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SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF ORANGE

CIVIL COMPLEX CENTER

Assigned for All Purposes

Judge Lon F. Hurwitz

HECTOR MARTIN TZAPUT GUARCHAJ,
as an individual and on behalf of all similarly
situated employees,

Plaintiffs,

v.

BBQ OC, INC., and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 30-2023-01328400-CU-OE-CXC

CLASS ACTION

COMPLAINT FOR DAMAGES

1. Violation of Cal. Labor Code §§ 204, 510, 1182.12, 1194, 1194.2 (Recovery of Unpaid Minimum Wage and Overtime);
2. Violation of Cal. Labor Code §§ 226.7, 512, Wage Order No. 4 (Meal Period Violations);
3. Violation of Cal. Labor Code § 226.7, Wage Order No. 1 (Rest Period Violations);
4. Violation of Cal. Labor Code § 226, subds. (a) and (e) (Failure to Issue Accurate Itemized Wage Statements);
5. Violation of Cal. Labor Code §§ 201, 202, 203 (Failure to Pay Wages Due at Separation of Employment);
6. Violation of Cal. Labor Code §2802 (Failure to Reimburse Necessary Business Expenses);
7. Violation of Cal. Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices); and
8. Violation of Private Attorneys General Act (PAGA) (Lab. Code § 2698 et. seq.)

DEMAND FOR JURY TRIAL

1 Plaintiff Hector Martin Tzaput Guarchaj (“Plaintiff”), individually, and on behalf of all
2 others similarly situated, complain and allege as follows:

3 **INTRODUCTION**

4 1. This is a class action brought on behalf of Plaintiff and the class he seeks to
5 represent (“Plaintiff Class” or “Class Members.”). Plaintiff Class consists of all non-exempt,
6 hourly-paid employees, currently and/or formerly employed by BBQ OC, Inc. (“Defendant”), in
7 the State of California during the Class Period. The term “Class Period” is defined as four (4)
8 years prior to the filing of the original complaint in this action through judgment. Plaintiff reserves
9 the right to amend this complaint to reflect a different “Class Period” as further discovery is
10 conducted.

11 2. Plaintiff, individually, and on behalf of Plaintiff Class, seeks relief against
12 Defendant, for Defendant’s practices of violating the applicable Industrial Welfare Commission
13 Wage Order, Code of Regulations, and California Labor Codes, including: (1) Violation of Labor
14 Code §§ 204, 510, 1182.12, 1194, and 1194.2 for Recovery of Unpaid Minimum Wage and
15 Overtime, (2) Violation of Labor Code §§ 226.7, and 512, and California Wage Order No. 4–
16 2001 for Meal Period Violations, (3) Violation of Labor Code § 226.7, and California Wage Order
17 No. 1–2001 for Rest Period Violations, (4) Violation of Labor Code § 226 for Failure to Issue
18 Accurate Itemized Wage Statements, (5) Violation of Labor Code §§ 201, 202, and 203 for Failure
19 to Pay Wages Due at Separation of Employment, (6) Violation of Labor Code §2802 (Failure to
20 Reimburse Necessary Business Expenses); (7) Violation of Cal. Bus. & Prof. Code §§ 17200 et
21 seq. for Unfair Business Practices, (8) Violation of Private Attorneys General Act (PAGA) Labor
22 Code § 2698 et. seq. These violations concern current and past employees of Defendant.

23 3. At all relevant times herein, Defendant has consistently maintained and enforced
24 against Plaintiff Class the unlawful practices and policies set forth herein.

25 **JURISDICTION AND VENUE**

26 4. Venue is proper in this judicial district and the County of Orange, pursuant to the
27 California Code of Civil Procedure sections 395 and 395.5, because the acts that give rise to the
28 causes of action alleged herein occurred in this county.

5. This Court has personal jurisdiction over Defendant because Defendant resides in, is incorporated in, has its main place of business in, and/or conducts business in the State of California, and a substantial portion of the acts, omissions, events, and transactions constituting the causes of action alleged herein occurred within the State of California, and more specifically, in the County of Orange and specifically Fullerton, California. (Code Civ. Proc. § 410.10.)

6. The California Superior Court has jurisdiction over this matter because the individual claims are under the seventy-five thousand dollar (\$75,000.00) individual jurisdictional threshold and the five million dollar (\$5,000,000.00) aggregate jurisdictional threshold for federal court; and upon information and belief, Plaintiff and Defendant are residents of and/or domiciled in the State of California. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law, including the California Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure, California Rules of Court, and the Business & Professions Code. Thus, the above-entitled court maintains appropriate jurisdiction over this matter.

THE PARTIES

Plaintiff

7. Plaintiff Hector Martin Tzaput Guarchaj was employed by Defendant as a cook from on or about March 2021, until on or about July 16, 2022, at Defendant's Buena Park restaurant. At all relevant times herein, Plaintiff was employed by Defendant in non-exempt, hourly position and was entitled to compensation for all hours worked, including overtime compensation, and penalties from Defendant. Plaintiff was employed by Defendant within the four (4) years prior to the commencement of this action.

8. Each Plaintiff Class consists of identifiable, current, and/or former similarly situated persons who were employed by Defendant in California during the Class Period.

Defendant(s)

9. Plaintiff is informed and believes, and based thereon alleges, that Defendant BBQ OC, Inc. is a California corporation that owns and operates multiple restaurant locations in Orange County, California, and was the employer of Plaintiff and the Plaintiff Class. On information and

1 belief, and based thereon, Plaintiff alleges that Defendant is conducting business in good standing
2 in California, and at all times herein mentioned has regularly conducted business in the State of
3 California.

4 10. Plaintiff is ignorant of the true names, capacities, relationships and extent of
5 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
6 inclusive, but on information and belief, alleges that said Defendants are legally responsible for
7 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
8 capacities of the DOE Defendants when that information is ascertained.

9 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
10 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
11 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
12 are legally attributable to the other Defendants. Furthermore, Defendant operates as a joint
13 venture and/or single business enterprise, integrated enterprise, and/or are agents of one another,
14 are alter egos, joint employers, and conspire with one another to increase profits by engaging in
15 the conduct described in this complaint.

16 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
17 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
18 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
19 below was acting, at least in part, within the course and scope of that authority as such agent,
20 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
21 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
22 are legally attributable to the other Defendants.

23 **ADMINISTRATIVE PREREQUISITES**

24 13. By this complaint, Plaintiff also brings this case as a representative action seeking
25 penalties for the State of California in a representative capacity, as provided for by the Private
26 Attorneys General Act ("PAGA"), Labor Code section 2698 et seq., to the extent permitted by
27 law, as an aggrieved employee who was employed by Defendant and subject to alleged violations
28 set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in his notice to

the Labor Workforce Development Agency (“LWDA”) and the employer: Labor Code sections 510, 558, 558.1, 1182.12, 1194, and 1197 for failure to pay minimum wage and applicable overtime rates, Labor Code sections 226.7 and 512 for failure provide meal and rest periods or premium compensation in lieu thereof, Labor Code sections 226, 226.3, 1174 and 1174.5 for failure to provide complete and accurate wage statements and failure to maintain accurate payroll records, Labor Code sections 201, 202, and 203 for failure to pay all wages earned at the time employment ended, and Labor Code section 2802 for failure to reimburse necessary business expenses.

14. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after sixty-five (65) days have passed without notice from the LWDA.

15. On March 20, 2023, prior to the filing of this complaint, Plaintiff gave written notice of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3. This written notice was given via certified mail to Defendant, and to the LWDA by electronically filing the notice via the Department of Industrial Relations website. Plaintiff was given an LWDA case number of LWDA-CM-943121-23. A true and correct copy of Plaintiff’s notice to the LWDA and Defendant, dated March 20, 2023, is attached hereto as Exhibit A.

FACTUAL ALLEGATIONS

16. Plaintiff and Plaintiff Class are, and at all times relevant herein, have been non-exempt employees within the meaning of the California Labor Code, and California Wage Order No. 1–2001 of the Industrial Welfare Commission. Defendant is, and at all times relevant herein, has been an “employer” within the meaning of state law and California Wage Order No. 1–2001 of the Industrial Welfare Commission.

17. Defendant owns and operates restaurants in the County of Orange, California. Plaintiff and Class Members were employees of the business.

1 18. During the Class Period, Defendant was required to pay Plaintiff and Class
2 Members overtime compensation for any and all hours in excess of eight (8) hours in a workday
3 or forty (40) hours in a workweek and minimum wage for all hours worked.

4 19. During the Class Period, Defendant was required to permit Plaintiffs and Class
5 Members to take one (1) uninterrupted thirty (30) minute meal period prior to the sixth (6th) hour
6 of work. Defendant was also required to permit Plaintiff and Class Members to take one (1) ten
7 (10) minute rest period for every four (4) hours or major fraction thereof worked.

8 20. Due to the nature of their work combined with the requirements and demands of
9 the Defendant, Plaintiff and Class Members were unable to take the meal and rest periods to
10 which they were entitled. Defendant prioritized customers over providing requisite meal and rest
11 breaks to Plaintiff and Class Members. However, Defendant deducted thirty (30) minutes for meal
12 period from Plaintiff and Class Members' time records regardless of whether an off-duty meal
13 break was taken. Plaintiff and Class Members were not paid for time worked during meal periods.

14 21. Defendant scheduled Plaintiff and Class Members in such a manner that they were
15 precluded from taking a third duty-free uninterrupted meal period after the fifteenth (15th) hour
16 of work and at least one (1) ten (10) minute rest period for every four (4) hours or major fraction
17 thereof worked.

18 22. Due to Defendant being understaffed, Plaintiff and Class Members were required
19 to work through their meal periods, take their meal periods late, after the fifth (5th) hour of work,
20 or had their meal periods interrupted and/or cut short and were required to return to work.

21 23. Further, Defendant failed to maintain and communicate to Plaintiff and Class
22 Members a policy for rest breaks. Plaintiff and Class Members would be reprimanded if they tried
23 to use the restroom during their shifts.

24 24. When Plaintiff and Class Members were prevented from taking the required meal
25 and rest periods, Defendant failed to compensate with a premium pay for every missed meal
26 period and failed to compensate with a premium pay on all workdays on which one or both rest
27 periods were missed.

1 25. During the class period, Defendant was required to provide Plaintiff and Class
2 Members with complete and accurate wage statements.

3 26. As discussed above, Plaintiff and Class Members were not paid for all hours
4 worked. Specifically, Plaintiff and Class Members were required to arrive to work one (1) hour
5 before their scheduled shifts to prepare food but were not permitted to record this time worked on
6 their time records. Plaintiff and Class Members were occasionally required to perform work at
7 another of Defendant's restaurant locations but were not permitted to record the time worked at
8 the other location. Defendant would also sometimes pay Plaintiff and Class Members in cash for
9 overtime hours at their regular rate of pay to avoid paying the overtime rate. Plaintiffs and Class
10 Members were also not compensated for thirty-minute meal periods that were deducted from their
11 pay on days they were not provided a compliant meal period.

12 27. Accordingly, Plaintiff and Class Members were provided inaccurate and
13 incomplete wage statements as they omitted the aforementioned hours of work and premium
14 compensation for non-compliant meal and rest periods.

15 28. Therefore, Defendant furnished Plaintiff and Class Members wage statements with
16 an inaccurate number of hours worked, inaccurate gross and net wages, and inaccurate
17 corresponding number of hours worked at each hourly rate.

18 29. Plaintiff and Class Members were required by Defendant to wear a logo uniform
19 that required special laundry care. Defendant failed to reimburse Plaintiff and Class Members for
20 the maintenance of these uniforms which were subjected to heavy soiling daily requiring them to
21 be washed separate from regular clothing.

22 30. At the time of Plaintiff and Class Members' separation from employment,
23 Defendant was required to compensate Plaintiff and Class Members for all wages earned and
24 owed.

25 31. Defendant failed to compensate Plaintiff and Class Members for all wages owed
26 at the time their employment ended as Plaintiff and Class Members were not compensated for all
27 hours worked, nor at the proper overtime rate for applicable hours. Additionally, Plaintiff and
28 Class Members had thirty (30) minutes pay deducted from their wages every day and were entitled

1 to compensation for those thirty (30) minutes on days that they worked during their meal period.
2 Finally, Plaintiff and Class Members were also owed compensation in the form of premium pay
3 for the times they did not receive compliant meal and rest periods.

4 32. Plaintiff and Class Members are owed regular wages, overtime wages, minimum
5 wage, premium payments, and waiting time penalties.

6 **CLASS ALLEGATIONS**

7 33. Plaintiff brings this action on behalf of themselves and all other similarly situated
8 persons, as a class action pursuant to California Code of Civil Procedure section 382.

9 34. Plaintiff's proposed class consists of and is defined as follows: all individuals who
10 worked for Defendant in non-exempt, hourly positions at Defendant's California locations and at
11 a time during the period from four years prior to the filing of this action through the date of
12 judgment ("Class Period").

13 35. Plaintiff reserves the right under California Rules of Court, rule 3.765, to amend
14 or modify the class description(s) with greater specificity or further division into subclasses or
15 limitation to particular issues.

16 36. This action has been brought and may be maintained as a class action pursuant to
17 Code of Civil Procedure section 382 because there is a well-defined community of interest in the
18 litigation and because the proposed class is easily ascertained by Defendant's personnel and
19 payroll records.

20 **Numerosity**

21 37. The potential members of the class as defined are so numerous that joinder of all
22 class members is impracticable. While the precise number of the Plaintiff Class is unknown,
23 Plaintiffs are informed and believe that Defendant has employed more than fifty (50) employees
24 during the class period.

25 **Commonality**

26 38. There are common questions of law and fact arising out of Defendant's conduct,
27 as described herein, including, but not limited to:
28

- a. Whether Defendant failed to pay all wages, including minimum and overtime wages earned and due to Plaintiff and Class Members;
- b. Whether Defendant failed, and continues to fail, to provide meal periods to Plaintiff and Class Members;
- c. Whether Defendant failed, and continues to fail, to authorize and permit Plaintiff and Class Members to take rest periods;
- d. Whether Defendant failed, and continues to fail, to provide Plaintiff and Class Members wage statements containing all information required by Labor Code section 226(a);
- e. Whether Defendant failed to pay Plaintiff and Class Members all wages earned during the course of their employment upon separation;
- f. Whether Defendant was required to reimburse Plaintiff and Class Members for expenses incurred in maintaining mandated uniforms; and
- g. Whether Defendant engaged in unfair or unlawful business practices.

Typicality

39. The claims of the Plaintiff are typical of the claims of the Class, all of whom have incurred and/or will incur damages, as a result of Defendant's common course of conduct and common policies and practices. The claims of Plaintiff are typical because Defendant subjected all of its non-exempt employees to the identical violations of the California Industrial Welfare Commission Wage Orders, California Code of Regulations, California Labor Code, and California Business & Professions Code.

Adequacy of Representation

40. The Plaintiff will fairly and adequately represent and protect the interests of the Plaintiff Class. Plaintiff's interests are not in conflict with those of the Plaintiff Class. Plaintiff's attorneys are competent, well-versed, and experienced in litigating employment class actions and other complex litigation matters.

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1 **Superiority**

2 41. Under the facts and circumstances set forth above, a class action is superior to any
3 other method available for both the fair and efficient adjudication of the rights of each Class
4 Member. Joinder of individual and relatively small claims of Class Members is not practical, and
5 if each employee were required to file an individual lawsuit, the corporate defendant would
6 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm
7 the limited resources of each individual plaintiff. Requiring each Class Member to pursue an
8 individual remedy would also discourage the assertion of lawful claims by employees fearful of
9 retaliation and permanent damage to their careers at present and/or subsequent employment.
10 Further, the substantial risk of inconsistent or varying verdicts or adjudications with respect to the
11 individual Class Members against Defendant herein further support class certification.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY ALL WAGES**

14 **(Labor Code §§ 204, 510, 1182.12, 1194, and 1194.2)**

15 **(Plaintiffs Against All Defendants)**

16 42. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
17 fully set forth herein.

18 43. Pursuant to Labor Code § 1182.12, notwithstanding any other provision of the
19 Labor Code, hourly minimum wage rates are set for all industries according to statute. Labor
20 Code section 1194 requires that employers pay employees no less than minimum wage for each
21 hour worked.

22 44. Labor Code section 510, subdivision (a), mandates that any work in excess of eight
23 (8) hours in a workday and any work in excess of forty (40) hours in a workweek be compensated
24 at a rate of no less than one and one-half times the regular rate of pay. Any work in excess of
25 twelve (12) hours in a workday is mandated to be paid at no less than twice the regular rate of
26 pay.

27 45. Defendant also failed to compensate Plaintiff and Class Members at the legally
28 mandated overtime wage rates for all hours worked in excess of eight in a workday or forty in a

workweek. Specifically, Defendant required Plaintiff and Class Members to arrive one (1) hour prior to the start of their scheduled shifts, but would not permit them to record this time worked on their time record. Defendant also required Plaintiff and Class Members to work through meal periods but would deduct thirty (30) minutes from their time worked for which they were not paid.

46. Pursuant to Labor Code sections 1194, subdivision (a), and 1194.2, an employee receiving less than the legal minimum wage or overtime wage is entitled to recover in a civil action the amount of unpaid wages, attorney fees, costs of suit, and liquidated damages in an amount equal to the unlawfully unpaid wages and interest thereon.

47. Pursuant to Labor Code section 1197: “[T]he minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

48. Pursuant to Labor Code sections 510, 1182.12, and 1194, the Plaintiff Class seeks the payment of all minimum and overtime wages which they earned and accrued four (4) years prior to filing this complaint according to proof.

49. Additionally, Plaintiffs and Plaintiff Class are entitled to liquidated damages pursuant to Labor Code section 1194.2, attorney fees and costs pursuant to California Labor Code sections 218.5 and 1194, and prejudgment interest.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS OR PREMIUM COMPENSATION IN LIEU THEREOF

(Labor Code §§ 226.7 and 512)

(Plaintiffs Against All Defendants)

50. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

51. Labor Code sections 226.7 and 512, and Industrial Welfare Commission (IWC) Wage Order No. 5–2001, section 11, provide that no employer shall employ any person for a

1 work period of more than five (5) hours without providing an uninterrupted meal period of at least
2 thirty (30) minutes. No employer shall employ any person for a work period of more than ten (10)
3 hours without providing a second (2nd) uninterrupted meal period of at least thirty (30) minutes.
4 Further, when an employer fails to provide an employee a required meal period, the employer
5 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
6 that a required meal period is not provided.

7 52. Plaintiff alleges that Defendant failed or refused to provide legally compliant meal
8 periods by failing to schedule Plaintiffs and Class Members in such a manner as to ensure that
9 they could take proper meal periods as required by law. Plaintiff and Class Members were
10 frequently required to work through meal periods but Defendant would deduct 30 minutes from
11 their time worked. Defendant was required to provide uninterrupted meal periods of at least thirty
12 minutes for all shifts in excess of five hours. This was due to understaffing combined with the
13 workload and prioritizing customer traffic set forth by Defendant.

14 53. Further, Defendant failed to provide premium compensation of one (1) hour of
15 regular pay to Plaintiff and Class Members for their missed, late meal or short periods as required
16 by law. As such, Defendant intentionally and improperly denied compliant meal periods to
17 Plaintiff and Class Members in violation of Labor Code sections 226.7 and 512 and IWC Wage
18 Order No. 5-2001.

19 54. At all times relevant hereto, Plaintiff and Class Members worked more than five
20 (5) hours in a workday. Pursuant to Labor Code section 226.7, Plaintiff and Plaintiff Class are
21 entitled to damages in the amount equal to one (1) hour of wages at their regular rate of pay for
22 each missed or untimely meal period, in an amount according to proof at trial.

23 55. Pursuant to Labor Code section 226.7, Plaintiff individually, and on behalf of the
24 Plaintiff Class, request recovery of meal period compensation which they are owed beginning
25 four (4) years prior to filing this complaint, as well as the assessment of any statutory penalties
26 against the Defendant in a sum as provided by law. Pursuant to Labor Code section 218.5, Code
27 of Civil Procedure section 1021.5, and any other provision of law, Plaintiff requests the court
28 award reasonable attorney fees and costs incurred by them in this action.

**FAILURE TO PROVIDE REST PERIODS OR PREMIUM COMPENSATION IN LIEU
THEREOF
(Labor Code § 226.7)
(Plaintiffs Against All Defendants)**

57. Labor Code section 226.7 and IWC Wage Order No. 5–2001, section 12, requires that employers allow all employees a ten (10) minute rest period for every four (4) hours worked, or major fraction thereof. Further, when an employer fails to provide an employee with required rest periods, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday that at a required rest period is not provided.

59. Further, Defendant failed to provide premium compensation of one (1) hour of regular pay to Plaintiff and Class Members for each day a rest period was missed as required by law. As such, Defendant intentionally and improperly denied rest periods to Plaintiff and Class Members in violation of Labor Code section 226.7 and IWC Wage Order No. 5-2001.

61. Pursuant to Labor Code section 226.7, Plaintiffs individually, and on behalf of the Plaintiff Class, request recovery of rest period compensation which they are owed beginning four (4) years prior to filing this complaint, as well as the assessment of any statutory penalties against

the Defendant in a sum as provided by law. Pursuant to Labor Code section 218.5, Code of Civil Procedure section 1021.5, and any other provision of law, Plaintiff requests the court award reasonable attorney fees and costs incurred by them in this action.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

(Plaintiffs Against All Defendants)

62. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

63. Labor Code section 226, subdivision (a), requires that “at the time of each payment of wages,” employers furnish employees with “an accurate itemized statement” that includes, inter alia, sub. (1) gross wages earned, sub. (2) total hours worked, sub. (5) net wages earned, sub. (9) and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

64. Defendant knowingly and intentionally failed to provide Plaintiff and Class Members wage statements in compliance with Labor Code section 226, because said statements contained inaccurate gross wages earned, an inaccurate number of total hours actually worked, inaccurate net wages earned, and inaccurate number of hours worked at each hourly rate.

65. As discussed above, Plaintiff and Class Members were required to work during meal and rest periods, entitling them to premium compensation which was missing from their wage statements. Plaintiff and Class Members were also required to work prior to the start of their scheduled shifts without pay and during meal breaks without pay. Plaintiff and Class Members also worked in excess of eight (8) hours in a workday and forty (40) hours in a workweek, entitling them to overtime wages which were missing from their wage statements.

66. Consequently, Plaintiff and Class Members’ wage statements reflected an inaccurate number of total hours worked, an inaccurate number of hours worked at each hourly rate, and inaccurate gross and net wages earned.

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67. Pursuant to Labor Code section 226, subsection (e)(2)(B), “[a]n employee is deemed to suffer injury ... if the employer fails to provide accurate and complete information as required.” Labor Code section 226, subdivision (e)(1), provides that employees suffering injury as a result of the employers failure to comply with section 226, subsection (a), are “entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Because Defendant furnished inaccurate and incomplete wage statements, Plaintiffs and Class Members are entitled to penalties, attorney fees, and costs pursuant to Labor Code sections 2699, subdivisions (f)(2) and (g)(1), and section 226, subdivision (e)(1), and prejudgment interest.

FIFTH CAUSE OF ACTION

**FAILURE TO PAY ALL WAGES EARNED AND OWED AT TERMINATION OR
SEPARATION OF EMPLOYMENT**

(Labor Code §§ 201–203)

(Plaintiffs Against All Defendants)

68. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

69. Labor Code section 201 provides that when an employer discharges an employee, all earned and unpaid wages are due immediately. Labor Code section 202 requires an employer pay an employee who quits all earned and unpaid wages within seventy-two (72) hours thereafter.

70. At the time that Plaintiff’s and any of the Class Members’ employment ended, they were entitled to timely compensation of regular and overtime wages for all hours worked and premium compensation for all missed meal and rest periods throughout their employment with Defendant.

71. At the cessation of Plaintiff’s and formerly employed Class Members’ employment, Defendant failed or refused to compensate Plaintiff and formerly employed Class

Members for all hours worked as well as premium compensation for any missed meal or rest periods.

72. Pursuant to Labor Code section 203, subdivision (a), “[i]f an employer willfully fails to pay ... any wages of any employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

73. Plaintiff and members of the Plaintiff Class whose employment was terminated within four (4) years prior to the filing of this complaint are entitled to thirty (30) days of pay at their regular hourly rate as waiting time penalties.

74. Plaintiff individually, and on behalf of the formerly employed Plaintiff Class, requests compensation for all wages owed, as well as the assessment of any civil penalties in a sum provided by law pursuant to Labor Code sections 201, subdivision (a), and 203, subdivisions (a) and (b).

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

(Labor Code § 2802)

(Plaintiff Against All Defendants)

75. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

76. Labor Code section 2802, subdivision (a) provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

77. Plaintiff and Class Members were required by Defendant to wear uniforms bearing the Defendant’s logo. IWC Wage Order 5-2001, Sect. 9 provides: “(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term “uniform” includes wearing apparel and accessories of distinctive design or color.”

1 78. Plaintiff and Class Members' uniforms were required to be laundered separately
2 and apart from their regular clothing due to daily excessive soiling from handling food products
3 and grease. Defendant provided no compensation for Plaintiff and Class Members to the
4 necessary maintenance and cleaning of the mandated uniforms.

5 79. Plaintiff individually, and on behalf of Plaintiff Class, requests reimbursement for
6 necessary business expenditures, as well as attorney fees and costs, any assessment of civil
7 penalties, and prejudgment interest in a sum provided by law pursuant to Labor Code section
8 2802, subdivisions (b), (c), and (d).

9 **SEVENTH CAUSE OF ACTION**

10 **UNFAIR BUSINESS PRACTICES**

11 **(Business and Professions Code §§ 17200 et seq.)**

12 **(Plaintiffs Against All Defendants)**

13 80. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
14 fully set forth herein.

15 81. Business and Professions Code section 17200 prohibits unfair competition by way
16 of unlawful, unfair, or fraudulent business acts or practices. Business and Professions Code
17 section 17204 allows "a person who has suffered injury in fact and has lost money or property as
18 a result of the unfair competition" to prosecute a civil action for violation of the Business and
19 Professions Code.

20 82. Pursuant to Labor Code section 90.5, subdivision (a), it is the policy of California
21 to "vigorously enforce minimum labor standards in order to ensure employees are not required or
22 permitted to work under substandard unlawful conditions ... and to protect employers who
23 comply with the law from those who attempt to gain a competitive advantage at the expense of
24 their workers by failing to comply with minimum labor standards."

25 83. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4)
26 years prior to the filing of this action, Defendant has committed acts of unfair competition as
27 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent
28 business practices and acts described in this complaint, including, but not limited to, violations of

1 Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 558, 558., 1182.12, 1194, 1197
2 and 2802.

3 84. The violations of these laws and regulations, as well as of fundamental California
4 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of
5 Business and Professions Code sections 17200 et seq.

6 85. As a result of these unlawful, unfair, and fraudulent business practices, Plaintiff,
7 on information and belief, allege that Defendant is able to unfairly compete with, and gained an
8 unfair advantage over, other comparable companies in the State of California in violation of
9 Business and Professions Codes 17200 et seq. and sections 17200 et seq.

10 86. Plaintiff is informed and believes, and thereon alleges, that Defendant performed
11 the unlawful, unfair, and fraudulent business practices with the intent of gaining an unfair
12 competitive advantage and thereby injuring Plaintiff, Class Members, competing restaurants in
13 the State of California, and the general public.

14 87. Plaintiff's success in this action will enforce important rights affecting the public
15 interest and public policy. In this regard, Plaintiff sue on behalf of the public as well as on behalf
16 of himself.

17 88. Business and Professions Code sections 17203 provides that "[t]he court may
18 make such orders or judgments ... as may be necessary to prevent the use or employment by any
19 person of any practice which constitutes unfair competition." Injunctive relief is necessary and
20 appropriate to prevent Defendant from repeating their unlawful, unfair, and fraudulent business
21 acts and practices alleged above.

22 89. Business and Professions Code section 17203 provides that the Court may "restore
23 to any person in interest any money or property... which may have been acquired by means of
24 such unfair competition." Plaintiff and Plaintiff Class are entitled to restitution pursuant to
25 Business and Professions Code section 17203 for wages and payments unlawfully withheld from
26 employees, including the fair value of the meal and rest periods and other losses alleged herein,
27 during the four-year period prior to the filing of this complaint. All remedies are cumulative
28 pursuant to Business and Professions Code section 17205.

1 90. Business and Professions Code section 17202 provides: “Notwithstanding section
2 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
3 forfeiture, or penal law in a case of unfair competition.” Plaintiff and Plaintiff Class are entitled
4 to enforce all applicable penalty provisions of the Labor Code pursuant to Business and
5 Professions Code section 17202.

6 91. Plaintiff requests injunctive relief pursuant to Business and Professions Code
7 section 17203 to enjoin Defendant from continuing the unfair and unlawful business practices
8 alleged herein.

9 92. Plaintiff herein takes upon enforcement of these laws and lawful claims. There is
10 a financial burden involved in pursuing this action. The action is seeking to vindicate a public
11 right, and it would be against the interests of justice to penalize Plaintiff by forcing Plaintiff to
12 pay attorney fees from the recovery in this action. Attorney fees are appropriate pursuant to Code
13 of Civil Procedure section 1021.5 and others.

14 **EIGHTH CAUSE OF ACTION**

15 **VIOLATION OF CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT OF 2004**

16 **(Labor Code §§ 2698 *et seq.*)**

17 **(Plaintiff Against All Defendants)**

18 93. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
19 fully set forth herein.

20 94. Plaintiff seeks recovery of penalties under the Labor Code Private Attorney
21 General Act of 2004 (PAGA), Labor Code sections 2698 *et seq.*

22 95. Pursuant to Labor Code section 2699.3, subdivision (a)(1), on October 12, 2021,
23 Plaintiff gave written notice to the LWDA and Defendant of the specified provisions alleged to
24 have been violated, including the facts and theories to support the alleged violations, as required
25 by Labor Code section 2699.3. A true and correct copy of Plaintiff’s notice dated March 20, 2023
26 is attached hereto as Exhibit A.

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1 96. The LWDA has not provided Plaintiff with any notice that it intends to investigate
2 the alleged violations, and more than sixty-five (65) calendar days have elapsed since the
3 postmark date on Plaintiff's notice.

4 97. Pursuant to Labor Code section 2699, subdivision (I)(1), Plaintiff will provide the
5 LWDA with a file-stamped copy of this complaint within ten (10) days of the filing thereof.

6 98. Plaintiff has therefore complied with all administrative requirements.

7 99. PAGA permits an "aggrieved employee" to recover penalties on behalf of himself
8 and other employees subject to violations of the Labor Code.

9 100. Section 2699, subdivision (f) of the Labor Code provides for civil penalties for
10 violations the California Labor Code, for which a specific civil penalty is not provided, which
11 here includes sections 201, 202, 203, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194,
12 1197, and 2802, and the applicable Wage Order. Plaintiff also seeks recovery of civil penalties
13 for any section of the Labor Code included in this action, including sections 201, 202, 203, and
14 226.

15 101. Section 558 of the Labor Code provides for civil penalties for violations of the
16 Labor Code by "any employer or other person," which in this case includes Defendant BBQ OC,
17 Inc., and DOES 1 through 50.

18 102. Plaintiff is informed and believes Defendant at all relevant times employed one or
19 more employees.

20 103. For code sections that provide for recovery of civil penalties, Plaintiff will seek
21 said penalties on behalf of all aggrieved employees. For code sections that do not specifically
22 provide for civil penalties, Plaintiff will seek civil penalties of one hundred dollars (\$100) for
23 each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200)
24 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code
25 section 2699, subdivision (f). The "initial violation" occurs during the first pay period following
26 notice of such violations served on Defendant through the letter to the LWDA.

27 104. Code of Civil Procedure section 2699, subdivision (a), provides that civil penalties
28 may be "recovered through a civil action brought by an aggrieved employee on behalf of himself

1 or herself and other current or former employees.” Code of Civil Procedure section 2699,
2 subdivision (g), provides that an employee who prevails in a civil action under section 2699 shall
3 be entitled to an award of reasonable attorney fees and costs.

4 105. Accordingly, the State of California, Plaintiff, and aggrieved employees are
5 entitled to civil penalties, attorney fees, and costs according to proof.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiffs pray for judgment as follows:

- 8 1. That the Court determine that this action may be maintained as a class action under
9 Code of Civil Procedure section 382;
- 10 2. The Court appoint Plaintiff as Class Representative;
- 11 3. The Court appoint Mahoney Law Group, APC as class counsel;
- 12 4. For compensatory and statutory damages;
- 13 5. For restitution of all monies due to Plaintiff and Plaintiff Class from the unlawful and
14 unfair business practices of Defendant;
- 15 6. For injunctive relief;
- 16 7. For statutory and civil penalties according to proof;
- 17 8. For reasonable attorney fees and costs pursuant to Labor Code section 226,
18 subdivision (e), section 218.5, and section 1194; Code of Civil Procedure section
19 1021.5, Labor Code section 2699(g)(1) and other applicable laws and statutes; and
- 20 9. That the Court award such other and further relief as this Court may deem
21 appropriate.

22
23 Dated: May 25, 2023

MAHONEY LAW GROUP, APC

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25 _____

26 Katherine J. Odenbreit, Esq.

27 Raleigh D. Dixon, Esq.

28 Attorneys for Plaintiff HECTOR MARTIN

TZAPUT GUARCHAJ, individually and on behalf
of all similarly situated employees.

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Dated: May 25, 2023

Nathaniel Adams

Raleigh D. Dixon, Esq.

TZAPUT GUARCHAJ, individually and on behalf of all similarly situated employees.