

BLANCHARD, KRASNER & FRENCH
David C. Hawkes; SBN: 224241
dhawkes@bkflaw.com
800 Silverado St., 2nd Floor
La Jolla, CA 92037
Telephone: (858) 551-2440
Facsimile: (858) 614-7008

LAW OFFICE OF DAVID A. HUCH
David A. Huch; SBN: 222892
david.a.huch@gmail.com
12223 Highland Ave., Ste. 106-574
Rancho Cucamonga, CA 91739
Telephone: (909) 463-6363
Facsimile: (909) 614-7008

LAW OFFICE OF MICHAEL H. YI
Michael H. Yi; SBN: 269025
myi@yimadrosenlaw.com
3435 Wilshire Blvd. Suite 1050
Los Angeles, CA 90010
Telephone: (213) 377-5447
Facsimile: (213) 377-5448

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/24/2023 at 10:03:00 AM
Clerk of the Superior Court
By Katie Winburn, Deputy Clerk

Attorneys for Plaintiff, Paul Catalano

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

PAUL CATALANO, Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

MILLE FLEURS, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

) **Case No. 37-2023-00005841-CU-OE-CTL**
)
) **CLASS ACTION**
)
) **FIRST AMENDED COMPLAINT FOR**
) **COMPENSATORY DAMAGES,**
) **RESTITUTION, PENALTIES &**
) **INJUNCTIVE RELIEF:**
)
) **1. Failure to Pay Earned Wages and**
) **Overtime Compensation in Violation of**
) **Labor Code §§ 204, 210, 218, 510, and**
) **1194;**
) **2. Failure to Provide Meal Periods, Or**
) **Compensation in Lieu Thereof, in**
) **Violation of Labor Code §§ 226.7 and**
) **512;**
) **3. Failure to Authorize and Permit Rest**
) **Periods, Or Compensation in Lieu**
) **Thereof, in Violation of Labor Code §**
) **226;**

1 3. Plaintiff and other similarly situated employees have also been required by Defendant
2 to work during meal periods and rest periods. Defendant's employees have not received their state-
3 mandated meal periods of an uninterrupted thirty minutes within the first five hours of daily work
4 periods lasting more than five hours and have not received a second meal period within the first ten
5 hours of daily work periods lasting more than ten hours. Defendant's employees have not received
6 their state-mandated rest period of an uninterrupted ten minutes' rest during every four hour work
7 period, or major fraction thereof.

8 4. Plaintiff and other similarly situated employees have also been subjected to unlawful
9 gratuity, or tip, sharing policies and practices in violation of Cal. Labor Code Section 351.
10 Specifically, Defendant and its agents have collected, taken, and received a portion of gratuities paid
11 and given to Plaintiff and other tipped employees at the Mille Fleurs restaurant in Rancho Santa Fe,
12 California. Furthermore, Defendant's tip pooling policies and practices are patently unfair and
13 inequitable, and bear no relation to the tip pooling participants' efforts in the chain of service for
14 Defendant's patrons.

15 5. Defendant also is liable for reporting time pay for requiring Plaintiff and other
16 similarly situated employees to be available "on call" for work at the Mille Fleurs restaurant. During
17 several work shifts per week, Defendant's employees must regularly wait to be contacted by
18 Defendant before the start of the scheduled standby, or "on call," shift to find out whether they
19 actually need to work the standby shift. Defendant's require its employees to wait an unreasonable
20 amount of time in order to be notified if such employees are scheduled to work. Often, employees
21 are not notified until one hour before the scheduled start time. Defendant's employees are disciplined
22 if they do not wait "on call" to be notified if they need to appear for work. If the "on call" employee
23 does not receive a call from Defendant to come into work, he or she is not paid at all despite the
24 employee's activities being significantly constrained. Defendant is therefore liable for reporting time
25 pay pursuant to California's strict regulations.

26 6. The policies and practices of Defendant, as alleged herein, are unlawful, unfair and
27 deceptive business practices whereby Defendant has retained wages due to Plaintiff and other
28

1 similarly situated employees for all hours worked, including gratuities and overtime compensation;
2 all missed meal and rest periods; and reporting time pay. Defendant's unlawful, unfair and deceptive
3 employment and wage practices cheat Plaintiff and other members of the proposed Class out of their
4 lawful compensation due, as required by California law. Plaintiff therefore seeks an injunction
5 enjoining such conduct by Defendant in the future, restitution for the named Plaintiff and all
6 members of the proposed Class, and all other appropriate equitable relief.

7 **IDENTIFICATION OF THE PARTIES**

8 7. Plaintiff PAUL CATALANO is a competent adult who resides in the City of
9 Escondido, County of San Diego, State of California. From his date of hire during March 2020 to
10 February 2023, Plaintiff CATALANO was employed by Defendant as an hourly, non-exempt Server
11 who received a base hourly rate of pay plus gratuities paid to him by Defendant's restaurant patrons.

12 8. Plaintiff is informed and believe, and thereon allege, that Defendant MILLE
13 FLEURS, INC. is a California corporation with its principal place of business in Rancho Santa Fe,
14 California. According to Defendant's website, www.millefleurs.com, MILLE FLEURS, INC. owns
15 and operates an upscale French restaurant in Rancho Santa Fe, California.

16 9. At all times mentioned herein, Defendant MILLE FLEURS, INC. has been doing
17 business in the State of California through its ownership and management of the Mille Fleurs French
18 restaurant.

19 10. Plaintiff is informed and believe, and thereon allege, that at all relevant times
20 Defendant MILLE FLEURS, INC. has employed Plaintiff and the members of the proposed Class,
21 and exercised control over Plaintiff and the proposed Class members' wages, hours and working
22 conditions.

23 11. Plaintiff do not know the true names and capacities of Defendants sued herein as
24 DOES 1 through 50, inclusive, and will amend this Complaint to set forth the true names and
25 capacities of said Defendants, along with the appropriate charging allegations when the same have
26 been ascertained.

27 12. Plaintiff is informed and believe, and on that basis alleges, that each of the fictitiously
28

1 named Defendants was in some manner legally responsible for the actionable and unlawful actions,
2 policies and practices as alleged herein. Plaintiff will amend this Complaint to set forth the true
3 names and capacities of said Defendant, along with the appropriate charging allegations, when the
4 same have been ascertained.

5 13. Plaintiff is informed and believe, and thereon allege, that at all times mentioned
6 herein, all Defendant, and each of them, were acting as the agent and/or employee of each remaining
7 co-defendant, and were acting with permission and consent of each other, and within the course and
8 scope of said agency and/or employment. Plaintiff is further informed and believe that each co-
9 defendant, by and through its officers, directors or managing agents, ratified, authorized and
10 approved, expressly or implicitly, all of the conduct alleged herein.

11 14. When in this Complaint reference is made to any act of the "Defendant," such shall
12 be deemed to mean that officers, directors, agents, employees, or representatives of the Defendant
13 named in this lawsuit committed or authorized such acts, or failed and omitted to adequately
14 supervise or properly control or direct their employees while engaged in the management, direction,
15 operation or control of the affairs of the Defendant and did so while acting within the scope of their
16 employment or agency.

17 **JURISDICTION AND VENUE**

18 15. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

19 16. This Court has jurisdiction over all causes of action asserted herein pursuant to
20 California Constitution, Article VI, Sec. 10, because this case is a cause not given by statute to other
21 trial courts.

22 17. This Court has jurisdiction over Defendant because each co-defendant is a
23 corporation authorized to do business in the State of California and registered with the California
24 Secretary of State to do sufficient business with sufficient minimum contacts in California, and/or
25 otherwise intentionally avail itself of the California market through the ownership and management
26 of the Mille Fleurs restaurant in Rancho Santa Fe, California, to render the exercise of jurisdiction
27 by the California courts consistent with traditional notions of fair play and substantial justice

18. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant's actionable and unlawful employment practices as to Plaintiff and numerous other employees occurred at the Mille Fleurs restaurant in the County of San Diego, State of California.

CLASS ACTION ALLEGATIONS

19. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

20. Plaintiff brings this suit as a class action pursuant to California Code of Civil Procedure § 382 on behalf of himself and all individuals who are or previously were employed by Defendant in the State of California and who have been classified by Defendant as non-exempt, hourly employees. The class period applicable to the Class is defined as the period beginning four years prior to the filing of this Complaint and ending on the date as determined by the Court. As a matter of company policy and practice, Defendant has failed to pay all earned gratuities, the required straight time and overtime compensation due to these employees for all hours worked, has failed to provide state-mandated meal periods and rest periods to such employees, has failed to pay required reporting time pay, and has otherwise failed to comply with all labor laws and regulations with respect to such employees.

21. The putative class and subclass Plaintiff CATALANO will seek to certify is currently composed of and defined as follows:

a. All current and former California-based, hourly, non-exempt employees who were employed by MILLE FLEURS, INC. between February 9, 2019 and the present (hereinafter, the "CLASS").

b. All former California-based, hourly, non-exempt employees of MILLE FLEURS, INC. who separated their employment with MILLE FLEURS, INC. between February 9, 2020 and the present (hereinafter, the "FORMER EMPLOYEE SUBCLASS").

22. Numerosity: The potential number of members of the CLASS and SUBCLASS as defined is so numerous that joinder of all members would be unfeasible and impractical. The disposition of their claims through this class action will benefit both the parties and this Court. The quantity of members of the CLASSES and SUBCLASS is currently unknown to Plaintiff; however,

1 it is estimated that there are at least 100 members in the CLASS, and at least 75 members in the
2 FORMER EMPLOYEE SUBCLASS. The quantity and identity of such membership is readily
3 ascertainable via inspection of Defendant's employment records, which Defendant is required to
4 maintain under California law.

5 23. Typicality: The claims of Plaintiff are typical of the claims of all members of the
6 CLASS mentioned herein because all members of the CLASS and SUBCLASS sustained injuries
7 and damages arising out of Defendant's common course of conduct in violation of California wage
8 and hour law, and the injuries and damages of all members of the CLASS and SUBCLASS were
9 caused by Defendant's wrongful conduct in violation of California statutory and regulatory law, as
10 alleged herein.

11 24. Adequacy: Plaintiff is an adequate representative of the CLASS and SUBCLASS
12 and will fairly protect the interests of the members of the CLASS and SUBCLASS, and have no
13 interests antagonistic to the members of the CLASS and SUBCLASS, and will vigorously pursue
14 this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.

15 25. Superiority. The nature of this action and the nature of the laws available to Plaintiff
16 make the use of the class action format a particularly effective and appropriate procedure to afford
17 relief to Plaintiff for the wrongs alleged herein:

18 This case involves a corporate Defendant and a large number of individual class members
19 with common issues of law and fact.

20 a. If each individual member of the CLASS was required to file an individual lawsuit,
21 the large corporate Defendant would necessarily gain an unconscionable advantage
22 because Defendant would be able to exploit and overwhelm the limited resources of
23 each member of the CLASS with Defendant's vastly superior financial and legal
24 resources.

25 b. Requiring each individual member of the CLASS to pursue an individual remedy
26 would also discourage the assertion of lawful claims by the members of the CLASS
27 who would be disinclined to pursue an action against Defendant because of an
28

1 appreciable and justifiable fear of retaliation and permanent damage to their lives,
2 careers and well being;

3 c. Proof of a common business practice or factual pattern, of which the members of the
4 CLASS and SUBCLASS experienced, is representative of the CLASS and
5 SUBCLASS herein and will establish the right of each of the members of CLASS
6 and SUBCLASS to recover on the causes of action alleged herein; and

7 d. The prosecution of separate actions by the individual members of the CLASS, even
8 if possible, would create a substantial risk of inconsistent and varying verdicts or
9 adjudications with respect to the individual members of the CLASS against
10 Defendant, which would establish potentially incompatible standards of conduct for
11 Defendant and/or legal determinations with respect to individual members of the
12 CLASS.

13 Existence and Predominance of Common Questions of Fact and Law:

14 26. There are common questions of fact and law as to the members of the CLASS, which
15 predominate over questions affecting only individual members of the CLASS including, without
16 limitation:

- 17 a. Whether the members of the CLASS were expected, required, permitted and/or
18 suffered to work overtime hours on a regular basis;
- 19 b. Whether the recorded work hours of the members of the CLASS were unlawfully
20 reduced by Defendant;
- 21 c. Whether Defendant unlawfully instructed the members of the CLASS to record and
22 submit hours less than those actually worked;
- 23 d. Whether the members of the CLASS were paid wages for all hours worked;
- 24 e. Whether the members of the CLASS were paid overtime compensation in
25 accordance with California statutory and regulatory law;
- 26 f. Whether the members of the CLASS were provided with uninterrupted 30-minute
27 meal periods within the first five hours of daily work periods lasting longer than
28

1 five hours;

2 g. Whether the members of the CLASS were provided with a second uninterrupted 30-
3 minute meal period within the first ten hours of daily work periods lasting longer
4 than ten hours;

5 h. Whether Defendant has failed to keep accurate time records showing when
6 members of the CLASS begin and end each meal periods;

7 i. Whether the members of the CLASS were provided with 10-minute rest periods
8 during every four hour period, or major fraction thereof;

9 j. Whether Defendant has provided wage compensation to the members of the CLASS
10 for work shifts in which meal periods and/or rest periods were not provided;

11 k. Whether Defendant required members of the CLASS to work through their meal
12 periods and rest periods;

13 l. Whether Defendant paid all wages due and owing to members of the FORMER
14 EMPLOYEE SUBCLASS at the time of separation of employment, in accordance
15 with Labor Code §§ 201-203;

16 m. Whether Defendant's conduct constituted unfair or unlawful business practices
17 within the meaning of Business & Professions Code § 17200 *et seq.*;

18 n. Whether the members of the CLASS are entitled to compensatory damages, and if
19 so, the means of measuring such damages;

20 o. Whether the members of the CLASS are entitled to injunctive relief;

21 p. Whether the members of the CLASS are entitled to restitution;

22 q. Whether the members of the CLASS are entitled to disgorgement of profits;

23 r. Whether the members of the FORMER EMPLOYEE SUBCLASS are entitled to
24 "waiting time penalties;"

25 s. Whether Defendant is liable for pre-judgment interest; and

26 t. Whether Defendant is liable for attorneys' fees and costs.

FIRST CAUSE OF ACTION

(Failure to Pay Earned Wages and Overtime Compensation in Violation of
California Labor Code §§ 204, 210, 510 & 1194)

(On Behalf of Plaintiff and the CLASS)

27. Plaintiffs reallege by reference, as if fully set forth herein, all of the above Paragraphs.

28. Cal. Labor Code § 204 requires employers to pay employees for all hours worked as follows: “all wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Cal. Labor Code § 510 further provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

29. Cal. Labor Code § 1194 establishes an employee’s right to recover unpaid wages, including overtime compensation and interest thereon, together with costs of suit and statutory attorneys fees.

30. Plaintiff further alleges that throughout the Class Period all members of the CLASS, including Plaintiff, has been classified by Defendant as non-exempt, hourly employees.

31. As set forth herein, Defendant’s policy and practice has been to intentionally and uniformly deny payment of wages due for hours worked, including overtime hours worked, to non-exempt employees. This has been done in an illegal attempt to avoid payment of earned wages, overtime compensation and other benefits in violation of the California Labor Code and Industrial Welfare Commission requirements.

32. Plaintiff alleges, on the basis of information and belief, that at all relevant times Defendant has continuously engaged in the regular practice of requiring, suffering or permitting members of the CLASS to accrue work hours but Defendant has unlawfully failed to pay wages earned to CLASS, including Plaintiff, for all hours worked in violation of Labor Code § 204 and applicable Industrial Welfare Commission requirements. The actual work hours of the members of the CLASS are evidenced by Defendant’s records and witnessed by management, who unlawfully reduced CLASS members’ recorded hours, and who instructed Plaintiff and members of the CLASS

1 to exclude work time from their time records.

2 33. Plaintiff alleges, on the basis of information and belief, that at all relevant times
3 Defendant has continuously engaged in the regular practice of requiring, suffering or permitting
4 members of the CLASS to work hours in excess of eight hours per day and/or 40 hours per week.
5 Despite CLASS members regularly working hours in excess of eight hours per day and/or 40 hours
6 per week, Defendant has unlawfully failed to pay overtime compensation to CLASS members,
7 including Plaintiff, for all overtime hours worked in violation of Labor Code § 510 and applicable
8 Industrial Welfare Commission requirements. The actual overtime hours of the members of the
9 CLASS is evidenced by Defendant's records and witnessed by management, who unlawfully
10 reduced CLASS members' recorded hours, and who instructed Plaintiffs and members of the CLASS
11 to exclude work time from their time records.

12 34. As a result of the actions of Defendant in failing and/or refusing to pay earned wages
13 and overtime compensation, members of the CLASS, including Plaintiff, were damaged by not
14 receiving all wages owed and by not receiving overtime compensation which they should have
15 received, but did not receive. Defendant has known or should have known that Plaintiff and members
16 of the CLASS has accrued work hours, including overtime hours, for which Plaintiffs and members
17 of the CLASS have not been compensated. Defendant systemically elected, either through
18 intentional malfeasance or gross nonfeasance, not to pay Plaintiff and members of the CLASS for
19 their labor as a matter of uniform corporate policy, practice and procedure. To perpetrate this
20 scheme, Defendant has refused to institute a system for recording hours worked that is not subject to
21 manipulation or alteration by Defendant and/or Defendant's managing agents. Members of the
22 CLASS, including Plaintiff, are therefore entitled to compensation in an amount to be proven at trial
23 for unpaid earned wages, unpaid overtime compensation, pre-judgment interest, attorneys' fees and
24 costs pursuant to Labor Code section 218.5 and 1194.

SECOND CAUSE OF ACTION

(Failure to Provide 30-Minute Employee Meal Period)
(On Behalf of Plaintiff and the CLASS)

35. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

36. Plaintiff alleges, on the basis of information and belief, that within each of the four years prior to the commencement of this action, Defendant has promulgated and enforced policies under which members of the CLASS including Plaintiff, regularly worked more than five hours in a daily work period lasting longer than five hours without being provided with an uninterrupted, thirty-minute meal period during which members of the CLASS, including Plaintiff, were relieved of all of their respective work duties, or under which members of the CLASS, including Plaintiff, were not provided with a thirty-minute meal period during the first five hours of their work shifts. Defendant has also promulgated and enforced policies under which members of the CLASS including Plaintiff, regularly worked more than ten hours in a daily work period lasting longer than ten hours without being provided with a second uninterrupted, thirty-minute meal period during which members of the CLASS including Plaintiff, were relieved of all of their respective work duties, or under which members of the CLASS, including Plaintiff, were not provided with a second thirty-minute meal period during the first ten hours of their work shifts. Defendant has also otherwise failed to provide CLASS members with state-mandated meal periods, including requiring CLASS members to take unlawful "on duty" meal periods.

37. All members of the CLASS, including Plaintiff, are entitled to additional wages pursuant to California Labor Code Section 226.7 for each daily work period lasting more than five hours during which members of the CLASS, including Plaintiff, were not provided with an uninterrupted, thirty minute meal period, or during which members of the CLASS were not provided with an uninterrupted thirty-minute meal period during the first five hours of their work shifts. Members of the CLASS, including Plaintiff, are also entitled to additional wages pursuant to California Labor Code Section 226.7 for each daily work period lasting more than ten hours during which members of the CLASS, including Plaintiff, were not provided with a second uninterrupted, thirty minute meal period, or during which members of the CLASS were not provided with a second

1 uninterrupted thirty-minute meal period during the first ten hours of their work shifts.

2 38. As a result of Defendant's conduct as alleged herein, members of the CLASS,
3 including Plaintiff, have suffered harm and monetary damages, in an amount to be ascertained at
4 trial.

5 **THIRD CAUSE OF ACTION**

6 (Failure to Authorize and Permit 10-Minute Employee Rest Periods)
7 (On Behalf of Plaintiff and the CLASS)

8 39. Plaintiffs reallege by reference, as if fully set forth herein, all of the above Paragraphs.

9 40. Plaintiffs allege, on the basis of information and belief, that during all relevant times,
10 Defendant has promulgated and enforced policies under which members of the CLASS, including
11 Plaintiff, have regularly worked more than four hours per day without being authorized and permitted
12 to take one or more paid rest periods of at least ten minutes for each four hours of work time, or
13 major fraction thereof, during which the members of the CLASS, including Plaintiff, were relieved
14 of all of their respective work duties.

15 41. Defendant has adopted and maintained uniform corporate rest period policies and
16 procedures that violate California law, including the applicable Industrial Welfare Commission
17 Wage Order. Defendant has failed to authorize and permit members of the CLASS, including
18 Plaintiff, to take ten-minute rest periods every four hours or major fraction thereof. Defendant has
19 failed to authorize and permit Plaintiff and the other members of the CLASS to take 10 minutes' rest
20 during shifts lasting more than three and one-half hours to six hours in length, 20 minutes' rest during
21 shifts lasting more than six hours up to 10 hours in length, and 30 minutes' rest during shifts lasting
22 more than 10 hours up to 14 hours in length.

23 42. Plaintiff alleges, on the basis of information and belief, that members of the CLASS,
24 including Plaintiff, have suffered harm and monetary damages, in an amount to be ascertained at
25 trial. Plaintiff and the other members of the CLASS are entitled to additional wages pursuant to
26 California Labor Code Section 226.7 for each four hour work period, or major fraction thereof,
27 during which members of the CLASS were not permitted and authorized to take one or more ten
28 minute rest periods.

FOURTH CAUSE OF ACTION

(Failure to Pay Reporting Time Pay in Violation of Wage Order No. 5-2001)
(On Behalf of Plaintiff and the CLASS)

43. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

44. Section 5 of Wage Order 5-2001 provides that "[e]ach workday an employee is required to report for work and does report, but is not put to, work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage."

45. As set forth herein, Defendant has scheduled Plaintiff and the CLASS for standby, or "on call," shifts that has required them to be at the ready to receive a call, starting as soon as 60 minutes prior to the scheduled start time of a standby shift and face discipline if they did not answer such call.

46. As a common, representative example, Plaintiff was regularly required to be "on call" two or three times per week and would need to wait up until approximately 3:30 p.m. for a phone call from Defendant for a potential work shift that would begin at 4:30 p.m. Often Defendant would not call Plaintiff into work despite the fact that he had blocked out his afternoon and evening on such days when he was scheduled "on call." Plaintiff and other CLASS members were not compensated at all by Defendant on such work days in which Plaintiff and the other CLASS members were "on call" but never called into work by Defendant, despite having their daily activities significantly restrained. Plaintiff and his fellow CLASS members were subject to disciplinary action, including the elimination of scheduled work shifts, if they could not be reached by Defendant during the "on call" time period.

47. Defendant has failed to pay required reporting time pay to Plaintiff and the CLASS, as Plaintiff and the CLASS were not paid reporting time pay or any compensation for having to be at the ready to work a standby, or "on call," shift. Defendant has only compensated its employees who were called to come to work and actually work the standby, or "on call," shift.

1 48. As a direct and proximate result of Defendant's actions as set forth herein, Plaintiff
2 and the CLASS have been damaged in that Plaintiff and the CLASS have not been paid all required
3 reporting time pay.

4 **FIFTH CAUSE OF ACTION**

5 (Failure to Pay Compensation When Due at Time of Separation of Employment
6 in Violation of Labor Code §§ 201-203)

7 (On Behalf of Plaintiff and the FORMER EMPLOYEE SUBCLASS)

8 49. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

9 50. California Labor Code Section 201 requires an employer who discharges an employee
10 to pay compensation due and owing said employee immediately upon discharge. California Labor
11 Code Section 202 requires an employer to promptly pay compensation due and owing an employee
12 within 72 hours of that employee's separation of employment by resignation. California Labor Code
13 Section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge
14 or resignation as required pursuant to California Labor Code Sections 201 and 202, said employer is
15 liable to said employee for waiting time penalties.

16 51. Plaintiff alleges, on the basis of information and belief, that Defendant has willfully
17 failed and have refused to pay all compensation and wages due and owing, including straight time
18 wages, overtime pay, reporting time pay, and/or premium payments for failure to provide meal
19 periods and failure to authorize and permit rest periods, to members of the FORMER EMPLOYEE
20 SUBCLASS, including Plaintiff, upon their separation of employment.

21 52. Defendant's failure to timely pay compensation and wages to members of the
22 FORMER EMPLOYEE SUBCLASS at the time of their separation of employment has been willful.
23 As a result, Defendant is liable to members of the FORMER EMPLOYEE SUBCLASS for "waiting
24 time penalties" under California Labor Code Section 203, in an amount to be ascertained at trial.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

17
18
19
20
21
22
23
24
25
26
27
28

20
21
22
23
24
25
26
27
28

21
22
23
24
25
26
27
28

22
23
24
25
26
27
28

23
24
25
26
27
28

24
25
26
27
28

28

1 61. Defendant and its agents, within the applicable statute of limitations, collected, took
2 and received a part of the gratuities paid and given to Plaintiff and the other class members in
3 violation of Labor Code § 350 *et seq.* As a direct and proximate result of Defendant's wrongful
4 collecting, taking and receiving of part of the gratuities paid and given to Plaintiff and the other class
5 members, Plaintiff and the other class members have been damaged in the amount of such portion
6 of their gratuities wrongfully appropriated subject to proof at time of trial.

7 62. Defendant's conduct constitutes unlawful, unfair, or fraudulent business acts or
8 practices, in that Defendant has violated Cal. Labor Code § 351 in not remitting to the non-
9 managerial service employees the total gratuities that are charged to customers. As a result of
10 Defendant's conduct, Plaintiff and class members suffered injury in fact and lost money and property,
11 including the loss of gratuities to which they were entitled. Pursuant to Cal. Bus. & Prof. Code §
12 17203, Plaintiff and class members seek declaratory and injunctive relief for Defendant's unlawful,
13 unfair, and fraudulent conduct and to recover restitution.

14 63. The collecting, taking, and receiving of a portion of gratuities given to tipped
15 employees in violation of Labor Code § 350 *et seq.*, the failure to pay overtime, the failure to pay all
16 wages owed, the failure to provide meal breaks and authorize and permit rest breaks, and the failure
17 to pay reporting time pay constitute unlawful business acts or practices in violation of Cal. Bus. &
18 Prof. Code § 17200 *et seq.*

19 64. Within each of the four years prior to the commencement of this action, Plaintiff is
20 informed and believe, and thereon allege, that Defendant and its agents have unlawfully failed to pay
21 hourly wages and overtime wages to members of the CLASS, including Plaintiff, in violation of
22 Labor Code §§ 204, 218, 510 and 1194; unlawfully collected, took, and received a portion of
23 gratuities paid and given to Plaintiff and other members of the CLASS, in violation of Labor Code
24 § 351; unlawfully failed to provide meal periods, or compensation in lieu thereof, to members of the
25 CLASS, including Plaintiff, in violation of Labor Code §§ 226.7 and 512; unlawfully failed to
26 authorize and permit rest periods, or compensation in lieu thereof, to the members of the CLASS,

1 including Plaintiff, in violation of Labor Code § 226.7; and unlawfully failed to pay reporting time
2 pay to the members of the CLASS, including Plaintiff, in violation of Wage Order No. 5-2001.

3 65. By committing the alleged acts and/or omissions as described in this Complaint,
4 Defendant has engaged, and continue to engage, in unlawful and/or unfair business practices within
5 the meaning of California Business & Professions Code § 17200 *et seq.*

6 66. Plaintiff alleges, on the basis of information and belief, that by and through
7 Defendant's alleged acts and/or omissions as described in this Complaint, Defendant has obtained
8 valuable property, money, and services from Plaintiff and members of the CLASS and have deprived
9 Plaintiffs and members of the CLASS of valuable rights and benefits guaranteed by law and contract,
10 all to Plaintiffs' and CLASS members' detriment and to the benefit of Defendant.

11 67. A request for injunctive relief, restitution and for the disgorgement of unlawfully
12 earned profits is specifically authorized by California Business & Professions Code § 17200 *et seq.*
13 Thus, on behalf of Plaintiffs and members of the CLASS, and on behalf of the general public,
14 Plaintiffs seek injunctive relief, restitution (to members of the CLASS of all unlawfully withheld
15 funds, and the disgorgement of all unlawfully earned profits (to members of the CLASS) obtained
16 by Defendant as a result of Defendant's alleged unlawful and unfair acts and/or omissions described
17 in this Complaint.

18 68. Plaintiffs are informed and believe, and thereon allege, that unless restrained and
19 ordered to pay restitution and disgorge profits derived from these unlawful and unfair employment
20 practices, Defendant will continue to engage in the unlawful and unfair acts and/or omissions
21 described in this Complaint.

22 **SEVENTH CAUSE OF ACTION**
23 **(Labor Code Private Attorneys General Act of 2004: Labor Code § 2698 *et seq.*)**
24 **(On Behalf of Plaintiff, All Aggrieved Employees and the State of California)**

25 69. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
26 Defendant has violated, and continues to violate, several provisions of the California Labor Code,
27 including but not limited to:

28 a. Sections 201 – 203 (Failure to Pay All Compensation Owed at Separation);

- b. Section 204 (Failure to Timely Pay All Wages Earned);
- c. Section 210 (Failure to Pay Wages);
- d. Section 226 (Failure to Provide Accurate Itemized Wage Statements);
- e. Section 226.3 (Penalties for Failure to Provide Accurate Wage Statements);
- f. Section 226.7 (Failure to Compensate for Missed, Late or On Duty Meal and Rest Periods);
- g. Section 351 (Failure to Pay All Gratuities Collected);
- h. Section 510 (Unlawful Overtime Policies and Procedures);
- i. Section 512 (Failure to Provide Timely, Uninterrupted 30-Minute Meal Periods);
- j. Section 1174 (Failure to Maintain Accurate Time Records); and
- k. Section 1194 (Failure to Pay Overtime Compensation);

70. Pursuant to Labor Code § 2699, Plaintiff bring this cause of action on behalf of himself and all other current or former employees of Defendant against whom one or more of the alleged violations was committed and/or is being committed (“aggrieved employees,” as defined by Section 2699(c)).

71. Pursuant to Labor Code Section 2699, Plaintiff seeks to recover from Defendant civil penalties for *each* Labor Code violation. The civil penalties are to be calculated at the rate at which the civil penalty is to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees.

72. Pursuant to Labor Code Section 2699, for all provisions of the California Labor Code that do not specifically provide for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, Plaintiff seeks to recover from Defendant civil penalties for *each* Labor Code violation at the following rate: one hundred dollar (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

1 73. Pursuant to Labor Code Section 2699, Plaintiff seeks an award of reasonable
2 attorney's fees and costs for bringing this cause of action on behalf of himself, the State of California
3 and Defendant's other current and former aggrieved employees against whom one or more of the
4 alleged violations was committed.

5 74. In compliance with Labor Code Section 2699.3, on February 9, 2023, Plaintiff
6 provided Defendant and the California Labor & Workforce Development Agency ("LWDA") with
7 written notice, via online filing and via certified mail, of the specific provisions of the Labor Code
8 alleged to have been violated by Defendant, and the facts and theories to support the allegations. The
9 LWDA assigned this matter Case No. LWDA-CM- 935118-23.

10 75. More than 65 days have elapsed since Plaintiff notified the LWDA of the specific
11 provisions of the Labor Code alleged to have been violated by Defendant. To date, the LWDA has
12 not notified Plaintiff nor Defendant that it intends to investigate the alleged violations contained in
13 Plaintiff's February 9, 2023 notice.

14 76. Pursuant to California Labor Code § 2699.3, Plaintiff may commence a civil action
15 against Defendant for civil penalties on behalf of himself, the State of California and Defendant's
16 other current and former aggrieved employees.

17 77. Plaintiff may maintain this cause of action against Defendant for civil penalties under
18 Labor Code Section 2698 *et seq.* regardless of whether Plaintiff's allegations contained herein are
19 certified for class treatment.

20 78. Plaintiff has not alleged any violation of Division 5 (commencing with Section 6300)
21 of the Labor Code.

22 79. In compliance with Labor Code Section 2699.3, Plaintiff's February 9, 2023 notice
23 also provided Defendant and the LWDA, with written notice, via online filing and via certified mail,
24 of the specific provisions of the Labor Code—not specified in Labor Code Section 2699.5—alleged
25 to have been violated by Defendant, including Labor Code Sections 210, 226.3 and 558, as well as
26 the facts and theories to support the allegations.

80. To date, Defendant have not cured any of the alleged violations, and Defendant have not abated any of the violations alleged by Plaintiff in his February 9, 2023 notice. At all relevant times, Defendant have not been in compliance with the underlying statutes as specified in Plaintiff's February 9, 2023 notice. At all relevant times, no aggrieved employee has been made whole for the Labor Code violations described in Plaintiff's February 9, 2023 notice.

81. To date, Defendant have not given written notice to Plaintiff nor the LWDA that any Labor Code violation alleged by Plaintiff in his February 9, 2023 notice has been cured.

82. Pursuant to California Labor Code § 2699.3(c)(2)(A), Plaintiff may commence a civil action against Defendant for civil penalties on behalf of himself, the State of California and Defendant's other current and former aggrieved employees with respect to the specific provisions of the Labor Code—not specified in Labor Code Section 2699.5—alleged to have been violated by Defendant, including Labor Code Sections 226.3, 246 and 558.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on his own behalf, and on behalf of all others similarly situated, prays for judgment as follows:

1. That the Court issue an Order certifying the CLASS, and FORMER EMPLOYEE SUBCLASS, appointing the named Plaintiff as representative of all others similarly situated and appointing the law firm representing the named Plaintiff, Blanchard, Krasner & French, the Law Office of David A. Huch, and the Law Office of Michael H. Yi as counsel for members of the CLASS and FORMER EMPLOYEE SUBCLASS;

2. For an Order requiring Defendant to identify each of the members of the CLASS, and SUBCLASS by name, last known home address and last known home telephone number;

3. For compensatory damages according to proof, including all wages due and owing as a result of Defendant's failure to pay all gratuities earned, reporting time pay, straight wages and overtime compensation to members of the CLASS;

4. For compensatory damages in the form of additional wages equal to one hour's regular pay for each member of the CLASS for each daily work period in which such member worked

1 more than five hours without being provided with an uninterrupted, thirty-minute meal period, or in
2 which members of the CLASS were not provided with an uninterrupted thirty-minute meal period
3 during the first five hours of their work shifts;

4 5. For compensatory damages in the form of additional wages equal to one hour's
5 regular pay for each member of the CLASS for each daily work period in which such member worked
6 more than ten hours without being provided with a second uninterrupted, thirty-minute meal period,
7 or in which members of the CLASS were not provided with a second uninterrupted thirty-minute
8 meal period during the first ten hours of their work shifts;

9 6. For compensatory damages in the form of additional wages equal to one hour's
10 regular pay for each member of the CLASS for each four hour work period, or major fraction thereof,
11 in which such employee worked without being authorize and permitted to take a paid rest period;

12 7. For statutory penalties pursuant to Labor Code Section 203 for each member of the
13 FORMER EMPLOYEE CLASS;

14 8. For an Order compelling Defendant to restore unpaid gratuities, wages, expenditures,
15 losses, income and other related benefits (in the form of restitution) to each of the members of the
16 CLASS who have suffered as a result of Defendant's unlawful and unfair employment practices
17 alleged herein;

18 9. For an order compelling Defendant to disgorge and pay over to each of the members
19 of the CLASS all profits and savings resulting from Defendant's unlawful and unfair employment
20 practices alleged herein;

21 10. For issuance of a permanent injunction enjoining Defendant from continuing to
22 engage in the unlawful and unfair employment practices alleged herein;

23 11. For civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004
24 (Cal. Labor Code § 2698 *et seq.*);

25 12. For interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code
26 Section 204.6;

1 13. For attorneys' fees and costs pursuant to Labor Code Sections 218.5, 1194 and 2699,
2 and Code of Civil Procedure Section 1021.5 and as otherwise permitted by statute; and

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

4 DATED: May 23, 2023

BLANCHARD, KRASNER & FRENCH

5
6 /s/ David Hawkes

7 DAVID C. HAWKES; SBN: 224241

8 800 Silverado St., 2nd Floor

9 La Jolla, CA 92037

10 Telephone: (858) 551-2440

11 Facsimile: (858) 614-7008

12 Attorneys for Plaintiff, PAUL CATALANO

13 LAW OFFICE OF MICHAEL H. YI

14 MICHAEL H. YI; SBN: 269025

15 myi@yimadrosenlaw.comu

16 3435 Wilshire Blvd. Suite 1045

17 Los Angeles, CA 90010

18 Telephone: (213) 377-5447

19 Facsimile: (213) 377-5448

LAW OFFICE OF DAVID A. HUCH

DAVID A. HUCH, SBN: 222892

david.a.huch@gmail.com

12223 Highland Ave., Ste. 106-574

Rancho Cucamonga, CA 9179

Telephone: (909) 463-6363

Facsimile: (909) 614-7008