

SUMMONS for First Amended Complaint (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

MARIHART RESTAURANT GROUP, INC., a California Corporation, and DOES 1 through 10, inclusive.

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

ROBERT ZIEGLER, on behalf of himself and all others similarly situated, and on behalf of the general public,

E-FILED
4/7/2023
Superior Court of California
County of Fresno
By: April Hoffman, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): B. F. Sisk Courthouse

1130 O Street
Fresno, CA 93721

CASE NUMBER:
(Número del Caso):

23CECG00301

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Roman Otkupman, Nidah Farishta: 5743 Corsa Ave, Suite 123, Westlake Village, CA 91362; (818)293-5623

DATE:
(Fecha) 4/7/2023

Clerk, by
(Secretario) A. Hoffman, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):

Roman Otkupman, CSBN 249423

Roman@OLFLA.com

Nidah Farishta, CSBN 312360

Nidah@OLFLA.com

OTKUPMAN LAW FIRM, A LAW CORPORATION

5743 Corsa Ave., Suite 123,

Westlake Village, CA 91362

Telephone: (818) 293-5623

Facsimile: (888) 850-1310

Attorney for Plaintiff,

Robert Ziegler, on behalf of himself and all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

ROBERT ZIEGLER, on behalf of himself
and all others similarly situated, and on behalf
of the general public,

Plaintiff,

vs.

MARIHART RESTAUNRANT GROUP,
INC., a California Corporation, and DOES 1
through 10, inclusive.

Defendants.

CASE NO. 23CECG00301

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF (LABOR CODE § 226.7, 512 and 558);**
- 2. FAILURE TO PROVIDE REST PERIODS IN VIOLATION OF (LABOR CODE § 226.7, 512 and 558);**
- 3. FAILURE TO PAY ALL WAGES IN VIOLATION OF (LABOR CODE §§ 510, 1194, 1194.2);**
- 4. KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE §§ 226(a), (e), 1174(d), 1174.5);**
- 5. FAILURE TO TIMELY PAY WAGES DUE AT TERMINATION (LABOR CODE §§ 201-203);**
- 6. FAILURE TO TIMELY PAY EMPLOYEES IN VIOLATION OF (LABOR CODE § 204(a)(b));**

7. **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES IN VIOLATION OF (LABOR CODE § 2802);**
8. **FAILURE TO PAY FOR ALL HOURS WORKED, INCLUDING OVERTIME HOURS WORKED IN VIOLATION OF (LABOR CODE §§ 210);**
9. **FAILURE TO PROVIDE PLACE OF EMPLOYMENT THAT IS SAFE AND HEALTHFUL IN VIOLATION OF (LABOR CODE §§ 6400, 6401, 6403, 6404, 6407, 8 CCR 3202);**
10. **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200**
11. **PENALTIES PURSUANT TO LABOR CODE SECTION 2699(f) FOR VIOLATIONS OF LABOR CODE §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a),(e) 1174(d), 201-203, 204(a)(b), 2802, 210, 6400, 6401, 6403, 6404, 6407, 8 CCR 3202, 17200**

DEMAND FOR JURY TRIAL

PLAINTIFF, Robert Ziegler (“Plaintiff”), on behalf of himself and other “aggrieved employees” complains of Defendants as follows:

I. INTRODUCTION

1. This is a Class and Representative Action, pursuant to Code of Civil Procedure § 382 on behalf of Plaintiff and certain individuals who are employed by, or were formerly employed by, Marihart Restaurant Group, Inc. and any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”) within California.

2. For at least four (4) years prior to the filing of this action and continuing to the present (the “liability period”).

///

///

1 3. Plaintiff and Defendant's California employees were routinely unable, and not
2 authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-
3 minute meal break for every shift they worked. Specifically, Plaintiff and Defendant's California
4 employees were forced to continue working through their meal and rest breaks in order to assist
5 Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to
6 take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one
7 hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees
8 who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558,
9 and IWC Order No. 5-2001, Section 12.

10 4. Plaintiff and Defendants' California employees were required to work off the clock
11 for Defendant. Defendant routinely made Plaintiff and its California employees wait in line for the
12 timeclock to become available. The time spent waiting in line took Plaintiff on the average of 5
13 minutes to complete. These excess hours were not recorded on our client's and Defendants'
14 California employees wage statements. Plaintiff and Defendant's California employees should have
15 been compensated for that time, but he was not in violation of Labor Code Sections 510, 1194, and
16 1194.2. As a result, Plaintiff and Defendant's California employees were not paid for all hours
17 worked including all straight time wages, and overtime wages. These failures to pay wages
18 constitute violations of Labor Code § 510 and 1194.

19 5. Plaintiff, on behalf of himself and all other California employees of Defendant claims
20 that Defendant has failed to pay all overtime wages due to non-exempt employees. As a result,
21 employees are not properly compensated for work performance in excess of eight (8) hours in a
22 workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than
23 one and one-half times the regular rate of pay. Employees of Defendant regularly work in excess of
24 eight (8) hours in a day or more than forty (40) hours per week and do not receive overtime
25 compensation at a rate of one and one half of their regular rate. Plaintiff and Defendant's California
26 employees were forced to work overtime and were not paid for all hours worked including all
27 straight time wages, and overtime wages. These failures to pay all overtime wages constitute
28 violations of Labor Code §§ 510, 1194, 1194.2.

 6. Defendants failed to issue Plaintiff and Defendant's California employees accurately
itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California
employees with all wages due, as detailed above, their wage statements failed to accurately state all

1 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
2 Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all
3 applicable hourly rates during the pay period and the corresponding number of hours worked, in
4 violation of Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages
5 due. These violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and
6 Defendants' California employees.

7 7. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's
8 California employees timely, accurate, itemized wage statements in accordance with Labor Code §
9 226 and keep accurate records as required by §1174(d), §1174.5. The statements provided to
10 Plaintiff and Defendant's California employees, and the records maintained by Defendants, have
11 not accurately reflected actual gross wages earned, including pay for all hours worked, overtime,
12 and meal/rest premiums, and total hour worked.

13 8. Our client further alleges that Defendants paid him and Defendant's California
14 employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As
15 they were not paid all wages due and owing throughout the course of their employment as a result
16 of Defendants' failure to pay all premium wages as detailed above, at the time of their separation,
17 they were not paid all final wages due and owing for the entirety of their employment. This violates
18 Labor Code §§ 201-203.

19 9. Defendant pays Plaintiff and it's California employees on a bi-weekly basis and has
20 failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis must
21 be paid no later than seven (7) calendar days following the close of the payroll period. Due to
22 Defendant's failure to pay Plaintiff and Defendant's California employees premium wages for
23 missed meal and rest breaks, and all straight time and overtime wages as described above, Plaintiff
24 and Defendant's California employees did not receive all of their wages earned within seven (7)
25 calendar days following the close of the payroll period as required by Labor Code § 204(a)(b).

26 10. Defendant failed to reimburse Plaintiff and Defendant's California employees
27 for the equipment they purchased to perform work for Defendant such as face masks.
28 Moreover, Defendant failed to reimburse Plaintiff and Defendant's California employees for
their uniform and uniform maintenance. Defendant further failed to reimburse its California
employees for using their personal cell phones for the benefit of Defendant. Labor Code section
2802 provides that "[a]n employer shall indemnify his or her employee for all necessary

1 expenditures or losses incurred by the employee in direct consequence of the discharge of his
2 or her duties.” As such, Plaintiff and Defendant’s California employees have incurred
3 reasonable and necessary expenses in the course of their job duties, which were not reimbursed
4 by Defendant, in violation of Labor Code § 2802.

5 11. Defendants failed to continue to take precautions to ensure employee safety after the
6 onset of COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome
7 coronavirus 2 (SARS-CoV-2). Plaintiff and Defendant’s California employees, directly after the
8 onset of COVID, were required to partake in mandatory temperature and health checks, but these
9 activities were not enforced or practiced quickly after the onset of COVID and when COVID was
10 still a health risk to the employees. Plaintiff and Defendant’s California employees were also
11 required to provide their own masks at the workplace. As a result of these practices, Defendants have
12 violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe
13 and healthful environment for their Employees, as outlines above. Defendants are liable for civil
14 penalties pursuant to Cal. Labor Code § 2699 *et seq.*

15 12. Defendants failed to pay all wages earned to Plaintiff and Defendant’s California
16 employees as a result of the unlawful employment policies and practices herein. As a result of these
17 practices, Plaintiff and Defendant’s California employees were underpaid for hours worked,
18 including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages
19 owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure
20 to pay wages as required by law.

21 13. Plaintiff and all other aggrieved employees bring this claim pursuant to *Business &*
22 *Professions Code* § 17200, *et seq.* The conduct of all Defendants as alleged above has been and
23 continues to be unfair, unlawful, and harmful to Plaintiff and Defendant’s California employees.

24 14. Plaintiff, on behalf of himself and all proposed Plaintiff Class members (specifically,
25 the “California Class” as defined herein), brings this action pursuant to Labor Code §§ 226.7, 512,
26 558, 510, 1194, 1194.2, 226(a)(e), 1174(d), 1174.5, 201-203, 204(a)(b), 2802, 210, and 6400.

27 15. Venue as to each Defendant is proper in this judicial district, pursuant to Code
28 of Civil Procedure § 395. Defendants operate within the State of California. The unlawful acts
alleged herein took place in Clovis, California.

///
///

///

II. PARTIES

A. PLAINTIFF

16. Plaintiff Robert Ziegler is a resident of Fresno, California. At all times relevant herein, he was employed by Defendants in Fresno County, California. Plaintiff was employed by Defendants as a non-exempt, hourly employee in California, including in and around the city of Clovis, County of Fresno. During Plaintiff's employment:

- A. Plaintiff did not receive final wages upon termination.
- B. Plaintiff and the Class were not paid in a timely manner pertaining to the waiting time penalties in accordance with Labor Code §§ 201-203.
- C. Plaintiff was forced to receive inaccurately itemized and deficient wage statements, in violation of Labor Code § 226(a).
- D. Plaintiff did not receive his compensation in a timely manner in accordance with Labor Code Section 204 in that Defendant failed to issue wages to its employees within seven (7) calendar days after the pay period ended.
- E. Plaintiff was required to work without meal and rest periods, nor compensation in lieu thereof, as required by the Labor Code and relevant Wage Orders.
- F. Plaintiff was required to work either in excess of eight hours per workday or in excess of forty hours per workweek without receiving compensation at a rate of one and one half the regular rate of pay.
- G. Defendant also failed to reimburse Plaintiff and Defendant's California employees for reasonable and necessary expenses in the course of their job duties, in violation of Labor Code § 2802.

B. DEFENDANTS

17. Defendant Marihart Restaurant Group, Inc. is doing business in Clovis, California. It operates within the State of California. Defendants employed Plaintiff and similarly situated employees within California. The violations alleged herein arose in Clovis, California.

18. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will

1 seek leave of court to amend this Complaint to reflect the true names and capacities of the
2 Defendants designated hereinafter as DOES when such identities become known.

3 19. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
4 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
5 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
6 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
7 employer and/or joint employer of Plaintiff and the proposed Class.

8 **FACTUAL ALLEGATIONS**

9 20. Plaintiff and Defendant's California employees were routinely unable, and not
10 authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-
11 minute meal break for every shift they worked. Specifically, Plaintiff and Defendant's California
12 employees were forced to continue working through their meal and rest breaks in order to assist
13 Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to
14 take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one
15 hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees
16 who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558,
17 and IWC Order No. 5-2001, Section 12.

18 21. Plaintiff and Defendants' California employees were required to work off the clock
19 for Defendant. Defendant routinely made Plaintiff and its California employees wait in line for the
20 timeclock to become available. The time spent waiting in line took Plaintiff on the average of 5
21 minutes to complete. These excess hours were not recorded on our client's and Defendants'
22 California employees wage statements. Plaintiff and Defendant's California employees should have
23 been compensated for that time, but he was not in violation of Labor Code Sections 510, 1194, and
24 1194.2. As a result, Plaintiff and Defendant's California employees were not paid for all hours
25 worked including all straight time wages, and overtime wages. These failures to pay wages
26 constitute violations of Labor Code § 510 and 1194.

27 22. Plaintiff, on behalf of himself and all other California employees of Defendant claims
28 that Defendant has failed to pay all overtime wages due to non-exempt employees. As a result,
employees are not properly compensated for work performance in excess of eight (8) hours in a
workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than
one and one-half times the regular rate of pay. Employees of Defendant regularly work in excess of

1 eight (8) hours in a day or more than forty (40) hours per week and do not receive overtime
2 compensation at a rate of one and one half of their regular rate. Plaintiff and Defendant's California
3 employees were forced to work overtime and were not paid for all hours worked including all
4 straight time wages, and overtime wages. These failures to pay all overtime wages constitute
violations of Labor Code §§ 510, 1194, 1194.2.

5 23. Defendants failed to issue Plaintiff and Defendant's California employees accurately
6 itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California
7 employees with all wages due, as detailed above, their wage statements failed to accurately state all
8 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
9 Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all
10 applicable hourly rates during the pay period and the corresponding number of hours worked, in
11 violation of Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages
12 due. These violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and
Defendants' California employees.

13 24. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's
14 California employees timely, accurate, itemized wage statements in accordance with Labor Code §
15 226 and keep accurate records as required by §1174(d), §1174.5. The statements provided to
16 Plaintiff and Defendant's California employees, and the records maintained by Defendants, have
17 not accurately reflected actual gross wages earned, including pay for all hours worked, overtime,
and meal/rest premiums, and total hour worked.

18 25. Our client further alleges that Defendants paid him and Defendant's California
19 employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As
20 they were not paid all wages due and owing throughout the course of their employment as a result
21 of Defendants' failure to pay all premium wages as detailed above, at the time of their separation,
22 they were not paid all final wages due and owing for the entirety of their employment. This violates
Labor Code §§ 201-203.

23 26. Defendant pays Plaintiff and it's California employees on a bi-weekly basis and has
24 failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis must
25 be paid no later than seven (7) calendar days following the close of the payroll period. Due to
26 Defendant's failure to pay Plaintiff and Defendant's California employees premium wages for
27 missed meal and rest breaks, and all straight time and overtime wages as described above, Plaintiff
28

1 and Defendant's California employees did not receive all of their wages earned within seven (7)
2 calendar days following the close of the payroll period as required by Labor Code § 204(a)(b).

3 27. Defendant failed to reimburse Plaintiff and Defendant's California employees
4 for the equipment they purchased to perform work for Defendant such as face masks.
5 Moreover, Defendant failed to reimburse Plaintiff and Defendant's California employees for
6 their uniform and uniform maintenance. Defendant further failed to reimburse its California
7 employees for using their personal cell phones for the benefit of Defendant. Labor Code section
8 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary
9 expenditures or losses incurred by the employee in direct consequence of the discharge of his
10 or her duties." As such, Plaintiff and Defendant's California employees have incurred
11 reasonable and necessary expenses in the course of their job duties, which were not reimbursed
12 by Defendant, in violation of Labor Code § 2802.

13 28. Defendants failed to continue to take precautions to ensure employee safety after the
14 onset of COVID. Under LC §6409.6(a)(1). "COVID-19" means severe acute respiratory syndrome
15 coronavirus 2 (SARS-CoV-2). Plaintiff and Defendant's California employees, directly after the
16 onset of COVID, were required to partake in mandatory temperature and health checks, but these
17 activities were not enforced or practiced quickly after the onset of COVID and when COVID was
18 still a health risk to the employees. Plaintiff and Defendant's California employees were also
19 required to provide their own masks at the workplace. As a result of these practices, Defendants have
20 violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe
21 and healthful environment for their Employees, as outlines above. Defendants are liable for civil
22 penalties pursuant to Cal. Labor Code § 2699 *et seq.*

23 29. Defendants failed to pay all wages earned to Plaintiff and Defendant's California
24 employees as a result of the unlawful employment policies and practices herein. As a result of these
25 practices, Plaintiff and Defendant's California employees were underpaid for hours worked,
26 including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages
27 owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure
28 to pay wages as required by law.

30. Plaintiff and all other aggrieved employees bring this claim pursuant to *Business &*
Professions Code § 17200, *et seq.* The conduct of all Defendants as alleged above has been and
continues to be unfair, unlawful, and harmful to Plaintiff and Defendant's California employees.

CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure.

32. Plaintiff seeks to represent a class composed of and defined as follows:

THE CALIFORNIA CLASS

33. All current and former California employees of Defendants since the date four (4) year prior to the filing of this complaint.

34. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

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

A. NUMEROSITY

36. The potential members of the proposed Class as defined are so numerous that joinder of all the members of the proposed Class is impracticable. While the precise number of proposed Plaintiff Class members has not been determined at this time, Plaintiff is informed and believes that Defendants currently employ, and during the relevant time periods employed, over seventy-five (75) Class members in the State of California.

37. Accounting for employee turnover during the relevant periods necessarily increases this number substantially. Plaintiff alleges that Defendants' employment records would provide information as to the number and location of all proposed Plaintiff Class members. Joinder of all members of the proposed Class is not practicable.

B. COMMONALITY

38. There are questions of law and fact common to the proposed Class that predominate over any questions affecting only individual Class members. These common questions of law and fact include, without limitation, whether Defendants failed to provide members of the Class with wage statements that fully and accurately itemize the requirements set forth in Labor Code §226(a), accurate final wages, and final wages on the day of termination and or within seventy-two (72) hours of separation and whether the rest periods were timely made available.

1 **C. TYPICALITY**

2 39. The claims of the named Plaintiff are typical of the claims of the proposed Class.
3 Plaintiff and all members of the proposed Class sustained injuries and damages arising out of and
4 caused by Defendants' common course of conduct in violation of laws, regulations that have the
force and effect of law, and statutes as alleged herein.

5 **D. ADEQUACY OF REPRESENTATION**

6 40. Plaintiff will fairly and adequately represent and protect the interests of the members
7 of the proposed Class. Counsel who represents Plaintiff is competent and experienced in litigating
large employment class actions.

8 **E. SUPERIORITY OF CLASS ACTION**

9 41. A class action is superior to other available means for the fair and efficient
10 adjudication of this controversy. Individual joinder of all proposed Plaintiff Class members is not
11 practicable, and questions of law and fact common to the proposed Class predominate over any
12 questions affecting only individual members of the proposed Class. Each member of the proposed
13 Class has been damaged and is entitled to recovery by reason of Defendant's failure to comply with
Labor Code 226(a).

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

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**
21 **(LABOR CODE §§ 226.7, 512 and 558)**

22 43. Plaintiff incorporates paragraphs 1 through 42 of this Complaint as though fully set
forth herein.

23 44. Plaintiff is entitled to one hour of pay for each day that Defendants failed to properly
24 provide one or more meal periods as set forth in the IWC Wage Orders and Labor Code §§ 226.7,
25 512 and 558.

26 45. Plaintiff and Defendant's California employees were routinely unable, and not
27 authorized to take an uninterrupted 30-minute meal break for every shift they worked. Specifically,

1 Plaintiff and Defendant's California employees were forced to continue working through their meal
2 breaks in order to assist Defendant's needs. Because of this, Plaintiff and Defendant's California
3 employees were unable to take their required meal breaks. Moreover, Defendants failed to pay
4 premium wages of one hour's pay for each missed meal and rest break to Plaintiff and Defendant's
5 California employees who were denied timely meal and rest breaks, in violation of Labor Code §§
226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

6 46. Pursuant to Labor Code §§ 226.7, 512 and 558 Plaintiff seeks the payment of all meal
7 period compensations, which he was owed since he commenced to work for Defendant, according to
8 proof.

9 47. Additionally, Plaintiff is entitled to, and seeks, attorney's fees and costs, and
10 prejudgment interest.

11 48. Wherefore, Plaintiff seeks to request relief as described below.

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF** 14 **(LABOR CODE §§ 226.7, 512 and 558)**

15 49. Plaintiff incorporates paragraphs 1 through 48 of this Complaint as though fully set
16 forth herein.

17 50. Plaintiff is entitled to one hour of pay for each day that Defendants failed to properly
18 provide one or more rest periods as set forth in the IWC Wage Orders and Labor Code §§ 226.7, 512
19 and 558.

20 51. Plaintiff and Defendant's California employees were routinely unable, and not
21 authorized to take their 10-minute rest periods for every shift they worked. Specifically, Plaintiff and
22 Defendant's California employees were forced to continue working through their rest breaks in order
23 to assist Defendant's needs. Because of this, Plaintiff and Defendant's California employees were
24 unable to take their required rest breaks. Moreover, Defendants failed to pay premium wages of one
hour's pay for each missed rest break to Plaintiff and Defendant's California employees who were
denied timely rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-
2001, Section 12.

25 52. Pursuant to Labor Code §§ 226.7, 512 and 558 Plaintiff seeks the payment of all rest
26 period compensations, which he was owed since he commenced to work for Defendant, according to
27 proof.

53. Additionally, Plaintiff is entitled to, and seeks, attorney's fees and costs, and prejudgment interest.

54. Wherefore, Plaintiff seeks to request relief as described below.

THIRD CAUSE OF ACTION
FAILURE TO PAY ALL WAGES IN VIOLATION OF
(LABOR CODE §§ 510, 1194, 1194.2)

55. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

56. During the liability period, Defendant failed to pay all wages to Plaintiff and Defendant's California employees.

57. Plaintiff and Defendants' California employees were required to work off the clock for Defendant. Defendant routinely made Plaintiff and its California employees wait in line for the timeclock to become available. The time spent waiting in line took Plaintiff on the average of 5 minutes to complete. These excess hours were not recorded on our client's and Defendants' California employees wage statements. Plaintiff and Defendant's California employees should have been compensated for that time, but he was not in violation of Labor Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendant's California employees were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay wages constitute violations of Labor Code § 510 and 1194.

58. Plaintiff, on behalf of himself and all other California employees of Defendant claims that Defendant has failed to pay all overtime wages due to non-exempt employees. As a result, employees are not properly compensated for work performance in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of pay. Employees of Defendant regularly work in excess of eight (8) hours in a day or more than forty (40) hours per week and do not receive overtime compensation at a rate of one and one half of their regular rate. Plaintiff and Defendant's California employees were forced to work overtime and were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay all overtime wages constitute violations of Labor Code §§ 510, 1194, 1194.2.

///

///

1 59. As a result, Plaintiff and Defendant's California employees were not paid for all
2 hours worked including all straight time wages, and overtime wages. These failures to pay wages
3 constitute violations of Labor Code § 510 and 1194.

4 60. As a result of the unlawful acts of Defendants in willfully failing to pay all alleges,
5 Plaintiff and Defendant's California employees have been deprived of wages in amounts to be
6 determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon,
7 attorneys' fees, and costs pursuant to Labor Code § 1194 and liquidated damages pursuant to Labor
8 Code § 1194.2.

9 **FOURTH CAUSE OF ACTION**
10 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**
11 **EMPLOYEE WAGE STATEMENT PROVISIONS**
12 **(LABOR CODE § 226(a),(e), 1174(d), 1174.5)**

13 61. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
14 forth herein.

15 62. Section 226(a) of the California Labor Code requires Defendants to provide wage
16 statements to employees. In those wage statements, Defendants must accurately set forth, among
17 other things, the total gross and net wages earned, and all hourly rates in effect, for Plaintiff.
18 Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

19 63. Defendants failed to issue Plaintiff and Defendant's California employees accurately
20 itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California
21 employees with all wages due, as detailed above, their wage statements failed to accurately state all
22 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
23 Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable
24 hourly rates during the pay period and the corresponding number of hours worked, in violation of
25 Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages due. These
26 violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendants'
27 California employees.

28 64. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's
California employees timely, accurate, itemized wage statements in accordance with Labor Code §
226 and keep accurate records as required by §1174(d), §1174.5. The statements provided to
Plaintiff and Defendant's California employees, and the records maintained by Defendants, have not

1 accurately reflected actual gross wages earned, including pay for all hours worked, overtime, and
2 meal/rest premiums, and total hour worked.

3 65. The wage statements provided to Plaintiff and members of the Class fail to accurately
4 itemize in wage statements total gross and net wages earned, and all hourly rates in effect for
5 Plaintiff. Defendants' violations of Labor Code § 226(a) are knowing and intentional, and Plaintiff
6 has suffered injury as a result of the receipt of defective wage statements, thereby entitling them to
penalties pursuant to Labor Code § 226(e).

7 66. Plaintiff is entitled to reimbursement for these necessary expenditures, plus
8 interest and attorneys' fees and cost, under Labor Code § 226(a),(e), 226.3, 1174, 1174.5.

9 67. Plaintiff also requests relief as described below.

10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO PAY WAGES DUE AT THE TIME OF DISCHARGE IN VIOLATION** 12 **OF LABOR CODE §§ 201-202, RESULTING IN SECTION 203 WAGES AND** 13 **PENALTIES (WAITING TIME PENALTIES)**

14 68. Plaintiff hereby incorporates preceding paragraphs of this Complaint as though
15 fully set forth herein.

16 69. At all times material herein, the California Labor Code Sections 201, 202, and
17 203 were in effect and binding on Defendant.

18 70. California Labor Code § 202 requires employers to pay employees all wages due
19 within seventy-two (72) hours of resignation. California Labor Code § 201 states in pertinent
20 part that "if an employer discharges an employee, the wages earned and unpaid at the time of
21 discharge are due and payable immediately." California Labor Code § 203 provides that if an
22 employer willfully fails to timely pay such wages the employer must, as penalty, continue to
23 pay the subject employee's wages until the back wages are paid in full or an action is
24 commenced. The penalty cannot exceed 30 days of wages.

25 71. Plaintiff was entitled to compensation for unpaid wages, but to date has not
26 received such compensation. Specifically, Defendant failed to pay Plaintiff all wages due to
27 Plaintiff at the time of his separation of employment from Defendant's. Thus, since Defendant
28 failed to promptly pay Plaintiff all wages due to Plaintiff at the time of his separation of
employment, Defendant violated Section 201 of the Labor Code and Plaintiff is therefore
entitled to wages and penalties pursuant to Labor Code Section 203.

1 72. More than 30 days have passed since Plaintiff's employment ended with
2 Defendant.

3 73. As a consequence of Defendant's willful conduct in not paying wages owed to
4 Plaintiff, Plaintiff is entitled to 30 days of wages as a penalty pursuant to Labor Code § 203 for
5 Defendant's failure to timely pay legal wages, together with attorney's fees and cost of suit,
6 and interest pursuant to California Labor Code Section 218.5.

7 74. Plaintiff is entitled to reimbursement for these necessary expenditures, plus
8 interest and attorneys' fees and cost, under Labor Code § 201-203.

9 75. Plaintiff also requests relief as described below.

10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO TIMELY PAY EMPLOYEES IN VIOLATION OF LABOR CODE § 204(a)(b)**

12 76. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
13 forth herein.

14 77. At all times relevant herein, Labor Code § 204 was in full force and effect and
15 binding on Defendants.

16 78. Wages must be paid according to a regularly set schedule. (Labor Code § 204). All
17 earned wages must be paid at least twice a month, on days designated in advance by the employer.
18 Work performed between the 1st and the 15th days, inclusive, of any calendar month must be paid
19 between the 16th and 26th day of the same month. Work performed between the 16th and the last
20 day of the month must be paid between the 1st and 10th day of the following month. (Labor Code §
21 204). Weekly or bi-weekly (every two weeks) payroll must be paid within seven (7) days of the end
22 of the pay period in which the wages were earned (Labor Code §§ 204(a), 204(b)).

23 79. Defendant pays Plaintiff and it's California employees on a bi-weekly basis and has
24 failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis must
25 be paid no later than seven (7) calendar days following the close of the payroll period. Due to
26 Defendant's failure to pay Plaintiff and Defendant's California employees premium wages for
27 missed meal and rest breaks, and all straight time and overtime wages as described above, Plaintiff
28 and Defendant's California employees did not receive all of their wages earned within seven (7)
calendar days following the close of the payroll period as required by Labor Code § 204(a)(b).

 80. Defendants have failed to comply with the above-section because they waited longer
than seven days from the close of the pay period to pay its bi-weekly paid employees.

1 81. Plaintiff is entitled to reimbursement for these necessary expenditures, plus
2 interest and attorneys' fees and cost, under Labor Code § 204(a)(b).

3 82. Plaintiff also requests relief as described below.

4 **SEVENTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES IN VIOLATION OF**
6 **CALIFORNIA LABOR CODE § 2802**

7 83. Plaintiff hereby incorporates preceding paragraphs of this Complaint as though
8 fully set forth herein.

9 84. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her
10 employee for all necessary expenditures or losses incurred by the employee in direct
11 consequence of the discharge of his or her duties."

12 85. Defendant failed to reimburse Plaintiff and Defendant's California employees
13 for the equipment they purchased to perform work for Defendant such as face masks.
14 Moreover, Defendant failed to reimburse Plaintiff and Defendant's California employees for
15 their uniform and uniform maintenance. Defendant further failed to reimburse its California
16 employees for using their personal cell phones for the benefit of Defendant. Labor Code section
17 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary
18 expenditures or losses incurred by the employee in direct consequence of the discharge of his
19 or her duties." As such, Plaintiff and Defendant's California employees have incurred
20 reasonable and necessary expenses in the course of their job duties, which were not reimbursed
21 by Defendant, in violation of Labor Code § 2802.

22 86. Plaintiff is entitled to reimbursement for these necessary expenditures, plus
23 interest and attorneys' fees and cost, under Labor Code § 2802.

24 87. Plaintiff also requests relief as described below.

25 **EIGHTH CAUSE OF ACTION**

26 **FAILURE TO PAY FOR ALL HOURS WORKED, INCLUDING OVERTIME HOURS**
27 **WORKED IN VIOLATION OF (LABOR CODE § 210)**

28 88. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully
set forth herein.

89. Section 2(K) or Wage Order 5 defines "hours worked" as "the time during
which an employee is subject to the control of an employer, and including all the time the

1 employee is suffered or permitted to work, whether or not required to do so.” Labor Code §§
2 1194 and 1197 required employers to compensate Plaintiff for all hours worked at least at a
3 minimum wage ad established by the Wage Order. Defendants did not pay for all hours worked
4 and frequently required Plaintiff to work off the clock. Defendants have been engaged in many
5 unlawful employment practices which resulted in underpayment for hours worked each pay
6 period as more set forth below:

7 90. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to
8 pay Plaintiff all wages earned twice during each calendar month pursuant to Labor Code §
9 204(a). Defendants failed to pay all wages earned to Plaintiff as a result of the unlawful
10 employment policies and practices herein. As a result of these practices, Plaintiff was
11 underpaid for hours worked, including overtime and penalty wages, and this underpayment
12 resulted in a failure to pay all wages owed twice per month. Due to this failure, Defendants are
13 liable under Labor Code § 210 for failure to pay wages as required by law.

14 91. Plaintiff is entitled to reimbursement for these necessary expenditures, plus
15 interest and attorneys’ fees and cost, under Labor Code § 210.

16 92. Plaintiff also requests relief as described below.

17 **NINTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE PLACE OF EMPLOYMENT THAT IS SAFE AND** 19 **HEALTHFUL IN VIOLATION OF** 20 **(LABOR CODE §§ 6400, 6401, 6402, 6403, 6404, 6407, 8 CCR 3202)**

21 93. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully
22 set forth herein.

23 94. Cal. Labor Code § 6400(a) provides that every employer shall furnish
24 employment and a place of employment that is safe and healthful for Plaintiff therein. Cal.
25 Labor Code § 6401 provides that “every employer shall furnish and use safety devices and
26 safeguard, and shall adopt and use practices, means, methods, operations, and processes which
27 are reasonably adequate to render such employment and place of employment safe and
28 healthful. Every employer.

95. Pursuant to Cal. Labor Code § 6402, no employer shall require, or permit any
employee to go or be in any employment or place of employment which is not safe and
healthful. Cal. Labor Code § 6403 states that no employer shall fail or neglect to provide and

1 use safety devices and safeguard reasonably adequate to render the employment and place of
2 employment safe, or adopt and use methods and processes reasonably necessary to protect the
3 life, safety, and health of Plaintiff and Defendant's California employees.

4 96. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any
5 place pf employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every
6 employer and every employee shall comply with occupational safety and health standards, with
7 Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders
8 pursuant to this division which are applicable to his own actions and conduct. Defendants failed
9 to continue to take precautions to ensure employee safety after the onset of COVID. Under LC
10 §6409.6(a)(1). "COVID-19" means severe acute respiratory syndrome coronavirus 2 (SARS-
11 CoV-2). Plaintiff, directly after the onset of COVID, were required to partake in mandatory
12 temperature and health checks, but these activities were not enforced or practiced quickly after
13 the onset of COVID and when COVID was still a health risk to Plaintiff and Defendant's
14 California employees. Plaintiff and Defendant's California employees was also required to
15 provide their own masks at the workplace. As a result of these practices, Defendants have
16 violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a
17 safe and healthful environment for Plaintiff, as outlines above.

18 97. Plaintiff is entitled to reimbursement for these necessary expenditures, plus
19 interest and attorneys' fees and cost, under Labor Code §§ 6400, 6401, 6402, 6403, 6404, and
20 6407.

21 98. Plaintiff also requests relief as described below.

22 **TENTH CAUSE OF ACTION**
23 **UNFAIR COMPETITION PURSUANT TO**
24 **BUSINESS & PROFESSIONS CODE § 17200**

25 99. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully
26 set forth herein.

27 100. This is an Action for Unfair Business Practices. Plaintiff Robert Ziegler brings
28 this claim pursuant to *Business & Professions Code* § 17200, et seq. The conduct of all
Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
harmful to Plaintiff and Defendant's California employees as a result of Defendant's failure to
comply with the labor code sections as set out above including but not limited to Labor Code

1 Sections 6400, 6401, 6402, 6403, 6404, 6407. Plaintiff and Defendant's California employees
2 seek to enforce important rights affecting the public interest within the meaning of *Code of*
3 *Civil Procedure* § 1021.5.

4 101. Plaintiff is a "person" within the meaning of *Business & Professions Code* §
5 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution,
6 and other appropriate equitable relief.

7 102. *Business & Profession Code* § 17200 *et. seq.* prohibits unlawful and unfair
8 business practices.

9 103. Defendants have violated statutes and public policies. Through the conduct
10 alleged in this Complaint, Defendants, and each of them, have acted contrary to these public
11 policies, have violated specific provisions of the *Labor Code*, and have engaged in other
12 unlawful and unfair business practices in violation of *Business & Professions Code* § 17200, *et*
13 *seq.*, depriving Plaintiff, of rights, benefits, and privileges guaranteed to Plaintiff under law.

14 104. Defendants' conduct, as alleged herein, constitutes unfair competition in
15 violation of § 17200 *et. seq.* of the *Business & Professions Code*.

16 105. As a proximate result of the above mentioned acts of Defendants, Plaintiff has
17 been damaged in a sum as may be proven.

18 106. Unless restrained by this Court, Defendants will continue to engage in the
19 unlawful conduct as alleged above. Pursuant to *Business & Professions Code*, this Court should
20 make such orders or judgments, including the appointment of a receiver, as may be necessary
21 to prevent the use or employment, by Defendants, their agents, or Plaintiff, of any unlawful or
22 deceptive practice prohibited by the *Business & Professions Code*, and/or, including but not
23 limited to, disgorgement of profits which may be necessary to restore Plaintiff to the money
24 Defendants have unlawfully failed to pay.

25 107. Plaintiff is entitled to reimbursement for these necessary expenditures, plus
26 interest and attorneys' fees and cost, under *Business & Profession Code* § 17200 *et. seq.*

27 108. Plaintiff also requests relief as described below.

28 **ELEVENTH CAUSE OF ACTION**

**PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 1174(d), 201-203, 204(a)(b), 2802, 210,
6400, 6401, 6403, 6404, 6407, 8 CCR 3202, 17200**

109. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

110. As a result of the acts alleged herein, Plaintiff seeks penalties under Labor Code § 2698 *et seq.* because of Defendants' violations of Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 201-203, 204(a)(b), 1174(d), 2802, 210, 6400, 6401, 6403, 6404, 6407, 8 CCR 3202, 17200.

111. For each such violation, Plaintiff and all aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. With respect to the violation of Labor Code § 2699(f) for violations of Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 1174(d), 201-203, 204(a)(b), 2802, 210, 6400, 6401, 6403, 6404, 6407, 8 CCR 3202, 17200 \$100 for the initial violation per employee per pay period and \$200 for each subsequent violation per employee per pay period.

112. These penalties will be allocated 75% to the Labor Workforce Development Agency, and 25% to the affected employees.

113. On January 26, 2023, Plaintiff sent a letter, by certified mail, return receipt requested, to the LWDA and Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* (**Exhibit "A"**). Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of January 26, 2023. Plaintiff may therefore commence this action to seek penalties pursuant to Labor Code § 2698 *et seq.*

114. Wherefore, Plaintiff and the aggrieved employees he seeks to represent request relief as described herein.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For a money judgment representing compensatory damages including lost wages, earnings, retirement benefits and other employee benefits, and all other sums of money, together with interest on these amounts, according to proof;
2. That Defendants are found to have violated the requirements of Labor Code § 203 for failure to timely pay wages due at termination.
3. That Defendants are found to have violated the requirements of Labor Code § 226(e)

1 for failure to comply with itemized employee wage statement provisions.

2 4. That Defendants are found to have violated the requirements of Labor Code §
3 1174(d) for failure to comply with itemized employee wage statement provisions.

4 5. That Defendants are found to have violated the requirements of Labor Code § 1174.5
5 for failure to comply with itemized employee wage statement provisions.

6 6. That Defendants are found to have violated the requirements of Labor Code § 226.7
7 for failure to provide meal and rest periods or compensation in lieu thereof.

8 7. That Defendants are found to have violated the requirements of Labor Code § 510 for
9 failure to pay all wages.

10 8. That Defendants are found to have violated the requirements of Labor Code § 1194.2
11 for failure to pay all wages.

12 9. That Defendants are found to have violated the requirements of Labor Code § 204(b)
13 for failure to timely pay employees.

14 10. That Defendants are found to have violated the requirements of Labor Code § 2802
15 for failure to reimburse for business expenses.

16 11. That Defendants are found to have violated the requirements of Labor Code § 210 for
17 failure to pay all hours worked, including overtime hours worked.

18 12. That Defendants are found to have violated the requirements of Labor Code § 6400
19 for failure to provide a place of employment that is safe and healthful.

20 13. That Defendants are found to have violated the requirements of Business and
21 Professions Code § 17200 et seq.;

22 14. For penalties and other relief pursuant to Labor Code § 2698 et seq. for Plaintiff and
23 all other aggrieved employees;

24 15. An award providing for payment of costs of suit pursuant to Labor Code §
25 2699(g)(1);

26 16. An award of prejudgment and post-judgment interest;

27 17. An award providing for payment of costs of suit;

28 18. An award of attorneys' fees; and

19. Such other and further relief as this Court may deem just and proper.

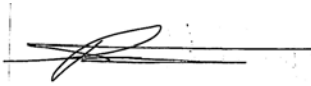
///

///

1
2 Dated: April 4, 2023

OTKUPMAN LAW FIRM,
A Law Corporation

3
4
5 By:



6 ROMAN OTKUPMAN
7 Attorneys for Plaintiff

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

10
11 Dated: April 4, 2023

OTKUPMAN LAW FIRM,
A Law Corporation

12
13
14 By:



15 ROMAN OTKUPMAN
16 Attorneys for Plaintiff

EXHIBIT A

OTKUPMAN LAW FIRM, A LAW CORPORATION

5743 Corsa Ave, Suite 123
Westlake Village, CA 91362
Tel.: 818-293-5623
Fax: 888-850-1310

January 26, 2023

VIA ELECTRONIC FILING

Labor & Workforce Development Agency

VIA CERTIFIED MAIL

Marihart Restaurant Group, Inc.
550 N. Bush Ave., Suite 101
Clovis, CA 93611
Defendant certified mail # 7022 0410 0002 4061 2562

VIA CERTIFIED MAIL

Agent for Service of Process
Joseph J. Doerr
5200 N. Palm, Suite 404
Fresno, CA 93704
Agent certified mail # 7022 0410 0002 4061 2548

VIA CERTIFIED MAIL

Marihart Restaurant Group, Inc.
1345 N. Willow Ave #190
Clovis, CA 93619
Defendant certified mail # 7022 0410 0002 4061 2531

Re: ***Robert Ziegler v. Marihart Restaurant Group, Inc. – Labor Code Violations of
Marihart Restaurant Group, Inc. – Compliance Letter of California Labor Code §
2698 – Private Attorneys General Act***

Dear Sir or Madam:

This office represents Robert Ziegler (“Plaintiff”), a former California employee of Marihart Restaurant Group, Inc. (“Defendants”). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client works for Defendant in Northern California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its California non-exempt employees.

Plaintiff began working for Defendants on or about February 13, 2021. While working for Defendant as a Dishwasher and Cook, Plaintiff was earning (\$15.80) dollars per hour.

Plaintiff and Defendant's California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant's California employees were forced to continue working through their meal and rest breaks in order to assist Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

Plaintiff and Defendants' California employees were required to work off the clock for Defendant. Defendant routinely made Plaintiff and its California employees wait in line for the timeclock to become available. The time spent waiting in line took Plaintiff on the average of 5 minutes to complete. These excess hours were not recorded on our client's and Defendants' California employees wage statements. Plaintiff and Defendant's California employees should have been compensated for that time, but he was not in violation of Labor Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendant's California employees were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay wages constitute violations of Labor Code § 510 and 1194.

Plaintiff, on behalf of himself and all other California employees of Defendant claims that Defendant has failed to pay all overtime wages due to non-exempt employees. As a result, employees are not properly compensated for work performance in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of pay. Employees of Defendant regularly work in excess of eight (8) hours in a day or more than forty (40) hours per week and do not receive overtime compensation at a rate of one and one half of their regular rate. Plaintiff and Defendant's California employees were forced to work overtime and were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay all overtime wages constitute violations of Labor Code §§ 510, 1194, 1194.2.

Defendants have required Plaintiff and Defendant's California employees to work hours in excess of eight hours in a day and forty in a week but had not paid these employees overtime compensation as required by their collective bargaining agreement in violation of Labor Code § 222.

Defendants failed to issue Plaintiff and Defendant's California employees accurately itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California employees with all wages due, as detailed above, their wage statements failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates during the pay period and the corresponding number of hours worked, in

violation of Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages due. These violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendants' California employees.

Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's California employees timely, accurate, itemized wage statements in accordance with Labor Code § 226 and keep accurate records as required by §1174(d), §1174.5. The statements provided to Plaintiff and Defendant's California employees, and the records maintained by Defendants, have not accurately reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest premiums, and total hour worked.

Our client further alleges that Defendants paid him and Defendant's California employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they were not paid all wages due and owing throughout the course of their employment as a result of Defendants' failure to pay all premium wages as detailed above, at the time of their separation, they were not paid all final wages due and owing for the entirety of their employment. This violates Labor Code §§ 201-203.

Defendant pays Plaintiff and it's California employees on a bi-weekly basis and has failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis must be paid no later than seven calendar days following the close of the payroll period. Due to the violations described above, Plaintiff and Defendant's California employees did not receive all of their wages earned in a timely manner as required by Labor Code § 204(a)(b).

Defendant failed to reimburse Plaintiff and Defendant's California employees for the equipment they purchased to perform work for Defendant such as face masks. Moreover, Defendant failed to reimburse Plaintiff and Defendant's California employees for their uniform and uniform maintenance. Defendant further failed to reimburse its California employees for using their personal cell phones for the benefit of Defendant. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." As such, Plaintiff and Defendant's California employees have incurred reasonable and necessary expenses in the course of their job duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

Plaintiff further alleges that Defendant failed to comply with Labor Code § 1024.5(a), which states an employer or prospective employer shall not use a consumer credit report for employment purposes unless the position of the person for whom the report is sought is any of the following: 1) a managerial position, 2) a position in the state Department of Justice, 3) that a sworn peace officer or other law enforcement position, 4) a position for which the information contained in the report is required by law to be disclosed or obtained, 5) a position that involved regular access, for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment, to all of the following types of information of any person: a bank or credit card account information, social security number, date of birth, 6) a position in which the person is, or

would be, any of the following: a named signatory on the bank or credit card account of the employer, authorized to transfer money on behalf of the employer, authorized to enter into financial contracts on behalf of the employer, 7) a position that involved access to confidential or proprietary information, including a formula, pattern, compilation program, device, method technique, process or trade secret that (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who may obtain economic value from the disclosure or use of the information, 8) a position that involves regular access to cash totaling ten thousand dollars (\$10,000) or more of the employer, a customer, or client, during the workday. Defendant violated Labor Code §1024.5(a) because Plaintiff and Defendant's California employees did not regularly deal with cash totaling at least \$10,000 per a day at work, and they did not have regular access to bank or credit card account information, social security numbers or dates of birth.

Defendants failed to continue to take precautions to ensure employee safety after the onset of COVID. Under LC §6409.6(a)(1). "COVID-19" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Plaintiff and Defendant's California employees, directly after the onset of COVID, were required to partake in mandatory temperature and health checks, but these activities were not enforced or practiced quickly after the onset of COVID and when COVID was still a health risk to the employees. Plaintiff and Defendant's California employees were also required to provide their own masks at the workplace. As a result of these practices, Defendants have violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for their Employees, as outlines above. Defendants are liable for civil penalties pursuant to Cal. Labor Code § 2699 *et seq.*

Defendants failed to pay all wages earned to Plaintiff and Defendant's California employees as a result of the unlawful employment policies and practices herein. As a result of these practices, Plaintiff and Defendant's California employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure to pay wages as required by law.

Plaintiff and all other aggrieved employees bring this claim pursuant to *Business & Professions Code* § 17200, *et seq.* The conduct of all Defendants as alleged above has been and continues to be unfair, unlawful, and harmful to Plaintiff and Defendant's California employees.

We invite Defendants or its attorney(s) to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Labor & Workforce Development Agency

Marihart Restaurant Group, Inc.

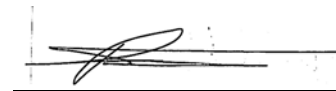
January 26, 2023

Page 5

Our office awaits your response.

Very truly yours,

OTKUPMAN LAW FIRM

A handwritten signature in dark ink, appearing to be 'Roman Otkupman', is written over a horizontal line. The signature is stylized with a large, sweeping 'R' and a cursive 'Otkupman'.

ROMAN OTKUPMAN