20 meal periods, resulted in a lack of meal period coverage and prevented Plaintiff and class
21 members from taking all timely, uninterrupted meal periods to which they were entitled.

22 82. As a result, Plaintiff and class members have had to work through all or part of
23 their meal periods, had their meal periods interrupted, and/or had to wait extended periods of
24 time before taking meal periods. For example, Plaintiff missed his meal periods entirely or
25 took his meal periods late, after having worked in excess of five (5) hours into his shift, in
26 order to meet the restaurant's customer demand. Moreover, Plaintiff's meal periods were
27 interrupted by Defendants' supervisors asking him to complete a task, such as clearing a table,
28 after he had already clocked out for his meal period.

1 83. Second, as set forth above, because Defendants frown upon employees accruing
2 meal period penalties, Defendants' management has pressured employees to clock out for
3 meal periods to reflect compliant meal periods, and/or adjusted their time records to reflect
4 compliant meal periods. In addition, Defendants' company-wide timekeeping system
5 prevented Plaintiff and class members from entering time worked during meal periods because
6 the system locks out Plaintiff and class members for a full 30-minutes.

7 84. Third, Defendants did not provide Plaintiff and class members with second 30-
8 minute meal periods on days that they worked in excess of 10 hours in one day. For example,
9 during the relevant time period, Plaintiff worked shifts in excess of 10 hours and did not take a
10 second meal period. Plaintiff and class members did not sign valid meal period waivers on
11 days that they were entitled to meal periods and were not relieved of all duties.

12 85. Moreover, Defendants had a company-wide policy of requiring all newly hired
13 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
14 the position that non-exempt, hourly paid employees had waived their rights to first and/or
15 second meal periods for the entirety of their employment and, on that basis, did not provide
16 them with all meal periods to which they were entitled. Moreover, Defendants' meal period
17 waiver form requires employees provide written notice should they wish to revoke the waiver.
18 Defendants' presumption that meal periods would not be provided for shifts in excess of five
19 (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than
20 twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and
21 imposition on employees to revoke the waivers in writing, discouraged and impeded Plaintiff
22 and class members from taking all meal periods to which they were entitled.

23 86. Furthermore, an employer's obligation to provide a meal period is only
24 "triggered" when the employer "employs an employee for a work period of more than five
25 hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits
26 anyone to work for a full five hours, its meal break obligation is triggered.").

27 [A]fter the meal break obligation is triggered . . . an employer is put to a
28 choice: it must (1) afford an off-duty meal period; (2) consent to a
mutually agreed-upon waiver if one hour or less will end the shift; or (3)

1 obtain written agreement to an on-duty meal period if circumstances
2 permit. Failure to do one of these will render the employer liable for
premium pay.

3 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
4 required Plaintiff and class members to sign meal period waivers simultaneously at or near
5 their time of hire (as opposed to on a specific work day) renders them invalid and
6 unenforceable, because Defendants' obligation to provide Plaintiff and class members with
7 meal periods did not arise until they had employed them for a full five (5) hours.

8 87. At all times herein mentioned, Defendants knew or should have known that, as
9 a result of these policies, Plaintiff and class members were prevented from being relieved of
10 all duties and required to perform some of their assigned duties during meal periods.
11 Defendants further knew or should have known that they did not pay Plaintiff and class
12 members all meal period premiums when meal periods were late, interrupted, shortened,
13 and/or missed.

14 88. Furthermore, Defendants engaged in a company-wide practice and/or policy of
15 not paying all meal period premiums owed when compliant meal periods were not provided.
16 Because of this practice and/or policy, Plaintiff and class members have not received all
17 premium pay for missed, late, and interrupted meal periods. As a result, Defendants failed to
18 provide Plaintiff and class members compliant meal periods in violation of California Labor
19 Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

20 89. Defendants' conduct violates the applicable IWC Wage Order, and California
21 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
22 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
23 rate of compensation for each work day that the meal period was not provided.

24 **FOURTH CAUSE OF ACTION**

25 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 26 **(Against all Defendants)**

27 90. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 91. At all relevant times herein set forth, the applicable IWC Wage Order and
2 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
3 members' employment by Defendants.

4 92. At all relevant times, the applicable IWC Wage Order provides that "[e]very
5 employer shall authorize and permit all employees to take rest periods, which insofar as
6 practicable shall be in the middle of each work period" and that the "rest period time shall be
7 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
8 hours or major fraction thereof" unless the total daily work time is less than three and one-half
9 (3 ½) hours.

10 93. At all relevant times, California Labor Code section 226.7 provides that no
11 employer shall require an employee to work during any rest period mandated by an applicable
12 order of the California IWC. To comply with its obligation to authorize and permit rest
13 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
14 employer must "relinquish any control over how employees spend their break time, and
15 relieve their employees of all duties—including the obligation that an employee remain on
16 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
17 *Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California
18 Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from
19 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
20 required rest period was not authorized and permitted.

21 94. During the relevant time period, Defendants regularly failed to authorize and
22 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
23 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
24 practices of understaffing and assignment of heavy workloads prevented Plaintiff and class
25 members from being relieved of all duty to take their rest periods. Defendants also failed to
26 schedule rest periods, which, coupled with Defendants' failure to provide adequate rest period
27 coverage, further led to Plaintiff and class members not being authorized and permitted to take
28 rest periods.

1 95. Furthermore, upon information and belief, during the relevant time period,
2 Defendants maintained and implemented a company-wide on-premises rest period policy,
3 which mandated that Plaintiff and class members remain on the work premises during their
4 rest periods. Because Plaintiff and class members were restricted from leaving the premises
5 during rest periods, they were denied the ability to use their rest periods freely for their own
6 purposes, such as running personal errands. Thus, Defendants effectively maintained control
7 over Plaintiff and class members during rest periods.

8 96. As a result of Defendants' practices and policies, Plaintiff and class members
9 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
10 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
11 Plaintiff missed his rest period three (3) times per week to complete work assignments.
12 Plaintiff's rest periods were also interrupted by supervisors requiring him to return to work
13 once per week.

14 97. Defendants have also engaged in a systematic, company-wide practice and/or
15 policy of not paying rest period premiums owed when rest periods are not authorized and
16 permitted. Because of this practice and/or policy, Plaintiff and class members have not
17 received premium pay for all missed rest periods. As a result, Defendants denied Plaintiff and
18 class members rest periods and failed to pay them rest period premiums due, in violation of
19 Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

20 98. Defendants' conduct violates the applicable IWC Wage Order and California
21 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
22 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
23 compensation for each work day that a compliant rest period was not authorized and
24 permitted.

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1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
3 **Statements and Failure to Maintain Accurate Payroll Records**
4 **(Against all Defendants)**

5 99. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 100. At all relevant times herein set forth, California Labor Code section 226(a)
8 provides that every employer shall furnish each of his or her employees an accurate and
9 complete itemized wage statement in writing, including, but not limited to, the inclusive dates
10 of the pay period, total hours worked, and all applicable rates of pay.

11 101. At all relevant times, Defendants have knowingly and intentionally provided
12 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
13 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
14 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
15 applicable hourly rates in effect during the pay period, including rates of pay for overtime
16 wages, and the corresponding number of hours worked at each hourly rate. Specifically,
17 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

18 102. Because Defendants did not record the time Plaintiff and Subclass members
19 spent working off the clock and deducted time from their records for meal periods that were
20 interrupted and/or missed (and therefore time for which they should have been paid),
21 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff
22 and Subclass members in compliance with section 226(a)(1) and section 226(a)(5). For the
23 same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff
24 and Subclass members in violation of section 226(a)(2), and failed to list the applicable hourly
25 rates of pay in effect during the pay period and corresponding accurate number of work hours
26 worked at each hourly rate in violation of section 226(a)(9).

27 103. The wage statement deficiencies also include, without limitation, failing to list
28 the number of piece-rate units earned and any applicable piece rate if the employee is paid on

1 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
2 for which employees were paid; failing to list the name of the employee and only the last four
3 digits of his or her social security number or an employee identification number other than a
4 social security number; failing to list the name and address of the legal entity that is the
5 employer, and/or failing to state all hours worked as a result of not recording or stating hours
6 worked off-the-clock.

7 104. California Labor Code section 1174(d) provides that “[e]very person employing
8 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
9 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
10 plants or establishments at which employees are employed, payroll records showing the hours
11 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
12 applicable piece rate paid to, employees employed at the respective plants or
13 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
14 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
15 members showing the daily hours they worked and the wages paid thereto as a result of failing
16 to record the off-the-clock hours that they worked.

17 105. California Labor Code section 1198 provides that the maximum hours of work
18 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
19 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
20 employment of any employees for longer hours than those fixed by the order or under
21 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
22 Wage Order, employers are required to keep accurate time records showing when the
23 employee begins and ends each work period and meal period. During the relevant time
24 period, Defendants engaged in company-wide practices and/or policies of failing to record
25 actual hours worked, and thereby failed to keep accurate records of work period and meal
26 period start and stop times for Plaintiff and Subclass members, in violation of section 1198.
27 Furthermore, in light of Defendants’ failure to provide Plaintiff and Subclass members with
28 second 30-minute meal periods to which they were entitled, Defendants kept no records of

meal start and end times for second meal periods.

106. Plaintiff and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

SIXTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination (Against all Defendants)

107. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

108. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

109. On information and belief, Defendants have a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Plaintiff provided more than seventy-two (72) hours previous notice of his intention to quit, stating his last date of work would be on or around December 19, 2021. However, Defendants did not provide him with a final paycheck until one week later. Thus, Defendants failed to pay Plaintiff his final wages at the time of quitting, in violation of California Labor Code section 202.

110. Additionally, Defendants willfully failed to pay Plaintiff and those class members who are no longer employed by Defendants the earned and unpaid wages set forth

1 above, including but not limited to, overtime wages, minimum wages, meal and rest period
2 premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two
3 (72) hours of their leaving Defendants' employ.

4 111. Defendants' failure to pay Plaintiff and class members who are no longer
5 employed by Defendants their wages earned and unpaid at the time of discharge, or within
6 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
7 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
8 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
9 thirty (30) day maximum pursuant to California Labor Code section 203.

10 SEVENTH CAUSE OF ACTION

11 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 12 **Employment** 13 **(Against all Defendants)**

14 112. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
15 and every allegation set forth above.

16 113. This cause of action is dependent upon, and wholly derivative of, the overtime
17 wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were
18 not timely paid to Plaintiff and class members during their employment.

19 114. At all times relevant herein set forth, Labor Code section 204 provides that all
20 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
21 days, inclusive, of any calendar month, other than those wages due upon termination of an
22 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
23 the month during which the labor was performed. Labor Code section 204 further provides
24 that all wages earned by any person in any employment between the sixteenth (16th) and the
25 last day, inclusive, of any calendar month, other than those wages due upon termination of an
26 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
27 month.

28 115. At all times relevant herein, Labor Code section 204 provides that all wages

1 earned for labor in excess of the normal work period shall be paid no later than the payday for
2 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
3 204 provides that the requirements of this section are deemed satisfied by the payment of
4 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
5 seven (7) calendar days following the close of the payroll period.

6 116. During the relevant time period, Defendants willfully failed to pay Plaintiff and
7 class members all wages due including, but not limited to, overtime wages, minimum wages,
8 meal and rest period premiums, and/or reporting time pay, within the time periods specified
9 by California Labor Code section 204.

10 117. Defendants' failure to timely pay Plaintiff and class members all wages due
11 violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover
12 from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

13 **EIGHTH CAUSE OF ACTION**

14 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section** 15 **11050 Subdivision 5(A)—Failure to Provide Reporting Time Pay** 16 **(Against all Defendants)**

17 118. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
18 and every allegation set forth above.

19 119. California Labor Code section 1198 dictates that no employer may employ an
20 employee under conditions of labor that are prohibited by the applicable IWC wage order.
21 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
22 fixed by the commission shall be the . . . standard conditions of labor for employees. The
23 employment of any employee . . . under conditions of labor prohibited by the order is
24 unlawful.”

25 120. The applicable IWC Wage Order, California Code of Regulations, Title 8,
26 section 11050(5)(A), provides that “[e]ach workday an employee is required to report for
27 work and does report, but is not put to work or is furnished less than half said employee’s
28 usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled

1 day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the
2 employee's regular rate of pay, which shall not be less than the minimum wage." The
3 "primary purpose of the reporting time regulation" is "to guarantee at least partial
4 compensation for employees who report to work expecting to work a specified number of
5 hours, and who are deprived of that amount because of inadequate scheduling or lack of
6 proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

7 121. During the relevant time period, Defendants violated California Labor Code
8 section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because
9 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
10 work for their usual or scheduled shift but were put to work for less than half of their usual or
11 scheduled day's work.

12 122. Defendants had a company-wide practice of sending Plaintiff and class
13 members home early from their shifts, including before they had worked at least half of their
14 usual or scheduled shift, but would not pay Plaintiff and class members for half of their
15 scheduled shift. For example, three (3) times per year, Defendants' managers sent Plaintiff
16 home before half of his scheduled shift was over, but on information and belief, Plaintiff was
17 only paid for the time he had worked. Although Plaintiff and class members reported to work
18 based on the schedule that was provided to them, Defendants would send them home before
19 they worked at least half of their usual or scheduled shifts. When this occurred, Defendants
20 did not pay Plaintiff and class members for at least half of their scheduled day's work or the
21 minimum reporting time pay.

22 123. Accordingly, Plaintiff and class members were not properly compensated with
23 reporting time pay in violation of California Labor Code section 1198 and California Code of
24 Regulations, Title 8, section 11050(5)(A). Plaintiff and class members are therefore entitled
25 to recover from Defendants unpaid wages and interest.

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1 **NINTH CAUSE OF ACTION**

2 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**
3 **(Against all Defendants)**

4 124. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 125. At all times herein set forth, California Labor Code section 2802 provides that
7 an employer must reimburse employees for all necessary expenditures and losses incurred by
8 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
9 to prevent employers from passing off their cost of doing business and operating expenses on
10 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
11 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen
12 tools or equipment are required by the employer or are necessary to the performance of a job,
13 such tools and equipment shall be provided and maintained by the employer, except that an
14 employee whose wages are at least two (2) times the minimum wage provided herein may be
15 required to provide and maintain hand tools and equipment customarily required by the trade
16 or craft.”

17 126. During the relevant time period, Defendants, had a company-wide policy of
18 requiring Plaintiff and class members to utilize their own personal vehicles to carry out
19 company business, but failed to reimburse them for all costs of travel, including mileage. For
20 example, Plaintiff was required to use his personal vehicle and drive to pick up supplies such
21 as bread, lemons, and drinks from grocery stores on his way to work. Although Defendants
22 required Plaintiff and class members to use their own personal vehicles to complete their
23 work-related duties, Defendants did not reimburse them for their travel expenses.

24 127. Defendants could have provided Plaintiff and class members with the actual
25 equipment for use on the job, such as company vehicles; or Defendants could have reimbursed
26 employees for their travel and mileage. Instead, Defendants passed these operating costs off
27 onto Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two (2)
28 times the minimum wage.

128. Defendants' company-wide policy and/or practice of passing on their operating costs to Plaintiff and class members violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and other class members for necessary business-related expenses and costs.

129. Plaintiff and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

TENTH CAUSE OF ACTION

For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

130. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

131. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

132. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other aggrieved employees with all required overtime pay, as alleged herein;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;

- 1 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
2 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
3 and other aggrieved employees with meal periods, as alleged herein;
- 4 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
5 applicable IWC Wage Order for Defendants' failure to authorize and
6 permit Plaintiff and other aggrieved employees to take rest periods, as
7 alleged herein;
- 8 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
9 IWC Wage Order for failure to provide accurate and complete wage
10 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 11 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
12 IWC Wage Order for failure to maintain payroll records, as alleged
13 herein;
- 14 (g) Violation of Labor Code sections 201 and 202 for failure to pay all
15 earned wages upon termination, as alleged herein;
- 16 (h) Violation of Labor Code section 204 for failure to pay all earned wages
17 during employment, as alleged herein;
- 18 (i) Violation of Labor Code section 1198 and the applicable IWC Wage
19 Order for failing to pay reporting time pay to Plaintiff and other
20 aggrieved employees, as alleged herein;
- 21 (j) Violation of Labor Code section 1198 and the applicable IWC Wage
22 Order for failure to pay split-shift premiums when Plaintiff and other
23 aggrieved employees returned to work for an additional shift in the same
24 day, after having been clocked out for more than an hour, as set forth
25 below;
- 26 (k) Violation of Labor Code section 1198 and the applicable IWC Wage
27 Order for failure to provide suitable seating, as set forth below;
- 28 (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff

1 and other aggrieved employees for all business expenses necessarily
2 incurred, as alleged herein; and

3 (m) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
4 provide written notice of information material to Plaintiff's and other
5 aggrieved employees' employment with Defendants, as set forth below.

6 133. At all relevant times herein, California Labor Code section 1198 makes it
7 illegal to employ an employee under conditions of labor that are prohibited by the applicable
8 wage order. California Labor Code section 1198 requires that ". . . the standard conditions of
9 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
10 The employment of any employee . . . under conditions of labor prohibited by the order is
11 unlawful."

12 134. At all relevant times herein, California Code of Regulations, Title 8, section
13 11050(4)(C) provides that, "When an employee works a split shift, one (1) hour's pay at the
14 minimum wage shall be paid in addition to the minimum wage for that workday, except when
15 the employee resides at the place of employment." California Code of Regulations, Title 8,
16 defines a split shift as "a work schedule, which is interrupted by non-paid non-working
17 periods established by the employer, other than bona fide rest or meal periods."

18 135. Defendants willfully violated California Labor Code section 1198 and
19 California Code of Regulations, Title 8, section 11050(4)(C), because Defendants failed to
20 pay Plaintiff and other aggrieved employees a split-shift premium when they returned to work
21 for an additional shift in the same day, after having been clocked out for several hours. For
22 example, on several instances, Plaintiff was required to work from 9:00 a.m. to about 3:00
23 p.m., then told to clock out before returning to work for the dinner shift around 5:00 p.m. the
24 same day. When this occurred, Defendants did not always pay Plaintiff and other aggrieved
25 employees an additional hour at minimum wage. Accordingly, Defendants required Plaintiff
26 and other aggrieved employees to work split shifts but failed to pay them an additional hour at
27 minimum wage, in violation of California Labor Code section 1198.

28 136. Defendants' failure to provide Plaintiff and other aggrieved employees with

1 split-shift pay when they returned to work for an additional shift in the same day, after having
2 been clocked out for more than an hour, violates California Labor Code section 1198 and
3 California Code of Regulations Title 8, Section 11050(4)(C). Plaintiff and other aggrieved
4 employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
5 2699(a), (f), and (g).

6 137. California Code of Regulations, Title 8, section 11050(14)(A) provides that
7 “[a]ll working employees shall be provided with suitable seats when the nature of the work
8 reasonably permits the use of seats.”

9 138. Defendants’ restaurants are generally similar in their layout and design and
10 there was, and continues to be, space behind host stands to allow for the presence and use of a
11 seat or stool by other aggrieved employees (with reasonable or no modification to these work
12 areas) during the performance of their work duties. Defendants could have provided other
13 aggrieved employees with a seat or stool at their host stands, but instead denied employees
14 seating and forced other aggrieved employees to stand throughout the day.

15 139. Other aggrieved employees spent a substantial portion of their day behind or at
16 these host stands. The nature of the work of an employee performing host duties at host
17 stands can reasonably be accomplished from a seated position. However, as set forth herein,
18 Defendants systematically, and on a company-wide basis, do not provide seats or stools at or
19 near the host stands, forcing other aggrieved employees to stand throughout their work shifts.

20 140. Defendants violated California Labor Code section 1198 and California Code
21 of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not
22 allowed to sit, even when the nature of their work would reasonably permit the use of seats,
23 nor were they provided with suitable seats. Defendants’ management did not inform other
24 aggrieved employees that they were allowed to sit down, provide any means for them to sit
25 down, or mention any policy regarding sitting.

26 141. As a result of Defendants’ company-wide policy and/or practice of prohibiting
27 employees from sitting during their shifts and company-wide failure to provide suitable
28 seating, other aggrieved employees were forced to stand during shifts and denied seats.

1 Defendants' failure to provide suitable seating to other aggrieved employees violates
2 California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(A).
3 Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor
4 Code sections 2699(a), (f), and (g).

5 142. California Code of Regulations, Title 8, section 11050(14)(B) provides that
6 "[w]hen employees are not engaged in the active duties of their employment and the nature of
7 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
8 proximity to the work area and employees shall be permitted to use such seats when it does
9 not interfere with the performance of their duties."

10 143. During the relevant time period, Defendants violated California Labor Code
11 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because other
12 aggrieved employees were not allowed to sit, even during lulls in their work duties, nor were
13 they provided with suitable seats in reasonable proximity to their work areas.

14 144. Defendants' California restaurants are generally similar in their layout and
15 design and there was, and continues to be, space near their work areas (with reasonable or no
16 modification to these work areas) to allow for the presence and use of a seat or stool by other
17 aggrieved employees during lulls in operation. Defendants could have provided other
18 aggrieved employees with a seat or stool in their work areas, but instead denied, and continue
19 to deny, employees seating, forcing them to stand throughout the day.

20 145. Defendants did not provide other aggrieved employees with seats or stools in
21 reasonable proximity to their work areas to allow them to use seats when it would not interfere
22 with the performance of their duties for times when they were not engaged in active duties
23 that require standing. In other words, to the extent other aggrieved employees engaged in
24 duties in which the nature of the work required standing, Defendants denied them the use of
25 seats nearby during lulls in their work duties. Moreover, Defendants did not inform other
26 aggrieved employees of their rights to a seat or stool under California law.

27 146. As a result of Defendants' company-wide policy and/or practice of prohibiting
28 employees from sitting at any time, even when they were not engaged in active duties

1 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
2 work areas, other aggrieved employees were forced to stand during shifts and denied seats.
3 Defendants' failure to provide suitable seating to other aggrieved employees violates
4 California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).
5 Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor
6 Code sections 2699(a), (f), and (g).

7 147. At all relevant times herein, California's Wage Theft Prevention Act was
8 enacted to ensure that employers provide employees with basic information material to their
9 employment relationship at the time of hiring, and to ensure that employees are given written
10 and timely notice of any changes to basic information material to their employment. Codified
11 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
12 time of hiring, an employer must provide written notice to employees containing basic and
13 material payroll information, including, among other things, the rate(s) of pay and basis
14 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
15 including any rates for overtime, the regular payday designated by the employer, and any
16 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
17 Code § 2810.5(a)(1)(A)-(C).

18 148. At all relevant times, on information and belief, Defendants failed, on a
19 company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that
20 lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
21 Defendants' failure to provide Plaintiff and other aggrieved employees with written notice of
22 basic information regarding their employment with Defendants is in violation of Labor Code
23 section 2810.5. Plaintiff and other aggrieved employees are therefore entitled to recover civil
24 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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1 **ELEVENTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

5 149. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 150. Defendants are “persons” as defined by California Business & Professions
8 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
9 and/or associations.

10 151. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
12 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
13 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
14 meaning of Code of Civil Procedure section 1021.5.

15 152. Defendants’ activities, as alleged herein, are violations of California law, and
16 constitute unlawful business acts and practices in violation of California Business &
17 Professions Code sections 17200, *et seq.*

18 153. A violation of California Business & Professions Code sections 17200, *et seq.*
19 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
20 policies and practices have violated state law in at least the following respects:

- 21 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
22 class members, to work overtime without paying them proper
23 compensation in violation of California Labor Code sections 510 and
24 1198, and the applicable IWC Wage Order, as alleged herein;
- 25 (b) Failing to pay at least minimum wage to Plaintiff and class members in
26 violation of California Labor Code sections 1182.12, 1194, 1197,
27 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
28 herein;

- 1 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
2 members in violation of California Labor Code sections 226.7, 512(a),
3 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 4 (d) Failing to authorize and permit Plaintiff and class members to take
5 uninterrupted rest periods in violation of California Labor Code sections
6 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged
7 herein;
- 8 (e) Failing to provide Plaintiff and class members with accurate wage
9 statements and failing to maintain accurate payroll records in violation
10 of California Labor Code sections 226(a), 1174(d), and 1198, and the
11 applicable IWC Wage Order, as alleged herein;
- 12 (f) Failing to timely pay all earned wages to Plaintiff and class members in
13 violation of California Labor Code section 204, as alleged herein;
- 14 (g) Failing to pay reporting time pay in violation of California Labor Code
15 section 1198 and the applicable IWC Wage Order, as alleged herein;
- 16 (h) Failing to pay Plaintiff and class members a split-shift premium wage of
17 an additional hour of pay at the minimum wage, when they returned to
18 work for an additional shift in the same day, after having been clocked
19 out for more than an hour, in violation of California Labor Code section
20 1198 and the applicable IWC Wage Order, as set forth below;
- 21 (i) Failing to reimburse Plaintiff and class members for all business
22 expenses necessarily incurred in violation of California Labor Code
23 sections 2802, as alleged herein; and
- 24 (j) Failing to provide written notice of information material to Plaintiff's
25 and class members' employment with Defendants in violation of
26 California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

27 154. At all times relevant herein, Labor Code section 1198 provides that no
28 employer may employ an employee under conditions of labor that are prohibited by the

1 applicable IWC Wage Order. California Code of Regulations, Title 8, section 11050(4)(C)
2 provides that, “When an employee works a split shift, one (1) hour’s pay at the minimum
3 wage shall be paid in addition to the minimum wage for that workday, except when the
4 employee resides at the place of employment.” Plaintiff and class members did not reside at
5 Defendants’ locations. California Code of Regulations, Title 8, defines a split shift as “a work
6 schedule, which is interrupted by non-paid non-working periods established by the employer,
7 other than bona fide rest or meal periods.”

8 155. Defendants violated California Labor Code section 1198 and California Code
9 of Regulations, Title 8, section 11050(4)(C), because Defendants failed to pay Plaintiff and
10 class members a split-shift premium when they returned to work for an additional shift in the
11 same day, after having been clocked out for more than several hours. For example, on several
12 instances, Plaintiff was required to work from 9:00 a.m. to about 3:00 p.m., then told to clock
13 out before returning to work for the dinner shift around 5:00 p.m. the same day. When this
14 occurred, Defendants did not always pay Plaintiff an additional hour at minimum wage.

15 156. Accordingly, Defendants required Plaintiff and class members to work split
16 shifts but failed to pay them the split-shift premium wage in violation of California Labor
17 Code section 1198. Defendants’ failure to compensate Plaintiff and class members with split-
18 shift pay when they returned to work for an additional shift in the same day, after having been
19 clocked out for more than an hour, violates California Labor Code section 1198 and California
20 Code of Regulations Title 8, Section 11050(4)(C).

21 157. At all relevant times herein, California’s Wage Theft Prevention Act was
22 enacted to ensure that employers provide employees with basic information material to their
23 employment relationship at the time of hiring, and to ensure that employees are given written
24 and timely notice of any changes to basic information material to their employment. Codified
25 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
26 time of hiring, an employer must provide written notice to employees containing basic and
27 material payroll information, including, among other things, the rate(s) of pay and basis
28 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,

1 including any rates for overtime, the regular payday designated by the employer, and any
2 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
3 Code § 2810.5(a)(1)(A)-(C).

4 158. At all relevant times, on information and belief, Defendants failed, on a
5 company-wide basis, to provide written notice to Plaintiff and class members that lists the
6 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
7 to provide Plaintiff and class members with written notice of basic information regarding their
8 employment with Defendants is in violation of California Labor Code section 2810.5.

9 159. As a result of the violations of California law herein described, Defendants
10 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
11 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
12 herein.

13 160. Pursuant to California Business & Professions Code sections 17200, et seq.,
14 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
15 Defendants during a period that commences four years prior to the filing of this complaint; a
16 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
17 class members; and an award of attorneys' fees pursuant to California Code of Civil
18 Procedure section 1021.5 and other applicable laws; and an award of costs.

19 **TWELFTH CAUSE OF ACTION**

20 **Violation of California Business & Professions Code §§ 17200, et seq. –**

21 **Unfair Business Practices**

22 **(Against all Defendants)**

23 161. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 162. Defendants are "persons" as defined by California Business & Professions
26 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
27 and/or associations.

28 163. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,

1 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
2 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff
3 seeks to enforce important rights affecting the public interest within the meaning of Code of
4 Civil Procedure section 1021.5.

5 164. Defendants' activities, namely Defendants' company-wide practice and/or
6 policy of not paying Plaintiff and class members all meal and rest period premiums due to
7 them under California Labor Code section 226.7, deprived Plaintiff and class members of the
8 compensation guarantee and enhanced enforcement implemented by section 226.7. The
9 statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to
10 compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v.*
11 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
12 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
13 and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
14 unfair business practice in violation of California Business & Professions Code sections
15 17200, *et seq.* (*Id.*)

16 165. A violation of California Business & Professions Code sections 17200, *et seq.*
17 may be predicated on any unfair business practice. In the instant case, Defendants' policies
18 and practices have violated the spirit of California's meal and rest period laws and constitute
19 acts against the public policy behind these laws.

20 166. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
21 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
22 benefits implemented by California Labor Code section 226.7 withheld and retained by
23 Defendants during a period that commences four years prior to the filing of this complaint; a
24 permanent injunction requiring Defendants to pay all statutory benefits implemented by
25 California Labor Code section 226.7 due to Plaintiff and class members; an award of
26 attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other
27 applicable laws; and an award of costs.

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11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

15. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order by willfully

1 failing to authorize and permit Plaintiff and class members to take all rest periods;

2 24. That the Court make an award to the Plaintiff and class members of one (1) hour
3 of pay at each employee's regular rate of pay for each workday that a rest period was not
4 authorized and permitted;

5 25. For all actual, consequential, and incidental losses and damages, according to
6 proof;

7 26. For premiums pursuant to California Labor Code section 226.7(c);

8 27. For pre-judgment interest on any unpaid rest period premiums from the date
9 such amounts were due, or as otherwise provided by law;

10 28. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

12 29. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **As to the Fifth Cause of Action**

15 30. That the Court declare, adjudge and decree that Defendants violated the
16 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
17 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate
18 itemized wage statements thereto;

19 31. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 32. For injunctive relief pursuant to California Labor Code section 226(h);

22 33. For statutory penalties pursuant to California Labor Code section 226(e);

23 34. For attorneys' fees and costs pursuant to California Labor Code section
24 226(e)(1); and

25 35. For such other and further relief as the Court may deem equitable and
26 appropriate.

27 **As to the Sixth Cause of Action**

28 36. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
2 meal and rest period premiums, and/or reporting time pay owed at the time of termination of
3 the employment of Plaintiff and other terminated class members;

4 37. For all actual, consequential and incidental losses and damages, according to
5 proof;

6 38. For waiting time penalties according to proof pursuant to California Labor
7 Code section 203 for all employees who have left Defendants' employ;

8 39. For pre-judgment interest on any unpaid wages from the date such amounts
9 were due, or as otherwise provided by law;

10 40. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

12 41. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **As to the Seventh Cause of Action**

15 42. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
17 overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay
18 during their employment;

19 43. For all actual, consequential and incidental losses and damages, according to
20 proof;

21 44. For statutory penalties according to proof pursuant to California Labor Code
22 section 210;

23 45. For pre-judgment interest on any unpaid wages from the date such amounts
24 were due, or as otherwise provided by law;

25 46. For attorneys' fees pursuant to California Code of Civil Procedure section
26 1021.5, or as otherwise provided by law; and

27 47. For such other and further relief as the Court may deem equitable and
28 appropriate.

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As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A) by failing to provide Plaintiff and class members with reporting time pay;
49. For all actual, consequential and incidental losses and damages, according to proof;
50. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law; and
51. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

52. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;
53. For unpaid business-related expenses and such general and special damages as may be appropriate;
54. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;
55. For all actual, consequential, and incidental losses and damages, according to proof;
56. For attorneys’ fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and
57. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

58. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and

1 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
2 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
3 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
4 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
5 earned wages upon termination); 204 (by failing to timely pay all earned wages during
6 employment); 1198 and the applicable IWC Wage Order (by failing to provide reporting time
7 pay); 1198 and the applicable IWC Wage Order (by failing to pay split-shift premiums); 1198
8 and the applicable IWC Wage Order (by failing to provide suitable seating); 2802 (by failing
9 to reimburse business expenses); and 2810.5 (by failing to provide notice of material terms of
10 employment);

11 59. For civil penalties pursuant to the California Labor Code, including sections
12 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code
13 sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1,
14 1198, 2802, and 2810.5;

15 60. For attorneys' fees and costs pursuant to California Labor Code section
16 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
17 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
18 1197, 1197.1, 1198, 2802, and 2810.5;

19 61. For pre-judgment and post-judgment interest as provided by law; and

20 62. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Eleventh Cause of Action**

23 63. That the Court declare, adjudge and decree that Defendants' conduct of failing
24 to provide Plaintiff and class members all overtime wages due to them, failing to provide
25 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
26 class members all meal periods, failing to authorize and permit Plaintiff and class members to
27 take all rest periods, failing to provide Plaintiff and class members accurate and complete
28 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,

1 failing to timely pay Plaintiff and class members all earned wages during employment, failing
2 to pay Plaintiff and class members reporting time pay, failing to properly compensate Plaintiff
3 and class members for split shifts, failing to reimburse Plaintiff and class members for
4 business-related expenses, and failing to provide written notice of material terms of
5 employment, constitutes an unlawful business practice in violation of California Business and
6 Professions Code sections 17200, *et seq.*;

7 64. For restitution of unpaid wages to Plaintiff and all class members and
8 prejudgment interest from the day such amounts were due and payable;

9 65. For the appointment of a receiver to receive, manage and distribute any and all
10 funds disgorged from Defendants and determined to have been wrongfully acquired by
11 Defendants as a result of violations of California Business & Professions Code sections
12 17200, *et seq.*;

13 66. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
14 California Code of Civil Procedure section 1021.5; and

15 67. For such other and further relief as the Court may deem equitable and
16 appropriate.

17 **As to the Twelfth Cause of Action**

18 68. That the Court declare, adjudge and decree that Defendants' conduct of denying
19 Plaintiff and class members the statutory benefits guaranteed under California Labor Code
20 section 226.7 constitutes an unfair business practice in violation of California Business and
21 Professions Code sections 17200, *et seq.*;

22 69. For restitution of the statutory benefits under California Labor Code section
23 226.7 unfairly withheld from Plaintiff and class members and prejudgment interest from the
24 day such amounts were due and payable;

25 70. For the appointment of a receiver to receive, manage and distribute any and all
26 funds disgorged from Defendants and determined to have been wrongfully acquired by
27 Defendants as a result of violations of California Business & Professions Code sections
28 17200, *et seq.*;

1 71. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
2 California Code of Civil Procedure section 1021.5;

3 72. For pre-judgment and post-judgment interest as provided by law; and

4 73. For such other and further relief as the Court may deem equitable and
5 appropriate.

6
7 Dated: February 6, 2023

Respectfully submitted,

8
9 Capstone Law APC

10
11 By: 

Robert Drexler
Molly DeSario
Jonathan Lee

12
13 Attorneys for Plaintiff Edwin Rodriguez
14 Hernandez

EXHIBIT “A”



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December 01, 2022

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Edwin Rodriguez Hernandez v. Bubba Gump Shrimp Co. Restaurants, Inc., et al.*

Dear PAGA Administrator:

This office represents Edwin Rodriguez Hernandez v. Bubba Gump Shrimp Co. Restaurants, Inc. in connection with his claims under the California Labor Code. Mr. Rodriguez Hernandez was an employee of BUBBA GUMP SHRIMP CO. RESTAURANTS, INC. and/or LANDRY'S PAYROLL, INC. For the purposes of this letter, Mr. Rodriguez Hernandez collectively refers to these entities as "BUBBA GUMP."

The employers may be contacted directly at the addresses below:

BUBBA GUMP SHRIMP CO. RESTAURANTS, INC.	LANDRY'S PAYROLL, INC.
1510 WEST LOOP SOUTH	1510 W LOOP S
HOUSTON, TX 77027	HOUSTON, TX 77027

Mr. Rodriguez Hernandez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Rodriguez Hernandez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by BUBBA GUMP as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

BUBBA GUMP employed Mr. Rodriguez Hernandez as an hourly paid, non-exempt employee from approximately April 2014 to December 2021. Mr. Rodriguez Hernandez worked for BUBBA GUMP as a Busser at its restaurant located in Newport Beach, California. Mr. Rodriguez Hernandez typically worked eight (8) or more hours per day, five (5) or more days per week, from 9:00 a.m. to 10:00 p.m. At the time his employment ended, Mr. Rodriguez Hernandez was compensated approximately \$14.00 per hour. His job duties included, without limitation, bussing plates, cleaning tables, wiping seats, sweeping, and mopping floors.

BUBBA GUMP committed one or more of the following Labor Code violations against Mr. Rodriguez Hernandez the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

BUBBA GUMP’s Company-Wide and Uniform Payroll and HR Practices

BUBBA GUMP SHRIMP CO. RESTAURANTS, INC. is a Delaware corporation and LANDRY’S PAYROLL, INC. is a Texas corporation, that together operate approximately 7 seafood restaurant locations in California. Upon information and belief, BUBBA GUMP maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Houston, Texas, for all non-exempt, hourly paid employees working for BUBBA GUMP in California, including Mr. Rodriguez Hernandez and other aggrieved employees. At all relevant times, BUBBA GUMP issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Rodriguez Hernandez and other aggrieved employees, regardless of its location or position.

Upon information and belief, BUBBA GUMP maintains a centralized Payroll department at its corporate headquarters in Houston, Texas, which processes payroll for all non-exempt, hourly paid employees working for BUBBA GUMP in California, including Mr. Rodriguez Hernandez and other aggrieved employees. Further, BUBBA GUMP issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Rodriguez Hernandez and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, BUBBA GUMP utilized the same methods and formulas when calculating wages due to Mr. Rodriguez Hernandez and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

BUBBA GUMP willfully failed to pay all overtime wages owed to Mr. Rodriguez Hernandez and other aggrieved employees. During the relevant time period, Mr. Rodriguez Hernandez and other

¹ These facts, theories, and claims are based on Mr. Rodriguez Hernandez’s experience and counsel’s review of those records currently available relating to Mr. Rodriguez Hernandez’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Rodriguez Hernandez reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, BUBBA GUMP had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Rodriguez Hernandez and other aggrieved employees from recording hours worked that were outside their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, BUBBA GUMP's policy of discouraging and limiting overtime, coupled with BUBBA GUMP's practice of assigning heavy workloads and understaffing (*see infra*), led Mr. Rodriguez Hernandez and other aggrieved employees to work off-the-clock before and after their scheduled shift times. For example, Mr. Rodriguez Hernandez and other aggrieved employees were required to travel to grocery stores to pick up ingredients and supplies on their way to work but they were not compensated for their travel time. As a further example, Mr. Rodriguez Hernandez was pressured to clock out at the end of his scheduled shift and continue working to complete tasks such as vacuuming and cleaning tables for up to 20 minutes per instance.

Moreover, BUBBA GUMP implemented, on a company-wide basis, an employer-imposed requirement that Mr. Rodriguez Hernandez and other aggrieved employees undergo mandatory COVID-19 temperature checks before clocking in for their scheduled shifts. Mr. Rodriguez Hernandez was required to undergo a daily temperature check, before being permitted to clock in for his shift. Even though BUBBA GUMP required these temperature checks, BUBBA GUMP did not provide Mr. Rodriguez Hernandez and other aggrieved employees with a mechanism to record this time so they could be compensated for the time spent undergoing mandatory temperature checks. Thus, BUBBA GUMP failed to track this time spent working before and after scheduled shifts, and failed to fully compensate Mr. Rodriguez Hernandez and other aggrieved employees for this time.

Second, BUBBA GUMP had, and continues to have, a company-wide policy and/or practice of understaffing its restaurant locations while assigning heavy workloads. BUBBA GUMP's policies and/or practices resulted in a failure to provide Mr. Rodriguez Hernandez and other aggrieved employees with adequate meal period coverage, and thus, Mr. Rodriguez Hernandez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. BUBBA GUMP also had a practice of failing to adhere to a schedule for meal periods, which further caused Mr. Rodriguez Hernandez and other aggrieved employees not to be relieved of their duties for compliant meal periods. For example, Mr. Rodriguez Hernandez's meal periods were interrupted by BUBBA GUMP's managers, requesting that he resume cleaning and clearing tables. On other occasions, Mr. Rodriguez Hernandez missed his meal periods entirely due to the heavy workload. Thus, Mr. Rodriguez Hernandez and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to complete their assigned workloads. BUBBA GUMP did not compensate Mr. Rodriguez Hernandez and other aggrieved employees for the time they spent working off the clock during meal periods.

Third, on information and belief, because BUBBA GUMP frowned upon employees accruing meal period penalties, BUBBA GUMP's management pressured Mr. Rodriguez Hernandez and other aggrieved employees to clock out for meal periods and/or adjust their time records to reflect complaint meal periods, even when they did not receive a complaint meal period. In addition, BUBBA GUMP's company-wide timekeeping system prevented Mr. Rodriguez Hernandez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Rodriguez Hernandez and other aggrieved employees

once they clocked out for a meal period, and did not permit them to clock back in from a meal period before 30 minutes elapsed. Thus, BUBBA GUMP did not record all hours worked during meal periods and Mr. Rodriguez Hernandez and other aggrieved employees performed work during meal periods for which they were not paid.

BUBBA GUMP knew or should have known that as a result of these company-wide practices and/or policies, Mr. Rodriguez Hernandez and other aggrieved employees were performing assigned duties off-the-clock during before and after their shifts and meal periods , and were suffered or permitted to perform work for which they were not paid. Because Mr. Rodriguez Hernandez and other aggrieved employees sometimes worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Rodriguez Hernandez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, BUBBA GUMP did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, BUBBA GUMP paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, BUBBA GUMP failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, BUBBA GUMP failed to pay all overtime wages by paying a lower overtime rate than required.

BUBBA GUMP's failure to pay Mr. Rodriguez Hernandez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Rodriguez Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As stated, during the relevant time period, BUBBA GUMP had a company-wide policy and/or practice requiring Mr. Rodriguez Hernandez and other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts, including traveling to grocery stores to pick up ingredients and supplies, performing additional job duties such as vacuuming and cleaning tables, and undergoing mandatory COVID-19 temperature checks.

Moreover, as set forth above, due to BUBBA GUMP's policies and/or practices of understaffing its restaurant locations while assigning heavy workloads and failing to adhere to a schedule for meal periods, Mr. Rodriguez Hernandez and other aggrieved employees were impeded from taking all

uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, BUBBA GUMP's management pressured employees to clock out for meal periods even when meal periods were missed, short, and/or interrupted and/or adjusted their time records to reflect compliant meal periods. In addition, BUBBA GUMP's company-wide timekeeping system prevented Mr. Rodriguez Hernandez and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Rodriguez Hernandez and other aggrieved employees for a full 30-minutes. Thus, BUBBA GUMP systematically failed to pay Mr. Rodriguez Hernandez and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not correctly recorded.

Thus, BUBBA GUMP did not pay at least minimum wages for all hours worked by Mr. Rodriguez Hernandez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, BUBBA GUMP did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, BUBBA GUMP regularly failed to pay at least minimum wages to Mr. Rodriguez Hernandez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Rodriguez Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First during the relevant time period, as set forth above, BUBBA GUMP had, and continues to have, a company-wide policy and/or practice of understaffing its restaurant locations which, combined with heavy workloads and a failure to adhere to a schedule for meal periods, resulted in a lack of meal period coverage and prevented Mr. Rodriguez Hernandez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled.

As a result, Mr. Rodriguez Hernandez and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Rodriguez Hernandez missed his meal periods entirely or took his meal periods late, after having worked in excess of five (5) hours or more into his shift, in order to meet the restaurant's customer demand. Moreover, Mr. Rodriguez Hernandez's meal periods were interrupted by BUBBA GUMP's supervisors asking him to complete a task, such as clearing a table after he had already clocked out for his meal period.

Second, as set forth above, because BUBBA GUMP frowned upon employees accruing meal period penalties, BUBBA GUMP's management pressured employees to clock out for meal periods to reflect compliant meal periods, and/or adjusted their time records to reflect compliant meal periods. In addition, BUBBA GUMP's company-wide timekeeping system prevented Mr. Rodriguez Hernandez and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Rodriguez Hernandez and other aggrieved employees for a full 30-minutes.

Third, BUBBA GUMP did not provide Mr. Rodriguez Hernandez and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example, during the relevant time period, Mr. Rodriguez Hernandez worked shifts in excess of 10 hours and did not take a second meal period. Mr. Rodriguez Hernandez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, BUBBA GUMP had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. BUBBA GUMP took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Moreover, BUBBA GUMP's meal period waiver form requires employees provide written notice should they wish to revoke the waiver. BUBBA GUMP's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Mr. Rodriguez Hernandez and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). BUBBA GUMP required Mr. Rodriguez Hernandez and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them

invalid and unenforceable, because BUBBA GUMP's obligation to provide Mr. Rodriguez Hernandez and other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

At all times herein mentioned, BUBBA GUMP knew or should have known that, as a result of these policies, Mr. Rodriguez Hernandez and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. BUBBA GUMP further knew or should have known that they did not pay Mr. Rodriguez Hernandez and other aggrieved employees all meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Furthermore, BUBBA GUMP engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Rodriguez Hernandez and other aggrieved employees have not received premium pay for missed, interrupted, shortened, or late meal periods. Alternatively, to the extent that BUBBA GUMP did pay other aggrieved employees premium pay for missed, late, interrupted and shortened meal periods, BUBBA GUMP did not pay other aggrieved employees at the correct rate of pay for premiums because BUBBA GUMP systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, BUBBA GUMP failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Rodriguez Hernandez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, BUBBA GUMP regularly failed to authorize and permit Mr. Rodriguez Hernandez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, BUBBA GUMP's

company-wide practices of understaffing and assignment of heavy workloads prevented Mr. Rodriguez Hernandez and other aggrieved employees from being relieved of all duty to take their rest periods. BUBBA GUMP also failed to schedule rest periods, which, coupled with BUBBA GUMP's failure to provide adequate rest period coverage, further led to Mr. Rodriguez Hernandez and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, BUBBA GUMP maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Rodriguez Hernandez and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Rodriguez Hernandez and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, BUBBA GUMP effectively maintained control over Mr. Rodriguez Hernandez and other aggrieved employees during rest periods.

As a result of BUBBA GUMP's practices and policies, Mr. Rodriguez Hernandez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Rodriguez Hernandez missed his rest period three (3) times per week to complete work assignments. Mr. Rodriguez Hernandez's rest periods were also interrupted by supervisors requiring him to return to work once per week.

BUBBA GUMP also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Rodriguez Hernandez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that BUBBA GUMP did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, BUBBA GUMP did not pay other aggrieved employees at the correct rate of pay for premiums because BUBBA GUMP failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, BUBBA GUMP failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Rodriguez Hernandez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. BUBBA GUMP has not provided Mr. Rodriguez Hernandez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each

violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, BUBBA GUMP has knowingly and intentionally provided Mr. Rodriguez Hernandez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, BUBBA GUMP issued uniform wage statements to Mr. Rodriguez Hernandez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, BUBBA GUMP violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because BUBBA GUMP did not record the time Mr. Rodriguez Hernandez and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), BUBBA GUMP did not list the correct amount of gross wages and net wages earned by Mr. Rodriguez Hernandez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, BUBBA GUMP failed to accurately list the total number of hours worked by Mr. Rodriguez Hernandez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

In addition, because BUBBA GUMP did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, BUBBA GUMP did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). BUBBA GUMP also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), BUBBA GUMP willfully failed to maintain accurate payroll records for Mr. Rodriguez

Hernandez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, BUBBA GUMP failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Rodriguez Hernandez and other aggrieved employees, in violation of section 1198. As stated, BUBBA GUMP engaged in a company-wide practice and/or policy of falsifying Mr. Rodriguez Hernandez’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Rodriguez Hernandez and other aggrieved employees. Furthermore, in light of BUBBA GUMP’s failure to provide Mr. Rodriguez Hernandez and other aggrieved employees with second 30-minute meal periods to which they were entitled, BUBBA GUMP kept no records of meal start and end times for second meal periods.

Because BUBBA GUMP failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Rodriguez Hernandez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Rodriguez Hernandez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Rodriguez Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, BUBBA GUMP failed to pay Mr. Rodriguez Hernandez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum

wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Rodriguez Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, BUBBA GUMP has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Rodriguez Hernandez provided more than seventy-two (72) hours previous notice of his intention to quit, stating his last date of work would be on or around December 19, 2021. However, BUBBA GUMP did not provide him with a final paycheck until one week later. Thus, BUBBA GUMP failed to pay Mr. Rodriguez Hernandez his final wages at the time of quitting, in violation of California Labor Code section 202.

Additionally, BUBBA GUMP willfully failed to pay Mr. Rodriguez Hernandez and other aggrieved employees who are no longer employed by BUBBA GUMP all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving BUBBA GUMP's employ.

Mr. Rodriguez Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a

given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

BUBBA GUMP’s California restaurants are generally similar in their layout and design and there was, and continues to be, space behind host stands to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. BUBBA GUMP could provide other aggrieved employees with a seat or stool at its host stands, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind or at these host stands. The nature of the work of an employee performing host duties at host stands can reasonably be accomplished from a seated position. However, as set forth herein, BUBBA GUMP systematically, and on a company-wide basis, does not provide seats or stools at or near the host stands, forcing other aggrieved employees to stand throughout their work shifts.

BUBBA GUMP violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. BUBBA GUMP’s management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of BUBBA GUMP’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. BUBBA GUMP’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(A).

Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring BUBBA GUMP into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the

work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

BUBBA GUMP’s California restaurants are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by other aggrieved employees during lulls in operation. BUBBA GUMP could have provided other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

BUBBA GUMP did not provide other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent other aggrieved employees engaged in duties in which the nature of the work required standing, BUBBA GUMP denied them the use of seats nearby during lulls in their work duties. Moreover, BUBBA GUMP did not inform other aggrieved employees of their rights to a seat or stool under California law.

As a result of BUBBA GUMP’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, other aggrieved employees were forced to stand during shifts and denied seats. BUBBA GUMP’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring BUBBA GUMP into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less

than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, BUBBA GUMP violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because BUBBA GUMP failed to pay Mr. Rodriguez Hernandez and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day's work.

BUBBA GUMP had a company-wide practice of sending Mr. Rodriguez Hernandez and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay other aggrieved employees for half of their usual or scheduled shift. For example, three (3) times per year, BUBBA GUMP's managers sent Mr. Rodriguez Hernandez home before half of his scheduled shift was over, but on information and belief, Mr. Rodriguez Hernandez was only paid for the time he had worked. Although Mr. Rodriguez Hernandez and other aggrieved employees would report to work based on the schedule BUBBA GUMP provided to them, BUBBA GUMP would send them home before they had worked at least half of their usual or scheduled shifts without giving them reporting time pay.

Accordingly, Mr. Rodriguez Hernandez and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A).

Mr. Rodriguez Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful."

California Code of Regulations, Title 8, section 11050(4)(C) provides that, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment." California Code of Regulations, Title 8, defines a split shift as "a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods."

BUBBA GUMP violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(4)(C), because BUBBA GUMP failed to pay Mr. Rodriguez Hernandez and other aggrieved employees a split-shift premium when they returned to work for an additional shift in

the same day, after having been clocked out for more than several hours. For example, on several instances, Mr. Rodriguez Hernandez was required to work from 9:00 a.m. to about 3:00 p.m., then told to clock out before returning to work for the dinner shift around 5:00 p.m. the same day. When this occurred, BUBBA GUMP did not always pay Mr. Rodriguez Hernandez and other aggrieved employees an additional hour at minimum wage. Accordingly, BUBBA GUMP required Mr. Rodriguez Hernandez and other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage, in violation of California Labor Code section 1198.

BUBBA GUMP's failure to provide Mr. Rodriguez Hernandez and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for several hours, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050(4)(C). Mr. Rodriguez Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, BUBBA GUMP, on a company-wide basis, required Mr. Rodriguez Hernandez and other aggrieved employees to use their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, Mr. Rodriguez Hernandez was required to use his personal vehicles to drive to pick up supplies such as bread, lemons, and drinks from grocery stores on his way to work. Although BUBBA GUMP required Mr. Rodriguez Hernandez and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, BUBBA GUMP failed to reimburse them for their mileage or travel expenses.

BUBBA GUMP could have provided Mr. Rodriguez Hernandez and other aggrieved employees with the actual equipment for use on the job, such as company vehicles; or BUBBA GUMP could have reimbursed employees for the costs of their travel and mileage. Instead, BUBBA GUMP passed these operating costs off onto Mr. Rodriguez Hernandez and other aggrieved employees. At all relevant times, Mr. Rodriguez Hernandez did not earn at least two (2) times the minimum wage.

Thus, BUBBA GUMP had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Rodriguez Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

BUBBA GUMP failed to provide Mr. Rodriguez Hernandez and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). BUBBA GUMP's failure to provide Mr. Rodriguez Hernandez and other aggrieved employees with written notice of basic information regarding their employment with BUBBA GUMP is in violation of Labor Code section 2810.5.

Mr. Rodriguez Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." BUBBA GUMP, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Rodriguez Hernandez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Rodriguez Hernandez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Rodriguez Hernandez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against BUBBA GUMP for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Rodriguez Hernandez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Jezzette Ron
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in dark ink, appearing to read "J. Ron". The signature is stylized with a large, looped "J" and a cursive "Ron".

Jezzette Ron

Copy: BUBBA GUMP SHRIMP CO. RESTAURANTS, INC. (via U.S. Certified Mail);
LAUDRY'S PAYROLL, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
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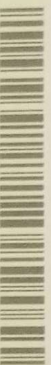
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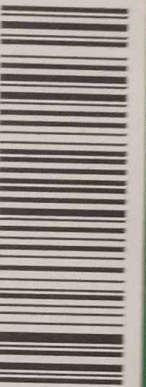
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Capstone Law, APC
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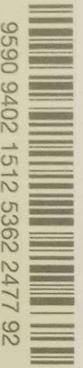
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9590 9402 1512 5362 2477 92

2. Article Number (Transfer from service label)

7022 2410 0000 2406 4109

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

12/6/22

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Restricted Delivery☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

BUBBA GUMP SHRIMP CO.
RESTAURANTS, INC.
1510 WEST LOOP SOUTH
HOUSTON, TX 77027



9590 9402 1512 5362 2477 85

2. Article Number (Transfer from service label)

7022 2410 0000 2406 4116

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

12/6/22

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Restricted Delivery☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **February 6, 2023**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Matthew M. Sonne
msonne@sheppardmullin.com

Lauren J. Blaes

lblaes@sheppardmullin.com

Sheppard, Mullin, Richter & Hampton LLP

650 Town Center Drive, 10th Floor

Costa Mesa, California 92626

Telephone: (714) 513-5100

Facsimile: (714) 513-5130

Attorneys for Defendants

**BUBBA GUMP SHRIMP CO.
RESTAURANTS, INC.**

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via Case Anywhere eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **February 6, 2023**, at Los Angeles, California.

Sophia Flores

Type/Print Name



Signature