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Clerk of the Superior Court
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MIGUEL RESENDIZ TENORIO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO-CENTRAL DIVISION

(UNLIMITED JURISDICTION)

MIGUEL RESENDIZ TENORIO,

Plaintiff,

vs.

SQUARED UP HOSPITALITY INC.;
MATTHEW SERVENTI; and DOES 1 to 50,
inclusive,

Defendant(s).

Case No.: 37-2023-00020382-CU-OE-CTL

COMPLAINT FOR DAMAGES FOR:

- 1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Unlawful Tip Collection (Lab. Code §§ 351, 353);
- 6) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 7) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203);
- 8) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 9) Failure to Provide Personnel Records;
- 10) Failure to Provide Pay Records;
- 11) Civil Penalties (Lab. Code §§ 2698, *et seq.*);
- 12) Retaliation Under Labor Code Section 1102.5;
- 13) Wrongful Termination in Violation of Public Policy; and

14) Unfair Competition (Bus. & Prof. Code, § 17200 *et seq.*)

JURY TRIAL DEMANDED

COMES NOW Plaintiff, MIGUEL RESENDIZ TENORIO (hereafter “Plaintiff”), and complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this action based on alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), the Business and Professions Code, and public policy against SQUARED UP HOSPITALITY INC., MATTHEW SERVENTI, and DOES 1-50, inclusive (collectively “SQUARED UP” or “Defendants”).

JURISDICTION AND VENUE

2. Jurisdiction and venue are proper in this Court and this action is properly filed in the County of San Diego – Central Division because Defendants SQUARED UP HOSPITALITY INC., MATTHEW SERVENTI, and DOES 1-50, inclusive, do business in the County of San Diego and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of San Diego is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

THE PARTIES

3. Plaintiff Miguel Resendiz Tenorio is a resident of San Diego, California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11050 and an “Aggrieved Employee” within the meaning of Labor Code Section 2699(c).

4. Defendant SQUARED UP HOSPITALITY INC. is and was an Arizona corporation, doing business in San Diego County, and which employed Plaintiff. As such, it is a citizen of California based on Plaintiff’s information and belief.

5. Defendant MATTHEW SERVENTI is a citizen of California based on

1 Plaintiff's information and belief.

2 6. In relevant part, Labor Code section 558.1 states:

3 (a) Any employer or other person acting on behalf of an employer, who violates,
4 or causes to be violated, any provision regulating minimum wages or hours and
5 days of work in any order of the Industrial Welfare Commission, or violates, or
6 causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
7 held liable as the employer for such violation.

8 (b) For purposes of this section, the term "other person acting on behalf of an
9 employer" is limited to a natural person who is an owner, director, officer, or
10 managing agent of the employer, and the term "managing agent" has the same
11 meaning as in subdivision (b) of Section 3294 of the Civil Code.

12 7. Based on Plaintiff's information and belief, Defendant MATTHEW SERVENTI
13 is a natural person, and an owner, director, officer, and/or managing agent of SQUARED UP
14 HOSPITALITY INC., who directly or indirectly, or through his agent, employed or exercised
15 control over the wages, hours, or working conditions of Plaintiff and the Aggrieved Employees
16 (defined below). Therefore, he is liable to Plaintiff and the Aggrieved Employees for his
17 violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, 1194, and
18 2802 pursuant to Labor Code section 558.1.

19 8. The "Aggrieved Employees" are all current and former non-exempt or hourly
20 paid employees who worked for Defendants in California during the relevant time period
21 pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys
22 General Act of 2004 ("PAGA").

23 9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
24 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
25 is informed and believes and thereon alleges that said defendants are legally responsible for the
26 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
27 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE
28 defendants when ascertained.

10 10. Plaintiff is informed and believes and thereon alleges that, at all relevant times
11 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
12 remaining Defendants, and in doing the things hereinafter alleged, were acting within the

1 course and scope of such agency or employment, and with the approval and ratification of each
2 of the other Defendants.

3 11. Plaintiff is informed and believes and thereon alleges that each and every one of
4 the acts and omissions alleged herein were performed by, and/or are attributable to, all
5 Defendants, each acting as agents and/or employees, and/or under the direction and control of
6 each of the other Defendants, and that said acts and failures to act were within the course and
7 scope of said agency, employment, and/or direction and control.

8 12. At all relevant times, in perpetrating the acts and omissions alleged herein,
9 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a
10 lack of a practice which resulted in Defendants not paying Plaintiff and the Aggrieved
11 Employees in accordance with applicable California labor laws as alleged herein.

12 **GENERAL ALLEGATIONS**

13 13. SQUARED UP first began to employ Plaintiff in or around October 2022 as a
14 cook at its Fuku Sushi restaurant located at 332 J St, Suite 102 in San Diego, California.

15 14. At all relevant times, SQUARED UP issued wages to Plaintiff and all of the
16 other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant
17 times, SQUARED UP classified Plaintiff and all of the other Aggrieved Employees as non-
18 exempt employees entitled to the protections of the Labor Code and the Wage Order.
19 SQUARED UP employed Plaintiff and all of the Aggrieved Employees more than six, eight,
20 and ten hours per day. During his tenure, Plaintiff generally worked 5-6 days a week and his
21 schedule varied, but he generally worked 4:00 p.m. to midnight or 9:00/10:00 a.m. to 6:30 p.m.
22 Plaintiff's latest rate of pay was approximately \$20.00 per hour.

23 15. SQUARED UP failed to pay Plaintiff and other Aggrieved Employees for all
24 time worked or subject to its control. Plaintiff and the other Aggrieved Employees were not
25 paid for all hours worked and consistently worked "off the clock" in that the company had a
26 policy and practice of rounding down work hours and "time shaving" which led to Plaintiff and
27 others not being paid for all hours worked, which would include the minimum wage. Moreover,
28

1 to the extent employees such as Plaintiff and others worked through their meal periods and
2 those meal periods were interrupted, they were not compensated for that time, which would be
3 akin to a minimum wage violation. In addition, Plaintiff and the other Aggrieved Employees
4 were not given accurate tips to which they were entitled. Furthermore, SQUARED UP
5 management would often speak to or text/call Plaintiff and others about their schedules and
6 work-related matters after they had clocked out at the end of their shifts. Plaintiff would often
7 receive text messages from his supervisor, Bryan Serventi, on Sundays regarding his work
8 schedule for the following week.

9 16. Due to the above “off the clock” violations, SQUARED UP failed to pay
10 Plaintiff and the Aggrieved Employees properly-calculated overtime wages. The Aggrieved
11 Employees’ actual work hours, which included the “off the clock” work as described above,
12 entitled them to overtime, however, it was not company policy to keep accurate track of all
13 hours worked and to pay employees the accurate amount of overtime, especially since the “off
14 the clock” work was not factored into the equation. Furthermore, any incentive payments
15 and/or bonus payments were not factored into employees’ regular rate of pay for purposes of
16 deciphering the correct overtime rate of pay. In addition, any bonus and/or incentive payments
17 were not factored into the correct meal and rest break premium pay per *Ferra v. Loews*
18 *Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

19 17. SQUARED UP failed to provide all compliant meal periods and authorize and
20 permit all compliant rest periods to which Plaintiff and the other Aggrieved Employees were
21 entitled. Plaintiff and other Aggrieved Employees were entitled to take off-duty, uninterrupted
22 30-minute meal periods before the fifth and tenth hours of work and to take uninterrupted 10-
23 minute rest periods for every four hours or major fraction thereof worked. However, Plaintiff
24 and the Aggrieved Employees did not receive their meal periods before the 5th hour worked
25 and often were not able to take their meal periods at all due to the press of business. During his
26 employment tenure, Plaintiff rarely took a meal break as there were not enough employees on
27 duty during his shift to cover for him so that he could take an uninterrupted, 30 minute meal
28

1 period. Similarly, Plaintiff and the other Aggrieved Employees were not able to take their 10
2 minute rest breaks due to understaffing. Even when Plaintiff and other Aggrieved Employees
3 were able to take a meal period or would be on their rest breaks, SQUARED UP
4 management/staff would frequently interrupt them with questions about work related matters.
5 On information and belief, SQUARED UP did not provide premium wages for these meal and
6 rest break violations; if SQUARED UP did provide premium wages, they were not paid at the
7 correct rate, as explained above.

8 18. SQUARED UP failed to reimburse Plaintiff and the other Aggrieved Employees
9 for business expenses they incurred in direct consequence of the discharge of their duties.
10 SQUARED UP required Plaintiff and the Aggrieved Employees to use their own personal cell
11 phones to communicate with management concerning work matters. SQUARED UP
12 ownership/management texted Plaintiff and the others on a regular basis regarding their work
13 schedules. However, SQUARED UP did not provide Plaintiff and the others with mobile
14 phones and did not reimburse Plaintiff and the other Aggrieved Employees for these mobile
15 phone expenses. Accordingly, SQUARED UP was in violation of California Labor Code
16 sections 2800 and 2802.

17 19. SQUARED UP failed to pay its employees all wages due to them within any
18 time period specified by California Labor Code section 204, including the minimum wages and
19 overtime as described above as well as meal/rest break premiums.

20 20. SQUARED UP did not provide Plaintiff and other Aggrieved Employees
21 accurate, itemized wage statements. Wage statements must include, among other things, total
22 hours worked by the employee. Labor Code § 226(a)(2). SQUARED UP issued wage
23 statements that inaccurately reflected total hours worked, gross and net wages earned, and the
24 number of hours worked at each hourly rate because of SQUARED UP's failure to properly
25 pay wages as explained herein. Labor Code §§ 226(a)(1), (2), (5), (9). SQUARED UP's failure
26 to maintain accurate records as to the hours worked daily by employees also constitutes a
27 violation of Labor Code section 1174(d).
28

21. Finally, because SQUARED UP did not properly pay all wages earned as explained herein, SQUARED UP also failed to pay final wages owed to Plaintiff and other Aggrieved Employees in violation of Labor Code section 203. These earned but unpaid wages include minimum wages and compensation for all hours worked, overtime compensation, premium pay for missed meal and rest breaks, and business expense reimbursement, among others.

22. Moreover, Plaintiff would also have individual claims against SQUARED UP for retaliation in violation of Labor Code section 1102.5 and wrongful termination in violation of public policy. During his employment tenure, Plaintiff complained to management about being harassed and mistreated by a manager named Javier (last name unknown). Specifically, Plaintiff, along with two other cooks, presented letters to supervisor Bryan Serventi detailing Javier's harassing behavior. Shortly thereafter, Defendants retaliated against Plaintiff for his complaints and took him off the work schedule. On or around February 5, 2023, Plaintiff's supervisor, Bryan Serventi, texted Plaintiff that they were giving front of the house and back of the house employees the week off to "evaluate business operations." Bryan Serventi informed Plaintiff that he would text him on February 12, 2023 with the following week's schedule. To date, Plaintiff has not been asked to return to work at Fuku Sushi. It is important to note that the other two cooks who complained alongside Plaintiff have not been asked to return to work and have been terminated from their employment as well. Upon information and belief, Javier is still working at Fuku Sushi and Fuku Sushi is still open and operating.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

(Lab. Code §§ 510, 1194, 1197, and 1198)

(By Plaintiff against all Defendants)

23. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

24. At all relevant times, Plaintiff was a non-exempt employee of Defendants and entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198,

1 and the Wage Order.

2 25. Section 2(K) of the Wage Order defines “hours worked” as “the time during
3 which an employee is subject to the control of an employer, and includes all the time the
4 employee is suffered or permitted to work, whether or not required to do so.”

5 26. Section 3 of the Wage Order states:

6 (A) Daily Overtime - General Provisions

7 (1) The following overtime provisions are applicable to
8 employees 18 years of age or over and to employees 16 or
9 17 years of age who are not required by law to attend
10 school and are not otherwise prohibited by law from
11 engaging in the subject work. Such employees shall not
12 be employed more than eight (8) hours in any workday or
13 more than 40 hours in any workweek unless the employee
14 receives one and one-half (1 ½) times such employee’s
15 regular rate of pay for all hours worked over 40 hours in
16 the workweek. Eight (8) hours of labor constitutes a day’s
17 work. Employment beyond eight (8) hours in any
18 workday or more than six (6) days in any workweek is
19 permissible provided the employee is compensated for
20 such overtime at not less than:

21 (a) One and one-half (1 ½) times the employee’s
22 regular rate of pay for all hours worked in excess
23 of eight (8) hours up to and including 12 hours in
24 any workday, and for the first eight (8) hours
25 worked on the seventh (7th) consecutive day of
26 work in a workweek.

27 (b) Double the employee’s regular rate of pay for
28 all hours worked in excess of 12 hours in any
workday and for all hours worked in excess of
eight (8) hours on the seventh (7th) consecutive
day of work in a workweek.

(c) The overtime rate of compensation required to
be paid to a nonexempt full-time salaried
employee shall be computed by using the
employee’s regular hourly salary as one-fortieth
(1/40) of the employee’s weekly salary.

27 27. Section 4 of the Wage Order requires an employer to pay non-exempt employees

1 at least the minimum wage set forth therein for all hours worked, which consist of all hours that
2 an employer has actual or constructive knowledge that employees are working.

3 28. Labor Code section 510 states:

4 Eight hours of labor constitutes a day's work. Any work in excess
5 of eight hours in one workday and any work in excess of 40
6 hours in any one workweek and the first eight hours worked on
7 the seventh day of work in any one workweek shall be
8 compensated at the rate of no less than one and one-half times the
9 regular rate of pay for an employee. Any work in excess of 12
10 hours in one day shall be compensated at the rate of no less than
11 twice the regular rate of pay for an employee. In addition, any
12 work in excess of eight hours on any seventh day of a workweek
13 shall be compensated at the rate of no less than twice the regular
14 rate of pay of an employee. Nothing in this section requires an
15 employer to combine more than one rate of overtime
16 compensation in order to calculate the amount to be paid to an
17 employee for any hour of overtime work.

18 29. California Labor Code § 1194 invalidates any agreement between an employer
19 and an employee to work for less than the minimum wage required under the applicable Wage
20 Order.

21 30. California Labor Code § 1197 makes it unlawful for an employer to pay an
22 employee less than the minimum wage required under the applicable Wage Order for all hours
23 worked during a payroll period.

24 31. California Labor Code § 1198 makes it unlawful for an employer to employ an
25 employee under conditions that violate the Wage Order.

26 32. In conjunction, these provisions of the California Labor Code require employers
27 to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates
28 for all hours worked, including unrecorded hours when the employer knew or reasonably should
have known that employees were working during those hours. (*See Morillion v. Royal Packing*
Co. (2000) 22 Cal.4th 575, 585.)

33. Defendants required Plaintiff to work in excess of eight (8) hours in one workday
and forty (40) hours in one workweek without compensating him for such time worked at the

1 premium rates required by California law.

2 34. As described more fully above, Defendants failed to pay all minimum, regular,
3 overtime, and double time wages to Plaintiff because Defendants paid wages based on rounded
4 times, did not pay for off-the-clock work, and failed to pay overtime and double time wages
5 based on correct regular rates of pay.

6 35. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
7 amount, subject to proof, to the extent that he was not paid the full amount of wages earned
8 during each pay period during the applicable limitations period, including minimum, overtime,
9 and double-time wages.

10 36. As a result of Defendants' conduct, Plaintiff seeks damages and/or restitution for
11 unpaid wages which Defendants failed to pay him at the rates set forth herein, interest thereon,
12 and costs of suit and reasonable attorney's fees pursuant to California Labor Code §§ 1194.

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REST BREAKS**

15 **(Lab. Code §§ 226.7 and 1198)**

16 **(By Plaintiff against all Defendants)**

17 37. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

18 38. At all relevant times during the applicable limitations period, Plaintiff was a
19 non-exempt employee of Defendants and entitled to the benefits and protections of California
20 Labor Code §§ 226.7, 1198, and the Wage Order.

21 39. Labor Code § 1198 states,

22 "The maximum hours of work and the standard conditions of labor
23 fixed by the commission shall be the maximum hours of work and the
24 standard conditions of labor for employees. The employment of any
employee for longer hours than those fixed by the order or under
conditions of labor prohibited by the order is unlawful."

25 40. In relevant part, Section 12 of the Wage Order states:

26 Rest Periods:

27 (A) Every employer shall authorize and permit all employees
28 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 often

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

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

9 41. In addition, Labor Code Section 226.7 states

10 (b) An employer shall not require an employee to work during a
11 meal or rest or recovery period mandated pursuant to an applicable
12 statute, or applicable regulation, standard, or order of the Industrial
Welfare Commission, the Occupational Safety and Health Standards
Board, or the Division of Occupational Safety and Health.

13 (c) If an employer fails to provide an employee a meal or rest or
14 recovery period in accordance with a state law, including, but not
15 limited to, an applicable statute or applicable regulation, standard, or
16 order of the Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of Occupational Safety and
17 Health, the employer shall pay the employee one additional hour of pay
at the employee's regular rate of compensation for each workday that
18 the meal or rest or recovery period is not provided.

19 42. Pursuant to the Wage Order, Plaintiff was entitled to be provided with net rest
20 breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

21 43. Defendants failed to authorize and permit Plaintiff to take compliant rest
22 periods and failed to pay one hour of correctly-calculated premium pay for each day such a
23 rest period was not provided.

24 44. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
25 an amount subject to proof to the extent he was not paid additional wages owed for all rest
26 breaks not provided to him.

27 45. By reason of the above, Plaintiff is entitled to premium wages for workdays in
28 which one or more rest breaks were not provided to him pursuant to California Labor Code §

1 226.7, plus interest and costs.

2 **THIRD CAUSE OF ACTION**

3 **FAILURE TO PROVIDE MEAL PERIODS**

4 **(Lab. Code §§ 226.7, 512, and 1198)**

5 **(By Plaintiff against all Defendants)**

6 46. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

7 47. At all relevant times during the applicable limitations period, Plaintiff was a
8 non-exempt employee of Defendants and entitled to the benefits and protections of California
9 Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

10 48. Labor Code § 1198 states,

11 “The maximum hours of work and the standard conditions of labor
12 fixed by the commission shall be the maximum hours of work and the
13 standard conditions of labor for employees. The employment of any
employee for longer hours than those fixed by the order or under
conditions of labor prohibited by the order is unlawful.”

14 49. In relevant part, Labor Code Section 512 states

15 “An employer may not employ an employee for a work period of more
16 than five hours per day without providing the employee with a meal
17 period of not less than 30 minutes, except that if the total work period
18 per day of the employee is no more than six hours, the meal period may
19 be waived by mutual consent of both the employer and employee. An
20 employer may not employ an employee for a work period of more than
21 10 hours per day without providing the employee with a second meal
period of not less than 30 minutes, except that if the total hours worked
is no more than 12 hours, the second meal period may be waived by
mutual consent of the employer and the employee only if the first meal
period was not waived.”

22 50. In relevant part, Section 11 of the Wage Order states:

23 **Meal Periods:**

24 (A) No employer shall employ any person for a work period of more
25 than five (5) hours without a meal period of not less than 30
26 minutes, except that when a work period of not more than six (6)
27 hours will complete the day’s work the meal period may be
waived by mutual consent of the employer and the employee...

1 (B) If an employer fails to provide an employee a meal period in
2 accordance with the applicable provisions of this order, the
3 employer shall pay the employee one (1) hour of pay at the
4 employee's regular rate of compensation for each workday that
5 the meal period is not provided.

6 51. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff was
7 entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day he
8 worked five or more hours. Pursuant to California Labor Code § 512, Plaintiff was also
9 entitled to a second 30-minute meal period when he worked more than ten (10) hours in a
10 workday.

11 52. During the relevant time period, Defendants failed to provide Plaintiff with
12 compliant meal periods before the fifth hour of work and failed to pay one hour of correctly-
13 calculated premium pay for each day such a meal period was not provided.

14 53. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
15 an amount subject to proof to the extent he was not paid additional wages owed for all meal
16 periods not provided to him.

17 54. By reason of the above, Plaintiff is entitled to premium wages for workdays in
18 which one or more meal periods were not provided to him pursuant to California Labor Code
19 § 226.7, plus interest and costs.

20 **FOURTH CAUSE OF ACTION**

21 **FAILURE TO INDEMNIFY**

22 **(Lab. Code §§ 1198 & 2802)**

23 **(By Plaintiff against all Defendants)**

24 55. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 56. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
26 entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802, and the
27 Wage Order.

28 57. In pertinent part, California Labor Code § 2802(a) states:

An employer shall indemnify his or her employee[s] for all necessary
expenditures incurred by the employee in direct consequence of the
discharge of his or her duties.

58. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

59. At all relevant times during the applicable limitations period, Defendants required Plaintiff to use his own personal cell phone to communicate with management concerning work matters. However, Defendants did not provide these items and did not reimburse Plaintiff for these expenses.

60. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants' failure to indemnify Plaintiff for the reasonable expenses he incurred in the course of performing his duties.

61. By reason of the above, Plaintiff is entitled to reimbursement for all necessary expenditures and losses and interest due and owing to within three years (3) of the date of the filing of the Complaint until the date of entry of judgment pursuant to California Labor Code § 2802(b). Further, Plaintiff seeks reasonable attorney's fees pursuant to Labor Code § 2802(c).

FIFTH CAUSE OF ACTION

UNLAWFUL TIP COLLECTION

(Lab. Code §§ 351 and 353)

(Plaintiff against all Defendants)

62. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

63. During all times relevant herein, Defendants manipulated Plaintiff's tips and did not provide Plaintiff the accurate monetary tips to which he was entitled. Defendants also failed to maintain records showing tips received and paid to Plaintiff.

64. Labor Code section 351 makes it illegal for an employer to collect tips paid or left for the employee and mandates that such tips are the employees' property.

65. Labor Code section 353 requires every employer to keep accurate records of all gratuities received, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise.

66. By Defendants not providing accurate tips to Plaintiff, Defendants violated

1 California Labor Code Section 351 and 353. Therefore, Plaintiff demands return of all tips
2 unlawfully withheld and/or collected from him within three years of the filing of this
3 complaint.

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

6 **(California Labor Code Section 226)**

7 **(By Plaintiff against all Defendants)**

8 67. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

9 68. Pursuant to California Labor Code Section 226, every employer must furnish
10 each employee an itemized statement of wages and deductions at the time of payment of wages.

11 69. Defendants knowingly and intentionally did not furnish Plaintiff with pay stubs
12 that accurately reflected all information required by Labor Code Section 226, including but not
13 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and
14 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the
15 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed
16 to maintain and provide accurate itemized wage statements to Plaintiff in accordance with
17 California Labor Code Section 226(a).

18 70. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover
19 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
20 violation occurs and one hundred dollars (\$100) per employee for each violation in a
21 subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000),
22 plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of
23 action pursuant to the 1-year period immediately preceding the date this lawsuit was filed.

24 71. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
25 sustained damages, including loss of earnings, in an amount to be established at trial. As a
26 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
27 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
28 and attorney's fees pursuant to statute.

1 72. Under this cause of action, Plaintiff prays for penalties due under the statutes
2 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
3 proof at trial.

4 **SEVENTH CAUSE OF ACTION**

5 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

6 **(California Labor Code Sections 201-203)**

7 **(By Plaintiff against all Defendants)**

8 73. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

9 74. Pursuant to California Labor Code Section 201(a), an employer who discharges
10 an employee must immediately pay for all compensation due and owing.

11 75. Pursuant to California Labor Code Section 202, when an employee resigns, the
12 employer must pay all compensation due and owing within 72 hours of resignation, or on the
13 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

14 76. Pursuant to California Labor Code Section 203, if an employer willfully fails to
15 pay, without abatement or reduction, any wages of an employee whose employment ends, the
16 wages of the employee shall continue as a penalty from the due date at the same rate until paid
17 or until an action is commenced; however, the wages shall not continue for more than 30 days
18 for failure to pay an employee owed wages.

19 77. After Plaintiff's employment with Defendants ended, Defendants willfully
20 refused and continue to refuse to pay his unpaid wages as required by Labor Code Section 203.

21 78. Under this cause of action, Plaintiff prays for penalties due under the statutes
22 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
23 proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years
24 immediately preceding the filing of this lawsuit.

25 79. Under this cause of action, Plaintiff also prays for attorney's fees and costs
26 under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages
27 as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

28 80. Under this cause of action, Plaintiff prays for penalties due under the statutes

1 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
2 proof at trial.

3 **EIGHTH CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

5 **(California Labor Code Section 204)**

6 **(By Plaintiff against all Defendants)**

7 81. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

8 82. California Labor Code Section 204 establishes the fundamental right of all
9 employees in the State of California to be paid wages in a timely fashion for their work.

10 83. At all times relevant during the liability period, Defendants failed to pay
11 Plaintiff the full amount of all owed wages when due as required by California Labor Code
12 Section 204.

13 84. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
14 informed, believes, and thereon alleges, that all times relevant during the applicable limitations
15 period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours
16 worked, including the minimum wage, overtime hours, double time hours, and premium pay
17 for missed meal and rest breaks.

18 85. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
19 an amount, subject to proof, to the extent he was not paid all wages each pay period. The
20 precise amount of unpaid wages is not presently known to Plaintiff but can be determined
21 directly from Defendants' records or indirectly based on information from Defendants' records.

22 86. Under this cause of action, Plaintiff prays for penalties due under the statutes
23 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
24 proof at trial.

25 **NINTH CAUSE OF ACTION**

26 **FAILURE TO PROVIDE PERSONNEL RECORDS**

27 **(Plaintiff against Defendants)**

28 87. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

88. Labor Code section 1198.5 dictates “every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.”

89. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times...” On information and belief, Defendants intentionally failed to provide Plaintiff with personnel records when requested by Plaintiff via letter on February 28, 2023, as required by law. Plaintiff requested his personnel records in accordance with California Labor Code section 1198.5(k) on February 28, 2023 via certified U.S. mail.

90. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to Defendants' failure to provide personnel records.

91. Plaintiff seeks all available remedies for Defendants' violations including, but not limited to penalties, and costs to the extent permitted by law and according to proof at trial. Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the amount of \$750.00, along with costs and attorney's fees.

TENTH CAUSE OF ACTION

FAILURE TO PROVIDE PAY RECORDS

(Plaintiff against all Defendants)

92. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

93. Labor Code section 226 sub-section (b) dictates “an employer...shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer...”

94. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer

1 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
2 pertaining to a current or former employee shall comply with the request as soon as practicable,
3 but no later than 21 calendar days from the date of the request.” On information and belief,
4 Defendants intentionally failed to provide Plaintiff with pay records when requested by
5 Plaintiff via letter, on February 28, 2023, and as required by law. Plaintiff requested his pay
6 records in accordance with California Labor Code section 226 on February 28, 2023, via U.S.
7 certified mail. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his
8 pay records within 21 days.

9 95. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered
10 and continues to suffer substantial losses related to Defendants’ failure to provide pay records.
11 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
12 amount of \$750.00, along with costs and attorney’s fees.

13 96. Plaintiff seeks all available remedies for Defendants’ violations including, but
14 not limited to, penalties and costs to the extent permitted by law and according to proof at trial.

15 **ELEVENTH CAUSE OF ACTION**

16 **CIVIL PENALTIES**

17 **(Lab. Code §§ 2698, *et seq.*)**

18 **(By Plaintiff against all Defendants)**

19 97. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

20 98. Plaintiff is an Aggrieved Employee under the Private Attorneys General Act of
21 2004 (“PAGA”) because he was employed by Defendants during the applicable statutory
22 period and suffered one or more of the violations of the Labor Code set forth in this Complaint.
23 Plaintiff seeks to recover on his own behalf, on behalf of the State of California, and on behalf
24 of all current and former Aggrieved Employees of Defendants, the civil penalties provided by
25 PAGA, plus reasonable attorney’s fees and costs.

26 99. During the applicable time period, Defendants violated California Labor Code
27 §§ 201, 202, 203, 204, 226, 226.7, 351, 353, 510, 512, 558, 558.1, 1102.5, 1174, 1194, 1197,
28 1198, and 2802.

1 100. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
2 behalf of themselves and other current or former employees, to bring a civil action to recover
3 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

4 101. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the
5 Aggrieved Employees are entitled to recover civil penalties for each of the Defendants'
6 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 351, 353, 510, 512, 558,
7 558.1, 1102.5, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the
8 following amounts:

9 A. For violations of California Labor Code § 204, one hundred dollars
10 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
11 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
12 established by California Labor Code § 210).

13 B. For violations of California Labor Code § 226(a), two hundred fifty
14 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
15 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
16 established by California Labor Code § 226.3).

17 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
18 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
19 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
20 California Labor Code § 558).

21 D. For violations of California Labor Code § 1174, five hundred dollars
22 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
23 California Labor Code § 1174.5).

24 E. For violations of California Labor Code § 1197, one hundred dollars
25 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
26 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation,
27 per pay period (regardless of whether the initial violations were intentionally committed)
28 (penalty amounts established by California Labor Code § 1197.1).

1 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 351,
2 353, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per
3 pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved
4 Employee per pay period for each subsequent violation (penalty amounts established by
5 California Labor Code § 2699(f)(2)).

6 G. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff individually
7 is entitled to recover civil penalties for each of the Defendants' violations of California Labor
8 Code §1102.5 during the applicable limitations period in the following amounts: an amount not
9 to exceed \$10,000 for each violation by Defendants of California Labor Code § 1102.5(b)(c),
10 as well as attorney's fees and costs under Labor Code § 2699(g) (penalty amounts established
11 by California Labor Code § 1102.5(f)).

12 102. Plaintiff has complied with the procedures for bringing suit specified in
13 California Labor Code § 2699.3. By letter dated February 28, 2023, Plaintiff filed written
14 notices online with the Labor and Workforce Development Agency ("LWDA") and gave
15 written notice by certified mail to Defendants of the specific provisions of the California Labor
16 Code alleged to have been violated, including the facts and theories to support the alleged
17 violations. Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. A true
18 and correct copy of Plaintiff's letter to the LWDA dated February 28, 2023 is attached hereto
19 as **Exhibit A**. The LWDA has failed to take action in response within 65 calendar days of the
20 date of Plaintiff's notice, but Plaintiff anticipates that the LWDA will provide written notice to
21 Plaintiff informing him that it does not intend to investigate these allegations.

22 103. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
23 Employees are entitled to an award of civil penalties and reasonable attorney's fees and costs in
24 connection with their claims for civil penalties.

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26 ///

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28 ///

1 **TWELFTH CAUSE OF ACTION**

2 **RETALIATION**

3 **(Lab. Code § 1102.5)**

4 **(By Plaintiff against all Defendants)**

5 104. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 105. According to Labor Code section 1102.5, subdivision (b),

7 An employer, or any person acting on behalf of the employer, shall not retaliate
8 against an employee for disclosing information, or because the employer
9 believes that the employee disclosed or may disclose information, ... to a
10 person with authority over the employee or another employee who has the
11 authority to investigate, discover, or correct the violation or noncompliance,...
12 if the employee has reasonable cause to believe that the information discloses a
13 violation of state or federal statute, or a violation of or noncompliance with a
14 local, state, or federal rule or regulation, regardless of whether disclosing the
15 information is part of the employee's job duties.

16 106. According to Labor Code section 1102.5, subdivision (c), an employer may not
17 retaliate against an employee for refusing to participate in an activity that would result in a
18 violation of state or federal statute, or a violation or noncompliance with a state or federal rule
19 or regulation.

20 107. This statute reflects the broad public policy interest in encouraging workplace
21 whistleblowers to report unlawful acts without fearing retaliation.

22 108. Defendants were employers for purposes of California law.

23 109. Plaintiff was an employee of Defendants, performing work on behalf of
24 Defendants.

25 110. During his employment tenure, Plaintiff complained to management about being
26 harassed and mistreated by a manager named Javier (last name unknown). Specifically,
27 Plaintiff, along with two other cooks, presented letters to supervisor Bryan Serventi detailing
28 Javier's harassing behavior.

111. Defendants retaliated against Plaintiff for his complaints by taking him off the
schedule and terminating his employment in violation of Labor Code § 1102.5. On or around

1 February 5, 2023, Plaintiff's supervisor, Bryan Serventi, texted Plaintiff that they were giving
2 front of the house and back of the house employees the week off to "evaluate business
3 operations." Bryan Serventi informed Plaintiff that he would text him on February 12, 2023
4 with the following week's schedule. To date, Plaintiff has not been asked to return to work at
5 Fuku Sushi. Upon information and belief, Fuku Sushi is still open and operating.

6 112. As a direct and proximate result of the aforementioned acts and omissions of
7 Defendants, Plaintiff suffered general and compensatory damages, including but not limited
8 to, loss of income (past and future), loss of employment benefits (past and future), general and
9 compensatory damages (past and future), mental pain and anguish and emotional distress (past
10 and future), and will continue to suffer in the future, in an amount to be proved at trial.

11 113. Plaintiff requests all available relief under Labor Code § 1102.5 including
12 damages and the imposition of civil penalties of \$10,000 for each violation as well as
13 attorney's fees.

14 114. The foregoing conduct engaged in by Defendants and each of their directors,
15 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
16 ratified, and carried on with a conscious and willful disregard of their workers' right to work
17 in an environment free of retaliation and labor code violations, so as to justify the imposition
18 of punitive damages to punish and set an example of said Defendants.

19 **THIRTEENTH CAUSE OF ACTION**

20 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

21 **(By Plaintiff against Defendant SQUARED UP HOSPITALITY INC.)**

22 115. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23 116. Plaintiff was employed by Defendants.

24 117. At all times during his employment with Defendants, Plaintiff performed his
25 duties with the utmost diligence and competence.

26 118. Defendants retaliated against Plaintiff and terminated his employment, as
27 alleged herein, shortly after Plaintiff complaints about being harassed at the workplace.

28 119. Plaintiff's employment was wrongfully terminated on or around February 12,

1 2023 in violation of the fundamental public policy of the State of California with respect to
2 retaliating against an employee for making complaints about harassment and mistreatment at
3 the workplace.

4 120. Moreover, Plaintiff was forced to hire an attorney to assist him to end these
5 illegal activities.

6 121. Said conduct violated statutory and constitutional expressions of public policy
7 including, but not limited to, California Labor Code, and the California Constitution, Article 1
8 section 8.

9 122. As set forth above, said actions by Defendants were wrongful and in violation
10 of the fundamental principles of the public policy of the State of California as reflected in its
11 laws, objectives and policies. Said statutes and constitutional expressions of public policy
12 include, but are not limited to, California Labor Code, and the California Constitution, Article
13 1 section 8. These laws inure to the benefit of the public at large, and not just the private
14 interests of the employers and employees whom they govern or protect.

15 123. As a direct and proximate result of the aforementioned acts and omissions of
16 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
17 loss of income (past and future), loss of employment benefits (past and future), general and
18 compensatory damages (past and future), mental pain and anguish and emotional distress (past
19 and future), and will continue to suffer in the future, in an amount to be proved at trial.

20 124. The foregoing conduct engaged in by Defendants and each of their directors,
21 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
22 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
23 an environment free of harassment, retaliation and labor code violations, so as to justify the
24 imposition of punitive damages to punish and set an example of said Defendants.

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1 **FOURTEENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

4 **(By Plaintiff against Defendant SQUARED UP HOSPITALITY INC.)**

5 125. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 126. At all relevant times during the applicable limitations period, Plaintiff has been
7 an employee of Defendants and entitled to the benefits and protections of the Business and
8 Professions Code §§ 17200, *et seq.*

9 127. Defendants engaged in unfair competition by failing to 1) pay employees for all
10 hours worked at the correct rates of pay and 2) pay their employees premium wages for
11 workdays during which one or more meal or rest periods were not provided, and 3) reimburse
12 employees for necessary business expenses incurred in the course of performing their duties.

13 128. The unlawful conduct of Defendants alleged herein amounts to and constitutes
14 unfair competition within the meaning of California Business & Professions Code §§ 17200,
15 *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have
16 unfairly gained a competitive advantage over other comparable companies doing business in
17 California that comply with their legal obligations to, among other things, refrain from
18 retaliatory practices and prevent retaliation, pay their employees premium wages for workdays
19 in which they did not provide employees with one or more meal and rest periods, indemnify
20 them for all business expenses incurred during the course of performing their duties, including,
21 but not limited to, mobile phone expenses, and pay them all wages earned.

22 129. As a result of Defendants' unfair competition as alleged herein, Plaintiff has
23 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiff for all
24 hours worked, failed to provide him with premium wages for missed meal and rest periods,
25 and failed to reimburse Plaintiff for all expenses he incurred in the course of performing his
26 duties.

27 130. Pursuant to California Business & Professions Code § 17203, Plaintiff is
28 entitled to restitution of all monies rightfully belonging to him that Defendants did not pay him

1 or otherwise retained by means of their unlawful and unfair business practices.

2 131. Plaintiff is entitled to reasonable attorneys' fees in connection with his unfair
3 competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial
4 benefit doctrine and/or the common fund doctrine.

5 132. Accordingly, with respect to this cause of action, Plaintiff prays for the herein
6 stated relief, and an award of all reasonable costs and attorneys' fees, including interest
7 thereon, as permitted by law, all in amounts subject to proof.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- 10 1. For compensatory damages including lost past and future wages, commissions, and all
11 other sums of money, including employment benefits, together with interest on said
12 amounts, and any other economic injury to Plaintiff, according to proof;
- 13 2. For general damages according to proof;
- 14 3. For special and consequential damages to the extent allowed by law;
- 15 4. For punitive and exemplary damages against Defendant SQUARED UP
16 HOSPITALITY INC. in an amount subject to proof;
- 17 5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
18 subject to proof at trial;
- 19 6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
20 proof at trial;
- 21 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
22 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 23 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
24 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 25 10. For maximum civil penalties available under the Labor Code and applicable Wage
26 Order against Defendants as described more particularly in the Complaint;
- 27 11. For restitution and disgorgement for all unfair business practices by Defendant
28 SQUARED UP HOSPITALITY INC. against Plaintiff in an amount according to proof;

- 1 12. For an order enjoining Defendant SQUARED UP HOSPITALITY INC. from further
2 unfair and unlawful business practices in violation of Business and Professions Code
3 Sections 17200, et seq.;
- 4 13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor
5 Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated
6 damages, damages, penalties, and waiting time penalties according to proof to the
7 extent permitted by law;
- 8 14. For the imposition of civil penalties and/or statutory penalties;
- 9 15. For all interest as allowed by law;
- 10 16. For all costs and disbursements incurred in this suit;
- 11 17. Reasonable attorney's fees where available by law, including but not limited to,
12 pursuant to, Code of Civil Procedure section 1021.5, Labor Code section 1102.5(j),
13 and/or other applicable laws; and
- 14 18. For such other and further relief as this Court may deem proper.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

17
18 Dated: May 12, 2023

MM LAW, APC

19 By Maralle Messrelia
20 Maralle Messrelia, Esq.
21 Attorney for Plaintiff,
22 Miguel Resendiz Tenorio
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27
28

EXHIBIT A



MM LAW
A Professional Corporation

500 N. Central Ave., Suite 840
Glendale, CA 91203
Tel: 818-810-7747
Fax: 818-230-9018
maralle@mmlawapc.com

February 28, 2023

NOTICE VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency (LWDA)

Attn: PAGA Administrator

<https://dir.tfaforms.net/308>

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Squared Up Hospitality Inc.
Matthew Serventi
c/o Legalzoom.com, Inc.
101 N Brand Blvd., 11th Floor
Glendale, CA 91203

**Re: Miguel Resendiz Tenorio/ Squared Up Hospitality Inc.
Private Attorneys General Act**

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("PAGA"), Mr. Miguel Resendiz Tenorio (hereafter "Resendiz") provides notice on behalf of himself and of all individuals currently and formerly employed in California as non-exempt or hourly paid employees (hereafter the "Aggrieved Employees"), by Squared Up Hospitality Inc., an Arizona corporation, and Matthew Serventi, an individual (hereafter collectively "SQUARED UP"), of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 351, 353, 510, 512, 558, 558.1, 1102.5, 1174, 1194, 1197, 1198, and 2802. Matthew Serventi is being included in this PAGA notice pursuant to Labor Code Section 558.1 as he was or is an owner/director/managing agent of Squared Up Hospitality Inc., was involved in the day-to-day operations of the business, and as such, controlled the wages, hours, and working conditions of Resendiz and the other Aggrieved Employees. On behalf of himself and all other Aggrieved Employees, Resendiz hereby provides this notice to the Labor & Workforce Development Agency and SQUARED UP and its agents and representatives.

At all relevant times, SQUARED UP has employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Resendiz and the Aggrieved Employees are "employees" within the meaning of Wage Order 5-2001 (hereafter "the Wage Order") § 2, subdivision (F) and "Aggrieved Employees" within the meaning of Labor Code § 2699, subdivision (c).

An Aggrieved Employee pursuing a representative action under the PAGA could seek civil penalties for alleged Labor Code violations that affected the Aggrieved Employee, as well as separate California Labor Code violations that affected other employees. In *Huff v. Securitas Security Services USA, Inc.*, 233 Cal. Rptr. 3d 502 (Ct. App. 2018), the Court concluded that an employee affected by at least one California Labor Code violation could pursue civil penalties under PAGA on behalf of other Aggrieved Employees for all Labor Code violations by the same employer, even if such violations did not affect the employee initiating the PAGA action. Consequently, Resendiz can equivocally bring the following labor code violations on behalf of all other employees, including hourly, non-exempt employees who were not specifically cooks.

STATEMENT OF FACTS

SQUARED UP first began to employ Resendiz in or around October 2022 as a cook at its Fuku Sushi restaurant located at 332 J St, Suite 102 in San Diego, California.

At all relevant times, SQUARED UP issued wages to Resendiz and all of the other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times, SQUARED UP classified Resendiz and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order. SQUARED UP employed Resendiz and all of the Aggrieved Employees more than six, eight, and ten hours per day. During his tenure, Resendiz generally worked 5-6 days a week and his schedule varied, but he generally worked 4:00 p.m. to midnight or 9:00/10:00 a.m. to 6:30 p.m. Resendiz's latest rate of pay was approximately \$20.00 per hour.

SQUARED UP failed to pay Resendiz and other Aggrieved Employees for all time worked or subject to its control. Resendiz and the other Aggrieved Employees were not paid for all hours worked and consistently worked "off the clock" in that the company had a policy and practice of rounding down work hours and "time shaving" which led to Resendiz and others not being paid for all hours worked, which would include the minimum wage. Moreover, to the extent employees such as Resendiz and others worked through their meal periods and those meal periods were interrupted, they were not compensated for that time, which would be akin to a minimum wage violation. In addition, Resendiz and the other Aggrieved Employees were not given accurate tips to which they were entitled. Furthermore, SQUARED UP management would often speak to or text/call Resendiz and others about their schedules and work-related matters after they had clocked out at the end of their shifts. Resendiz would often receive text messages from his supervisor, Bryan Serventi, on Sundays regarding his work schedule for the following week.

Due to the above "off the clock" violations, SQUARED UP failed to pay Resendiz and the Aggrieved Employees properly-calculated overtime wages. The Aggrieved Employees' actual work hours, which included the "off the clock" work as described above, entitled them to overtime, however, it was not company policy to keep accurate track of all hours worked and to pay employees the accurate amount of overtime, especially since the "off the clock" work was not factored into the equation. Furthermore, any incentive payments and/or bonus payments were not factored into employees' regular rate of pay for purposes of deciphering the correct overtime rate

of pay. In addition, any bonus and/or incentive payments were not factored into the correct meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

SQUARED UP failed to provide all compliant meal periods and authorize and permit all compliant rest periods to which Resendiz and the other Aggrieved Employees were entitled. Resendiz and other Aggrieved Employees were entitled to take off-duty, uninterrupted 30-minute meal periods before the fifth and tenth hours of work and to take uninterrupted 10-minute rest periods for every four hours or major fraction thereof worked. However, Resendiz and the Aggrieved Employees did not receive their meal periods before the 5th hour worked and often were not able to take their meal periods at all due to the press of business. During his employment tenure, Resendiz rarely took a meal break as there were not enough employees on duty during his shift to cover for him so that he could take an uninterrupted, 30 minute meal period. Similarly, Resendiz and the other Aggrieved Employees were not able to take their 10 minute rest breaks due to understaffing. Even when Resendiz and other Aggrieved Employees were able to take a meal period or would be on their rest breaks, SQUARED UP management/staff would frequently interrupt them with questions about work related matters. On information and belief, SQUARED UP did not provide premium wages for these meal and rest break violations; if SQUARED UP did provide premium wages, they were not paid at the correct rate, as explained above.

SQUARED UP failed to reimburse Resendiz and the other Aggrieved Employees for business expenses they incurred in direct consequence of the discharge of their duties. SQUARED UP required Resendiz and the Aggrieved Employees to use their own personal cell phones to communicate with management concerning work matters. SQUARED UP ownership/management texted Resendiz and the others on a regular basis regarding their work schedules. However, SQUARED UP did not provide Resendiz and the others with mobile phones and did not reimburse Resendiz and the other Aggrieved Employees for these mobile phone expenses. Accordingly, SQUARED UP was in violation of California Labor Code sections 2800 and 2802.

SQUARED UP failed to pay its employees all wages due to them within any time period specified by California Labor Code section 204, including the minimum wages and overtime as described above as well as meal/rest break premiums.

SQUARED UP did not provide Resendiz and other Aggrieved Employees accurate, itemized wage statements. Wage statements must include, among other things, total hours worked by the employee. Labor Code § 226(a)(2). SQUARED UP issued wage statements that inaccurately reflected total hours worked, gross and net wages earned, and the number of hours worked at each hourly rate because of SQUARED UP's failure to properly pay wages as explained herein. Labor Code §§ 226(a)(1), (2), (5), (9). SQUARED UP's failure to maintain accurate records as to the hours worked daily by employees also constitutes a violation of Labor Code section 1174(d).

Finally, because SQUARED UP did not properly pay all wages earned as explained herein, SQUARED UP also failed to pay final wages owed to Resendiz and other Aggrieved Employees

in violation of Labor Code section 203. These earned but unpaid wages include minimum wages and compensation for all hours worked, overtime compensation, premium pay for missed meal and rest breaks, and business expense reimbursement, among others.

Moreover, Resendiz would also have individual claims against SQUARED UP for retaliation in violation of Labor Code section 1102.5. During his employment tenure, Resendiz, along with two other cooks, complained to management about being harassed and mistreated by a manager named Javier (last name unknown). Specifically, Resendiz and the other cooks presented a letter to supervisor Bryan Serventi detailing Javier's harassing behavior. Upon information and belief, Javier is still working at Fuku Sushi. On or around February 5, 2023, Resendiz's supervisor, Bryan Serventi, texted Resendiz that they were giving front of the house and back of the house employees the week off to evaluate business operations. Bryan Serventi informed Resendiz that he would text him on February 12, 2023 with the following week's schedule. To date, Resendiz has not been asked to return to work at Fuku Sushi. Upon information and belief, Fuku Sushi is still open and operating.

For the reasons herein, on behalf of himself and the Aggrieved Employees, Resendiz alleges that SQUARED UP committed the following violations of the California Labor Code and the Wage Order: 1) failed to pay wages for all time worked or subject to SQUARED UP's control, including correctly-calculated overtime wages and accurate tips; 2) failed to provide meal periods or pay correctly-calculated premium wages in lieu thereof; 3) failed to authorize and permit rest periods or pay correctly-calculated premium wages in lieu thereof; 4) failed to reimburse reasonably necessary business expenses; 5) failed to provide compliant wage statements; 6) failed to maintain accurate records; and 7) failed to timely pay all wages owed during and upon separation of employment.

Accordingly, Resendiz now seeks civil penalties on behalf of himself and the Aggrieved Employees based on SQUARED UP's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry," where "Public Housekeeping Industry" includes "Restaurants." (*Id.*, §§ 1 & 2(P)(1).) At all relevant times during the applicable limitations period, SQUARED UP operated a restaurant. Accordingly, Resendiz and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

FAILURE TO PAY WAGES FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

Labor Code §§ 510, 558, 1194, 1197, and 1198

Labor Code sections 510, 1194, and 1197 require employers to pay the wages agreed to and at least minimum wages for all time under the employer's control, overtime wages for hours worked

over eight per day or forty per week at one and one-half times the employee's regular rate of pay, and double-time wages for hours worked over twelve in one day or for the first eight hours of work on the seventh consecutive day of work at two times the employee's regular rate of pay. Labor Code section 558 establishes a civil penalty for violation of Labor Code section 510. Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

SQUARED UP failed to pay all minimum, regular, and overtime wages to Resendiz and other Aggrieved Employees because SQUARED UP paid wages based on rounded times, did not pay for off-the-clock work, and failed to pay overtime wages based on correct regular rates of pay.

TIP VIOLATIONS

Labor Code §§ 351 and 353

Labor Code § 351 prohibits an employer or agent of the employer from collecting, taking, or receiving any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deducting any amount from wages due an employee on account of a gratuity, or requiring an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Labor Code § 351 further declares that every gratuity is the sole property of the employee or employees to whom it was paid, given, or left for. Labor Code § 353 requires every employer to keep accurate records of all gratuities it receives, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise.

At all relevant times, SQUARED UP manipulated Resendiz's and all of the other Aggrieved Employees' monetary tips in violation of Labor Code § 351 and did not maintain records showing tips received and paid to its employees in violation of Labor Code § 353.

FAILURE TO PROVIDE MEAL PERIODS

Labor Code §§ 226.7, 512, and 1198

Employers must provide employees a 30-minute, uninterrupted meal period after no more than five hours of work, and a second such meal period after no more than 10 hours work. Labor Code § 512(a); IWC Wage Order(s) §§ 11(A)-(B); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. If an employer fails to provide an employee a meal period in accordance with California law, the employer must pay the employee one hour of pay at the employee's regular rate for each work day the meal period is not provided. Lab. Code § 226.7(c); IWC Wage Order(s), § 11(D); *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

SQUARED UP failed to provide Resendiz and other Aggrieved Employees with compliant meal periods and failed to pay one hour of correctly-calculated premium pay for each day such a meal period was not provided.

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FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

Labor Code § 226.7 & 1198

The Rest Period section of the applicable Wage Order provides: “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 net rest time per four (4) hours or major fraction thereof.” IWC Wage Order(s), § 12(A). If an employer fails to provide an employee a rest period in accordance with California law, the employer must pay the employee one hour of pay at the employee’s regular rate for each work day a rest period is not provided. IWC Wage Order(s), § 12(B); Labor Code § 226.7(c); *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

SQUARED UP failed to authorize and permit Resendiz and other Aggrieved Employees to take compliant rest periods and failed to pay one hour of correctly-calculated premium pay for each day such a rest period was not provided.

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

Labor Code §§ 226

California employers are required to provide itemized wage statements showing, among other things, “gross wages earned,” “total hours worked by the employee,” “net wages earned,” and “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Labor Code §§ 226(a)(1), (2), (5), (9).

SQUARED UP did not provide itemized wage statements accurately reflecting Resendiz’s and other Aggrieved Employees’ gross wages earned, total hours worked, net wages earned, tips earned, and all applicable hourly rates and the number of hours worked at each rate.

FAILURE TO PROVIDE ACCURATE RECORDS

Labor Code §§ 1174, 1174.5, 1198; IWC Wage Order(s), § 7

An employer must maintain payroll records showing hours worked daily by, and wages paid to, its employees, in accordance with rules established by the Industrial Welfare Commission. Labor Code §1174. An employer must also maintain time records showing when each work period, and meal period, begins and ends. IWC Wage Order(s), § 7.

Because SQUARED UP rounded employees’ time worked, did not record off-the-clock work, and interrupted employees’ meal periods, SQUARED UP failed to maintain accurate records as to the hours worked daily by employees and as to when each work period and meal period began and ended.

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FAILURE TO REIMBURSE FOR EXPENSES

Labor Code §§ 1198, 2802, and 2804

An employer must reimburse its employees for their reasonable business-related expenses. Labor Code § 2802. The right to reimbursement cannot be waived. Labor Code § 2804.

SQUARED UP failed to reimburse Resendiz and other Aggrieved Employees for their reasonable business-related expenses, including use of their own personal cell phones in effectuating their job duties.

FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT & UPON SEPARATION

Labor Code §§ 201-204

An employer must pay “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment...twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Labor Code § 204. An employer must pay all wages owed to terminated employees at the time of termination, or within 72 hours to employees who quit. Labor Code §§ 201-202. If an employer willfully fails to timely pay all wages to separated employees, the wages continue at the same rate for up to 30 days, until paid. Labor Code § 203.

As a result of its failure to pay all wages earned, as described above, SQUARED UP failed to pay all final wages due to Resendiz and other Aggrieved Employees and violated Labor Code Sections 201-204.

RETALIATION

Labor Code § 1102.5

An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation. Lab. Code § 1102.5(c).

Resendiz complained to management, including supervisor Bryan Serventi, about being harassed by Javier. Because of his complaints, SQUARED UP retaliated against Resendiz by taking him off the schedule and not contacting him about future work in violation of California Labor Code § 1102.5(c).

Resendiz seeks civil penalties under California Labor Code § 1102.5(f) in an amount not to exceed \$10,000 for each violation by SQUARED UP of California Labor Code § 1102.5(c), as well as attorney’s fees and costs under Labor Code §§ 1102.5(j) and 2699(g).

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PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES LABOR CODE

Labor Code § 558.1

In relevant part, Labor Code section 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

At all relevant times, Matthew Serventi was an employer of Resendiz and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of SQUARED UP. Matthew Serventi directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of Resendiz and the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Aggrieved Employees, Resendiz seeks the same civil penalties against Matthew Serventi on the same grounds for which he seeks civil penalties against SQUARED UP.

CONCLUSION

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that Miguel Resendiz Tenorio will seek both reasonable attorneys’ fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Maralle Messrelan".

Maralle Messrelan, Esq.

maralle@mmlawapc.com