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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

OMAR RAMIREZ, and on behalf of others
similarly situated,

Plaintiff,

vs.

DAMM FINE PIZZA, LLC.; Matiullah (Last name
Unknown, "LNU"), Kelly LNU, Hugo Cuevas, Sky
LNU, Kendal LNU, and DOES ONE through
TWENTY inclusive,

Defendants.

Case No.: 19CV-0365

CLASS ACTION COMPLAINT

1. Failure to pay Minimum Wages;
2. Failure to Pay Overtime Compensation;
3. Failure to Provide Rest or Pay Additional Wages in Lieu Thereof;
4. Failure to Provide Meal Periods or Pay Additional Wages in Lieu Thereof;
5. Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions
6. Failure to Indemnify Employees for All Necessary Expenditures or Losses Incurred
7. Violation of Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*

NON-CLASS PAGA CLAIM

8. Penalties Pursuant to Labor Code's Private Attorney General Act, Cal. Labor Code §§ 2698 *et seq.*

DEMAND FOR JURY TRIAL
REQUEST FOR COMPLEX
DESIGNATION

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I. INTRODUCTION

1. Plaintiff OMAR RAMIREZ, ("Plaintiff") brings this action pursuant to the California Labor Code Private Attorney General Act 2699 et seq. ("PAGA") against Defendants Damm Fine Pizza, LLC. (dba "Blaze Pizza"), Matiullah (Last Name Unknown "LNU"), Kelly LNU, Hugo Cuevas, Sky LNU, Kendal LNU and DOES ONE through TWENTY, (collectively referred as "DFP")

2. The class that Plaintiff seeks to represent ("Class") is composed of California residents who worked for Defendant DAMM FINE PIZZA, LLC. ("DFP") in the State of California at any time during the period beginning four years prior to the filing of the original complaint through the date of notice to the Class Members that a class has been certified in this action ("Class Period"), who are non-exempt workers and who were paid on an hourly basis ("Class Members"). The wage and hour violations alleged in this Complaint revolve around the following: Defendant DFP's failure to pay wages owed at minimum and overtime rates, failure to maintain accurate records failure to provide proper rest and meal periods and failure to reimburse business expenses under the California Labor Code § 2802. Plaintiff and the class are owed wages, interest and penalties as a result of Defendant's enforcement of these unlawful policies and practices, which violate California Labor Code, Wage orders and UCL as described below.

3. At all times relevant hereto, Defendant DFP's unlawful policies and practices were centrally devised and commonly applied to all Class Members.

4. This action seeks payments for reimbursement of business expenses, wages, premium wages, interest, penalties, civil penalties, and reasonable attorneys' fees and costs pursuant to Labor Code § 2698 et seq., Labor Code § 2802, Labor Code §1194, Labor Cod 218.5 & 218.6, and Code of Civil Procedure § 1021.5. Plaintiff, on behalf of themselves and Class Members, also seek equitable and injunctive relief for these violations pursuant to Business and Professions Code §§ 17200-17208 (also referred to herein as the "UCL").

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II. THE PARTIES

5. Plaintiff was a non-exempt employee of Defendant DFP and resided in California and was employed as a non-exempt employee in California at some time during the Class Period.

1 6. Plaintiff OMAR RAMIREZ is an individual who, at all relevant times, was a resident of
2 San Luis Obispo, County of San Luis Obispo and was assigned to work and did work out of Defendant
3 DFP's San Luis Obispo, County of San Luis Obispo business location.

4 7. Plaintiff was a DFP employee. Plaintiff is an aggrieved employee who was
5 economically damaged by Defendant DFP's illegal policy of failing to pay non-exempt employees all
6 wages earned, failure to keep accurate time and payroll records; requiring, suffering or permitting
7 employees to perform unpaid work outside their schedule worktime, including time spent donning and
8 doffing personal protective equipment, washing hands, walking to and from the work areas to
9 designated break areas during meal periods, walking from one work station to another, and waiting in
10 line to clock in and/or out during normal work hours, meal periods and rest periods; failing to
11 compensate employees for all hours worked; refusing to provide rest periods or to provide premium
12 wages in lieu thereof; forcing employees to take late meal periods and failing to provide premium
13 wages in lieu thereof; failing to provide accurate itemized wage statements; and failing pay of all
14 wages owed upon separation from employment. Plaintiff incurred business expenses, as he were
15 required to wash garments necessary for work 2-3 times per week but never reimbursed for costs
16 incurred, nor for time spent washing garments as required. Plaintiff suffered injury in fact and is an
17 aggrieved employee.

18 8. Defendant DAMM FINE PIZZA, LLC. ("DFP") is a California corporation and was
19 and is conducting business at all relevant times in the County of San Luis Obispo and was Plaintiff's
20 employer at all relevant times.

21 9. Defendant Hugo Cuevas ("Cuevas") was a Supervisor and caused the violations at
22 issue. On information and belief, Mr. Cuevas resides and works in the County of San Luis Obispo and
23 caused the illegal wage practice at issue in this complaint in the County of San Luis Obispo.

24 10. Defendant Matiullah LNU ("Mati") was a District Manager and caused the violations at
25 issue. On information and belief, Mati resides and works in the County of San Luis Obispo and caused
26 the illegal wage practice at issue in this complaint in the County of San Luis Obispo.

27 11. Defendant Kelly LNU "Kelly") was a Supervisor and caused the violations at issue. On
28 information and belief, Kelly resides and works in the County of San Luis Obispo and caused the

1 illegal wage practice at issue in this complaint in the County of San Luis Obispo.

2 12. Defendant Sky LNU ("Sky") was a Chef Leader and caused the violations at issue. On
3 information and belief, Mr. Cuevas resides and works in the County of San Luis Obispo and caused the
4 illegal wage practice at issue in this complaint in the County of San Luis Obispo.

5 13. Defendant Kendal LNU ("Sky") was an Assistant Manager and caused the violations at
6 issue. On information and belief, Sky resides and works in the County of San Luis Obispo and caused
7 the illegal wage practice at issue in this complaint in the County of San Luis Obispo.

8 14. The true names and capacities, whether individual, corporate, associates, or otherwise
9 of Defendant DFP sued here in as DOES 1 through 10, inclusive, are currently unknown to Plaintiff,
10 who therefore sue such Defendants by fictitious names under Code of Civil Procedure § 474. Plaintiff
11 is informed and believe, and based thereon allege, that each of the Defendants designated herein as a
12 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek
13 leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
14 designated hereinafter as DOES when such identities become known.

15 15. Plaintiff is informed and believe that the Defendant Damm Fine Pizza is liable to
16 Plaintiff and Class Members as an "employer," as that term is defined in § 18 of the Labor Code. As
17 employers of Plaintiff and Class Members throughout the Class Period and is liable for the economic
18 damages, including statutory penalties, owned to Plaintiff and Class Members. Plaintiff believes that
19 Cuevas caused the violations at issue in this complaint and is therefore liable pursuant to PAGA.
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21 **III. JURISDICTION**

22 16. This Court has jurisdiction over Plaintiff's action, which arises under the California
23 Labor Code and alleges damages exceeding \$25,000.00.
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25 **IV. VENUE**

26 17. Venue is proper pursuant to California code of civil procedure section 395(a) because
27 Plaintiff were harmed by defendants violations to the California labor code in San Luis Obispo county,
28 defendant DFP continues to do business in alameda county, and defendant DFP has at least on business

1 location/office and employs individuals in San Luis Obispo county. Defendant Cuevas committed the
2 acts in question in the complaint, partly or wholly, in San Luis Obispo County.

4 **V. FACTUAL BACKGROUND**

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

11 19. During the Class Period, Defendant DFP has employed Plaintiff and other similar
12 situated non-exempt, hourly employees at worksites throughout California.

13 20. Plaintiff is informed, believe, and thereon allege that, throughout the Class Period,
14 hundreds of non-exempt employees were employed by Defendant DFP.

15 21. Plaintiff is informed and believe that Mati caused the violations at issue along with
16 several other managers including Kelly, Hugo Cuevas, Sky, and Kendal by creating and enforcing the
17 illegal policies in question. We will update the Does in this complaint once we have the last names of
18 the above-mentioned Defendants, and any others that we discover.

19 22. Plaintiff are informed, believe, and thereon allege that, through common practices,
20 policies, and/or schemes, Defendants systematically failed to compensate employees for all hours
21 worked, failed to pay premiums and civil penalties as a result of the illegal practices at issue.

22 23. For at least four years prior to the filing of this action and through to the present
23 DEFENDANT DFP maintained and enforced against PLAINTIFF and the Class unlawful practices
24 and policies in violation of California wage and hour laws, including but not limited to:
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27 a. forcing Class members, including Plaintiff, to work "off the clock" time without
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1 compensation, including but not limited to time spent putting on their uniforms
2 (company t-shirt, apron and hat) before clocking in, and removing their
3 uniforms after clocking out at the end of their shifts. This also occurred when
4 employees took their meal breaks, because employees were not allowed to leave
5 the company premises while still wearing their uniforms, which shortened their
6 break times to less than 30 minutes. This practice was required by
7 DEFENDANTS and under their control, in violation of California law and
8 public policy;

- 9 b. failing to properly provide/authorize Class members, including Plaintiff, rest
10 periods of at least (10) minutes per four (4) hours worked, or major fraction
11 thereof, and failing to pay such employees one (1) hour of additional wages at
12 the employees' regular rate of compensation for each workday that the rest
13 period was not provided, in violation of California law and public policy;
- 14 c. requiring Class members, including Plaintiff, to work at least five (5) hours
15 without a full, thirty-minute, uninterrupted meal period, and failing to pay such
16 employees one (1) hour of additional wages at the employees' regular rate of
17 compensation for each workday that the meal period was not provided, in
18 violation of California state laws and public policy;
- 19 d. failing to provide Class members, including Plaintiff, with accurate itemized
20 wage statements in violation of California law and public policy;
- 21 e. failing to maintain accurate time-keeping records for Class members, including
22 Plaintiff, in violation of California law and public policy;
- 23 f. failing to properly pay Class members, including Plaintiff, time and a half and
24 double overtime pursuant to California Labor Code provisions and Industrial
25 Welfare Commission Wage Orders 5-2001 or 16-2001, in violation of California
26 law and public policy;
- 27 g. failing to reimburse Class members, including Plaintiff, for expenses incurred
28 when employees were required to taken home and wash their uniforms

(company t-shirt, apron, and hat) on their own time, in violation of California law and public policy; and

h. failing to pay to Class members, including Plaintiff, statutory penalties pursuant to California Labor Code §§ 201, 202, 203, and 226, in violation of California law and public policy.

24. On information and belief, Defendants were on notice of the improprieties alleged and/or has intentionally, deliberately, and willfully carried out these unlawful and unfair business practices.

25. Defendants have made it difficult to account with precision for the unlawfully withheld wages due to Plaintiff and the Class during all relevant times herein, because Defendants did not fully implement and preserve a record-keeping method to accurately record all hours worked and wages earned by its employees as required for non-exempt employees by California Labor Code §§ 226 and 1174(d), and Industrial Welfare Commission Wage Orders.

26. The enforcement of statutory provisions to protect workers and to ensure proper and prompt payment of business-related expenses incurred by employees, is a fundamental public interest. Plaintiff's successful enforcement of important rights affecting the public interest will confer a significant benefit upon the general public. Private enforcement of these rights is necessary, as no public agency has pursued enforcement. Plaintiff is incurring a financial burden in pursuing this action, and it would be against the interests of justice to require the payment of attorneys' fees and costs from any recovery obtained.

I. CLASS ACTION ALLEGATIONS

27. Plaintiff brings this action on behalf of themselves and all others similarly situated as a class action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent the following "Class" composed of and defined as follows:

1 All non-exempt persons who are employed or have been employed by Defendant
2 DFP, LLC. in the State of California who, within four (4) years of the filing of the
3 original Complaint, have worked as non-exempt workers.

4 28. Plaintiff reserves the right under Rule 1855(b), California Rules of Court, to amend or
5 modify the class description with greater specificity to further divide into subclasses or to limit to
6 particular issues.

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

10
11 **A. Numerosity**

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

17 31. Upon information and belief, Plaintiff allege that Defendant DFP's employment records
18 would provide information as to the number and location of all Class Members. Joinder of all
19 members of the proposed Class is not practicable.

20
21 **B. Commonality**

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

- 25 a. Whether Defendants violated the California Labor Code, wage orders, and
26 public policy by failing to compensate Plaintiff and the other Class
27 members for all hours worked;
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- 1 b. Whether Defendants violated the California Labor Code, wage orders, or
2 public policy by failing to provide daily rest periods to Plaintiff and the
3 other Class members for every four hours or major fraction thereof worked
4 and failing to compensate said employees one hours of additional wages in
5 lieu of each rest period denied;
- 6 c. Whether Defendants violated the California Labor Code, wage orders, or
7 public policy by failing to provide a full timely meal period to Plaintiff and
8 the other Class members on days they worked work periods in excess of
9 five hours and failing to compensate said employees one hour additional
10 wages in lieu of each meal period denied, and by deducting for lunch
11 periods that were not taken;
- 12 d. Whether Defendants violated the California Labor Code, wage orders, or
13 public policy by failing to, among other things, maintain and provide
14 accurate records of Plaintiff's and the other Class members' earned wages
15 and work periods, accurately itemizing in wage statements all hours worked
16 and wages earned, and accurately maintaining records pertaining to Plaintiff
17 and the other Class members;
- 18 e. Whether Defendants violated the California Labor Code, wage orders, or
19 public policy by failing to pay all earned wages and/or premium wages due
20 and owing at the time that any Class member's employment with
21 Defendants terminated;
- 22 f. Whether Defendants violated the California Labor Code, wage orders, or
23 public policy by willfully refusing to pay all wages due;
- 24 g. Whether Defendants committed unfair or unlawful business practices in
25 violation of section 17200 *et seq.* of the Business and Professions Code.

26 C. Typicality

27 33. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff and all
28 members of the Class sustained injuries and damages arising out of and caused by Defendants'
common course of conduct in violation of California laws, regulations, and public policy as alleged
herein.

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D. Adequacy of Representation

34. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represent Plaintiff are competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

35. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' unlawful policy and/or practice of failing to reimburse or indemnify Class Members for all business expenses incurred and engaging in the other unlawful practices herein complained of.

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

VI. DAMAGES

37. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff and the similarly situated non-exempt employee are owed, among other things, reimbursement for business expenses incurred under Labor Code § 2802, and other statutory penalties, in an amount that exceed \$25,000 but is less than \$5,000,000, the precise amount of which will be proven at trial. More than 2/3 of the class are, and were, residents of California.

I. CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

FAILURE TO PAY MINIMUM WAGE

(Cal. Lab. Code §§ 1197, 1194(a), 1194.2 & Wage Order 5)

(Against DFP)

11. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

12. California Labor Code §1197, entitled "Pay of Less Than Minimum Wage," states:

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

13. The applicable minimum wage was eleven dollars (\$11.00) per hour for all hours worked effective January 1, 2018. Plaintiff worked for Defendant from May 2018 to October 2018.

14. The Defendants failed to pay minimum wage for all hours worked. In particular, Plaintiff and the Class were required to work on a schedule that did not take into account actual hours worked. For example, Plaintiff and the Class were not paid for the substantial amount of time for having to work pre- and post-shift while under the control of Defendants and for the benefit of the same. Regardless of the time at which Plaintiff and Class members arrived at the worksite, they were not paid for the time that it took to put on and take off work uniforms and prepare for work. Hours worked were not accurately recorded, because Plaintiff and Class members did not clock in upon arrival the worksite. Plaintiff and the Class were required to clock out for their lunch break before taking off their uniforms (they were not allowed to leave the premises while wearing the uniform) and then to put their uniforms back on before clocking back in, and consequently Plaintiff and the Class were not compensated for time actually spent working. These practices, among others, resulted in Defendants not paying the minimum wage for all hours worked. This violation of California minimum wage law was substantial and occurred on a daily basis due to Defendants' employment practices.

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

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

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

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

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

5 17. As described herein, this is an action under California Labor Code §1194 to recover
6 wages on account of Defendants' failure to pay minimum wages as described in California Labor Code
7 §§ 1197, 1194(a), 1194.2 and any applicable wage orders, including IWC Order 5. Therefore,
8 plaintiff and the Class are also entitled to recover liquidated damages in an amount equal to the wages
9 unlawfully unpaid and interest thereon.

10 18. WHEREFORE, PLAINTIFF and the Class request relief as described herein and below.

11 **SECOND CLAIM FOR RELIEF**

12 **FAILURE TO PAY OVERTIME COMPENSATION**
13 **(CALIFORNIA LABOR CODE §§ 510, 1194 & 1194.2)**

14 **(AGAINST DFP)**

15 38. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

16 39. California Labor Code § 510(a) states:

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

25 *See also* California Labor Code § 1185; Industrial Welfare Commission Wage Order 5. California Labor
26 Code § 500 defines, "Workday" and "Day" to mean any consecutive 24 hour period commencing at the
27 same time each calendar day, and defines "workweek" and "week" to mean "any seven consecutive days
28 starting with the same calendar day each week."

40. As described herein, defendants violated California Labor Code § 510 and the
applicable wage order by employing Plaintiff and the Class in excess of the above requirements
without overtime and double-time pay.

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

42. California Labor Code §1194(a) states:

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

As a result, PLAINTIFF and the Class are entitled to the unpaid balance of the full amount of the above noted overtime compensation, interest, reasonable attorney's fees and costs of suit.

43. WHEREFORE, Plaintiff and the Class request relief as described herein and below.

THIRD CLAIM FOR RELIEF

**FAILURE TO PROVIDE REST PERIODS PAY ADDITIONAL WAGES IN LIEU THEREOF
(CALIFORNIA LABOR CODE §§ 226.7)**

(AGAINST DEFENDANT DFP)

44. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

45. Defendants did not authorize or permit Plaintiff and, on information and belief, the Class to take all required rest periods. Plaintiff and, on information and belief, the Class routinely worked four-hour periods during the day without rest periods or compensation in lieu thereof. Defendants' employment practices did not provide for rest periods as mandated by California law.

46. California Labor Code §226.7 states:

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

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

47. The applicable wage order issued by the Industrial Welfare Commission is Wage Order 5, which states with regards to rest periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes

1 net rest time per four (4) hours or major fraction thereof. However, a rest period need not
2 be authorized for employees whose total daily work time is less than three and one-half
3 (3 1/2) hours. Authorized rest period time shall be counted, as hours worked, for which
4 there shall be no deduction from wages.

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

9 48. Defendants violated California law by failing to provide rest periods mandated by
10 Labor Code § 226.7 and Wage Orders 5 and others, and by failing to provide one hour pay at the
11 employees' regular rate of compensation for each work day that a required rest period was not
12 provided.

13 49. Plaintiff and, on information and belief, the Class did not voluntarily or willfully waive
14 rest periods. Any express or implied waivers obtained from plaintiff and Class members were not
15 willfully obtained, was not voluntarily agreed to, was a condition of employment, or part of a contract
16 of an unlawful adhesion.

17 50. By failing to keep adequate time records required by sections 226 and 1174(d) of the
18 Labor Code, Defendant has injured Plaintiff and the Class and made it difficult to calculate the unpaid
19 rest period compensation due Plaintiff and the Class.

20 51. As a result of the unlawful acts of Defendant, Plaintiff and the Class have been
21 deprived of premium wages in amounts to be determined at trial, and is entitled to recovery of such
22 amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code §§203, 226,
23 226.7, 512, 1194, and Wage Order 5, and others.

24 52. WHEREFORE, Plaintiff and the Class request relief as described herein and below.

25 **FOURTH CLAIM FOR RELIEF**

26 **FAILURE TO PROVIDE MEAL PERIODS OR PAY ADDITIONAL WAGES IN LIEU 27 THEREOF**

28 (CALIFORNIA LABOR CODE §§ 226.7, 512)

(AGAINST DEFENDANT DFP)

1 53. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

2 54. Plaintiff and, on information and belief, the Class was not afforded meal periods as
3 required by California law, since they were routinely required to work five hours or more without a
4 full, thirty-minute, uninterrupted meal period, and they were not compensated for these missed meal
5 periods.

6 55. California Labor Code §226.7 states:

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

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

13 56. The applicable wage order issued by the Industrial Welfare Commission is Wage Order

14 5. Wage Order 5 states with regards to meal periods:

15 (A) No employer shall employ any person for a work period of more than five (5)
16 hours without a meal period of not less than 30 minutes, except that when a work period
17 of not more than six (6) hours will complete the day's work the meal period may be
18 waived by mutual consent of the employer and employee. Unless the employee is
19 relieved of all duty during a 30-minute meal period, the meal period shall be considered
20 an "on duty" meal period and counted as time worked. An "on duty meal period shall be
21 permitted only when the nature of the work prevents an employee from being relieved of
22 all duty and when by written agreement between the parties an on-the-job paid meal
23 period is agreed to. The written agreement shall state that the employee may, in writing,
24 revoke the agreement at any time.

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

A similar provision is contained at California Labor Code § 512.

29 57. In this case, there was no mutual waiver of meal period and employees worked for
30 periods of more than five hours without an off-duty meal period of at least 30 minutes. As noted
31 above, Defendants violated California law by failing to provide meal periods mandated by Labor Code
32 § 226.7 and the wage orders. As such, Defendant DFP are liable for one hour of pay at the employee's
33 regular rate of compensation for each workday that meal periods were not provided.

1 58. As noted above, Defendant violated California law by failing to provide the meal and
2 rest periods mandated by Labor Code § 226.7 and Wage Orders 5, and by failing to provide one hour
3 pay at the employees' regular rate of compensation for each work day that the meal period was not
4 provided.

5 59. Plaintiff and, on information and belief, the Class did not voluntarily or willfully waive
6 meal periods. Any express or implied waivers obtained from Plaintiff and the Class was not willfully
7 obtained, was not voluntarily agreed to, was a condition of employment, or part of a contract of an
8 unlawful adhesion.

9 60. By failing to keep adequate time records required by sections 226 and 1174(d) of the
10 Labor Code, Defendants has injured Plaintiff and the Class and made it difficult to calculate the unpaid
11 meal period compensation due Plaintiff and the Class.

12 61. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been
13 deprived of premium wages in amounts to be determined at trial, and is entitled to recovery of such
14 amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code §§203, 226,
15 226.7, 512, and 1194.

16 62. WHEREFORE, Plaintiff and the Class request relief as described herein and below.

17
18 **FIFTH CLAIM FOR RELIEF**

19 **FAILURE TO INDEMNIFY EMPLOYEES FOR ALL NECESSARY EXPENDITURES OR**
20 **LOSSES INCURRED**

21 (LABOR CODE § 2802)

22 (AGAINST DEFENDANT DFP)

23 63. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

24 64. Labor Code § 2802 required Defendant to indemnify Plaintiff and the Class for all
25 necessary expenditures or losses incurred by these employees in direct consequence of the discharge
26 of his or her duties.

27 65. Plaintiff and the Class were required to take home their uniforms (company t-shirt, hat
28 apron) and wash them 2-3 times per week, as directed by Defendants.

66. Defendant DFP failed to reimburse Plaintiff and the Class with for the cost of laundering their uniforms 2-3 times per week as directed by Defendants and further failed to indemnify Plaintiff and the Class for all necessary expenditures and losses incurred by Plaintiff and the Class for the benefit of Defendants and to their detriment. As a result, Plaintiff and the Class were required to wash their own uniforms on their own time and had to use his own funds to pay for the cost of laundering. Defendants did not provide laundering for employees and did not reimburse Plaintiff and the Class for said expenses.

67. As a direct and proximate cause of Defendant's failure to indemnify employees, Plaintiff and the Class incurred out of pocket expenses and suffered a loss of wages in an amount to be proven at trial.

SIXTH CLAIM FOR RELIEF

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

(LABOR CODE §§ 226(B), 1174, 1175)

(AGAINST DEFENDANT DFP)

68. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

69. California Labor Code Section 226(a) states:

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

- i) gross wages earned,
- ii) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- iii) net wages earned,
- iv) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer

1 for at least three years at the place of employment or at a central location within
2 the State of California.

3 70. Defendants failed to provide "accurate itemized statements" to employees, including
4 Plaintiff and the Class, because the wage statements:

5 a. Falsely understated the gross wages earned, since the amount did not account for
6 all hours worked; and

7 b. Omitted or falsely understated the total hours worked by Plaintiff and the Class,
8 by under-reporting or ignoring the total of hours actually worked, and because there was
9 no system for employees to accurately record hours contemporaneously as they began,
10 ended and worked their shifts.

11 As a result, the wage statements also falsely understated the "number of hours worked at each
12 hourly rate" and falsely stated the net wages earned.

13 71. California Labor Code § 226(e) and (g) provide for the remedy for the violations
14 described above:

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

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

19 72. Section 1174 of the California Labor Code, and Section 6 of Wage Order 5 and Section
20 7 of Wage Order 5, require Defendant DFP to maintain and preserve, in a centralized location, among
21 other items, records showing the names and addresses of all employees employed, payroll records
22 showing the hours worked daily by and the wages paid to its employees. The Wage Orders also
23 require that the employer keep accurate information showing when each employee begins and ends
24 each work period, meal periods, and total daily hours worked." Defendant has created a uniform
25 practice of knowingly and intentionally failing to comply with Labor Code § 1174. Defendants'
26 failure to comply with Labor Code § 1174 is unlawful pursuant to Labor Code § 1175. When an
27 employer fails to keep such records, employees may establish the hours worked solely by their
28

1 testimony and the burden of overcoming such testimony shifts to the employer. Hernandez v.
2 Mendoza, 199 Cal. App. 3d 721 (1988).

3 73. By failing to keep adequate time records required by §§ 226 and 1174 (d) of the Labor
4 Code, Defendant DFP have injured Plaintiff and the Class and made it difficult to calculate the unpaid
5 wages due, and Plaintiff and the Class are entitled to up to \$4,000.00 in penalties.

6 74. WHEREFORE, Plaintiff requests relief as described herein and below on behalf of the
7 Class.

8 **SEVENTH CLAIM FOR RELIEF**

9 **FAILURE TO PAY ALL WAGES OWED UPON TERMINATION OR RESIGNATION**
(CALIFORNIA LABOR CODE §§ 201, 202 & 203)

10 (AGAINST DEFENDANT DFP)

11
12 75. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

13 76. California Labor Code §§ 201 and 202 provide for immediate payment of all wages
14 owed at termination of employment.

15 77. Defendants required Plaintiff and the Class to work without compensating them for all
16 wages as described in this complaint and failed to pay these wages at the termination of these
17 employees. Consequently, Defendant DFP has violated California Labor Code §§ 201 and/or 202.

18 78. California Labor Code §203 states:

19 If an employer willfully fails to pay, without abatement or reduction, in accordance with
20 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
21 quits, the wages of the employee shall continue as a penalty from the due date thereof at
22 the same rate until paid or until an action therefor is commenced; but the wages shall not
23 continue for more than 30 days. An employee who sequesters or absents himself or herself
24 to avoid payment to him or her, or who refuses to receive the payment when fully tendered
to him or her, including any penalty then accrued under this section, is not entitled to any
benefit under this section for the time during which he or she so avoids payment. Suit
may be filed for these penalties at any time before the expiration of the statute of
limitations on an action for the wages from which the penalties arise.

25 79. Defendant DFP willfully failed to pay all wages due as the failure to pay was not
26 inadvertent or accidental. As a result, Plaintiff and the Class are entitled to 30 days' wages. "30 days
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wages” is calculated pursuant to California case law as 30 working days and not merely a month’s wages.

80. In calculating 30 days wages pursuant to California Labor Code § 203, Plaintiff and the Class are entitled to compensation for all forms of wages earned (even if not properly paid), including, but not limited to, compensation for unprovided rest periods and unprovided meal periods, compensation for work done at hourly rates below the minimum and overtime wages, and other compensation due but not received.

81. More than 30 working days have passed since Plaintiff and many members of the Class have has left Defendant DFP’s employ, and despite this, they have not received payment pursuant to Labor Code § 203. As a consequence of Defendants’ willful conduct in not paying all earned wages, Plaintiff and the Class are entitled to 30 days’ wages as a penalty under Labor Code § 203 for failure to pay legal wages.

82. WHEREFORE, Plaintiff and the Class seek the relief as described herein and below.

EIGHTH CLAIM FOR RELIEF

VIOLATION OF UNFAIR COMPETITION LAW (CALIFORNIA BUS. & PROF. CODE §§ 17200 *ET SEQ.*)

(AGAINST DEFENDANT DFP)

83. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

84. On information and belief, by their policies described above, Defendant DFP engaged in unlawful activity prohibited by Business and Professions Code §§ 17200 et seq. The actions of Defendants as alleged within this Complaint, constitute unlawful and unfair business practices, within the meaning of Business and Professions Code §§ 17200 et seq and have suffered injury and have lost money or property as a result of Defendants failure to comply with well-established labor laws.

85. As a result of their unlawful acts, Defendant DFP have reaped and continue to reap unfair benefits and unlawful profits at the expense of Plaintiff and the Class. Defendant DFP should be enjoined from this activity and made to disgorge these ill-gotten gains and restore to Plaintiff and the Class the wrongfully withheld wages pursuant to Business and Professions Code § 17203. Plaintiff is

1 informed and believe and thereon allege that Defendant DFP are unjustly enriched through these
2 unlawful practices.

3 86. The unlawful conduct alleged herein is continuing, and there is no indication that
4 Defendants will not continue such activity in the future. Plaintiff allege that if Defendants are not
5 enjoined from the conduct set forth in this Complaint, Defendants will continue these violations.

6 87. Plaintiff further request that the court issue a preliminary and permanent injunction
7 requiring Defendants to comply with the recording keeping requirements under California Labor Laws
8 and providing required safety equipment.

9 88. WHEREFORE, Plaintiff for themselves and the Class they seek to represent request
10 injunctive, declaratory, and restitutionary relief as described herein and below.

11
12 **NINTH CLAIM FOR RELIEF**

13 **VIOLATIONS OF LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**
14 **(CALIFORNIA LABOR CODE §§ 2698 *ET SEQ.*)**

15 **(AGAINST ALL DFP)**

16 89. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

17 90. Plaintiff brings this claim for himself and other current and former employees, as
18 expressly authorized by Labor Code §§ 2699 et seq. PAGA is an enforcement action that empowers
19 an aggrieved employee to seek penalties on behalf of themselves, current and former employees and
20 the State, without the need to certify a class. For purposes of this claim only, therefore, Plaintiff brings
21 this claim for himself and other current and former employees and need not comply with Class Action
22 Certification.

23 91. Plaintiff is an aggrieved employee as defined in Labor Code §2699(a). He brings this
24 cause on behalf of himself and other current or former aggrieved employees affected by the labor law
25 violations alleged in this complaint.

26 92. The pre-lawsuit notice requirements set forth in Labor Code § 2699.3 have been
27 satisfied by written notice by certified mail to all Defendants and to the Labor and Workforce
28

1 Development Agency, detailing the Labor Code and IWC Wage Order violations averred herein. The
2 LWDA refused to timely investigate these violations.

3 93. Plaintiff seek civil penalties as provided under applicable Labor Code sections for
4 violations of the Labor Code alleged herein pursuant to Labor Code § 2699(a). To the extent that any
5 violation alleged herein does not carry a penalty, Plaintiff seeks civil penalties pursuant to Labor Code
6 § 2699(f) for Plaintiff, other current or former employees and the State for violations of those sections.

7 94. Labor Code § 2699(f) provides:

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

12 95. Plaintiff seeks penalties due from all Defendants on behalf of themselves, other
13 aggrieved employees and the State, as provided by Labor Code § 2699(i), including but not limited to,
14 penalties due pursuant to Labor Code § 558(a) as a result of Defendants' violation of the provisions of
15 the Labor Code and Wage Order 5.

16 96. All Defendants are liable to Plaintiff and "other current or former employees and the
17 state" for the civil penalties arising from the violations alleged in this Complaint. Plaintiff is also
18 entitled to an award of attorneys' fees and costs as set forth below.

19 97. Plaintiff, and on behalf of himself and other current or former employees, request relief
20 as described below.

21 **PRAYER FOR RELIEF**

22
23 WHEREFORE, Plaintiff pray for judgment for Plaintiff and the Class as follows:

- 24 1. That the Court determine that this action may be maintained as a class action with the
25 named Plaintiff appointed as Class Representative.
- 26 2. For the attorneys appearing on the above caption to be named Class Counsel.
- 27 3. For a declaratory judgment that Defendants violated the rights of Plaintiff and Class
- 28

1 under the California Labor Code, and California Business and Professions Code, as set
2 forth in the preceding paragraphs.

- 3 4. For premium pay, wages due, and penalties pursuant to PAGA and Labor Code § 558
4 and 1197.1.
- 5 5. For attorneys' fees, interest and costs of suit pursuant to California Labor Code §§
6 1194, 2802, 2699 *et seq.*, and pursuant to the private attorney provisions of California
7 Code of Civil Procedure § 1021.5.
- 8 6. For all provisions of the Labor code violated as described above except those for which
9 a civil penalty is specifically provided, a civil penalty of one hundred dollars (\$100) for
10 each aggrieved employee per pay period for the initial violation and two hundred
11 dollars (\$200) for each aggrieved employee per pay period for each subsequent
12 violation.
- 13 7. Pursuant to PAGA, for all provisions of the Labor code violated as described above for
14 which a civil penalty is specifically provided, civil penalties for each aggrieved
15 employee as specifically provided by statute.
- 16 8. For such other and further relief as the Court deems just and proper pursuant to the
17 procedures detailed in Labor Code §§ 2698 *et seq.*
- 18 9. That Defendants be ordered to make restitution to Plaintiff and the Class due to their
19 unfair competition, including restitutionary disgorgement of their wrongfully-obtained
20 revenues, earnings, profits, compensation, and benefits, pursuant to California Business
21 and Professions Code §§ 17203 and 17204.
- 22 10. That Defendants be enjoined from continuing the unlawful course of conduct, alleged
23 herein.
- 24 11. That Defendants further be enjoined to cease and desist from unfair competition in
25 violation of California Business and Professions Code § 17200 *et seq.*
- 26 12. For an award to Plaintiff and the Class of statutory damages or, in the alternative, actual
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1 damages.

2 13. California Labor Code §§ 203 & 256 (for unpaid final pay with a statute of limitations
3 of three years), 223.5, 558, 1194.2, 1197.1, 2699.

4
5 14. IWC Wage Order 5-2001 remedies, and California Labor Code §§ 203, 256, 206, 558,
6 1194.2, 1197.1, and 2699 remedies,

7
8 15. For such other and further relief as the Court deems just and proper.

9
10 **JURY TRIAL DEMANDED**

11 Plaintiff hereby demands trial of his claims and of the Class by jury to the extent authorized by
12 law.

13
14
15 Dated: June 17, 2019

Respectfully submitted,

16 MALLISON & MARTINEZ

17 
18 _____
19 Stan S. Mallison
20 Hector R. Martinez
21 Liliana Garcia
22 Attorneys for Plaintiff
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