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Attorneys for Plaintiff Juan Pablo Jaraz Ortega,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

JUAN PABLO JARAZ ORTEGA,
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

GRS RESTAURANT GROUP, INC., a
California corporation; and DOES 1
through 100, inclusive,

Defendant(s).

CASE NO.: 23-CIV-01720

*Assigned for All Purposes to:
Hon. V. Raymond Swope
Dept. 23*

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

- 1. Failure to Pay Wages;**
- 2. Failure to Provide Meal Periods;**
- 3. Failure to Authorize and Permit Rest Breaks;**
- 4. Failure to Provide Paid Sick Leave;**
- 5. Failure to Provide Accurate Itemized Wage Statements;**
- 6. Failure to Pay Wages Upon Separation of Employment;**
- 7. Violations of the Unfair Competition Law; and**
- 8. Violations of the Private Attorneys General Act of 2004.**

JURY TRIAL DEMANDED

1 Plaintiff JUAN PABLO JARAZ ORTEGA (“Plaintiff”), on behalf of himself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendants, GRS RESTAURANT GROUP, INC. (“GRS”), a California
4 limited liability company, and DOES 1 through 100, inclusive (collectively referred to herein as
5 “Defendants”) and alleges as follows:

6 **INTRODUCTION**

7 1. This proposed class action, pursuant to California Code of Civil Procedure section
8 382, is brought by Plaintiff on behalf of all persons currently or formerly employed as non-exempt
9 employees in California by Defendants. The non-exempt employees are formerly or currently
10 employed by Defendants within the State of California are hereinafter referred to individually as
11 “Class Members” and collectively as the “Class” or “Classes,” and includes those who worked for
12 Defendants in California within the four years prior to the date of filing of this lawsuit through the
13 date of class certification (“Relevant Time Period”).

14 2. Plaintiff also brings this representative action pursuant to the Private Attorneys
15 General Act of 2004, Labor Code sections 2698 *et seq.* (“PAGA”), against Defendants, on behalf
16 of himself individually, the State of California, and other aggrieved employees who are and/or were
17 employed by Defendants as non-exempt employees throughout California during the PAGA
18 Period. The term PAGA Period is defined as one (1) year prior to Plaintiff’s notice of Labor Code
19 violations to the Labor and Workforce Development Agency (“LWDA”) and Defendants until
20 judgment.

21 3. This proposed class and PAGA action seeks, *inter alia*, compensation for failure to
22 pay for all hours worked and payment of all unpaid wages, including minimum, regular and
23 overtime wages, failure to provide meal breaks, failure to provide rest breaks, failure to provide
24 paid sick leave, itemized wage statement penalties, waiting time penalties, civil penalties, injunctive
25 relief and other remedies under California’s Unfair Competition Law, interest, and reasonable
26 attorneys’ fees and costs. Plaintiff’s action is brought under, *inter alia*, the Industrial Welfare
27 Commission Wage Orders and applicable California Code of Regulations, Business & Professions
28

Code sections 17200 *et seq.*, Civil Code section 3289, and Labor Code sections 201-204, 210, 218, 218.5, 218.6, 226, 226.7, 246, 246.5, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 1199.

4. Under California Business and Professions Code (“Cal. Bus. & Prof. Code”) sections 17200 *et seq.*, and pursuant to the class action procedures provided for in this statute, Plaintiff, on behalf of himself and the proposed Class, also seeks restitution of all benefits Defendants have received from, including but not limited to, its failure to timely provide minimum wage, regular, and overtime compensation due for all hours worked, failure to provide paid sick leave, failure to maintain proper records of hours worked, failure to provide compliant meal periods and rest breaks to their non-exempt employees or compensation in lieu thereof, and failure to provide accurate itemized wage statements.

JURISDICTION AND VENUE

5. This Court has jurisdiction over all causes of action asserted herein pursuant to the California Constitution, Article VI, section 10, which grants the Superior Court original jurisdiction in all cases except those given to other trial courts. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law. Further, this is a class action pursuant to California Code of Civil Procedure section 382 and representative action under PAGA. As such, the monetary damages, restitution, penalties, and other amounts sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. The Court also has jurisdiction over certain causes of action pursuant to Cal. Bus. & Prof. Code sections 17203 and 17204, which provide for exclusive jurisdiction for enforcement of this statute in any court of competent jurisdiction.

6. This Court has jurisdiction over Defendants because each Defendant is an individual residing in the State of California, a corporation or association organized under the laws of the State of California, an association authorized to do business in California and registered with the California Secretary of State, or does sufficient business in California, has sufficient minimum contacts with California or otherwise intentionally avails itself of the laws and markets of

California, through the promotion, sale, marketing and distribution of its products in California, to render the exercise of jurisdiction by the California courts permissible.

7. Venue in San Mateo County is proper under Cal. Bus. & Prof. Code section 17203 and California Code of Civil Procedure section 395.5 because Defendants have their principal place of business in this County, a substantial part of Defendants' unlawful conduct occurred in this County, Defendants had and has on-going projects in this County, Defendants conduct substantial business in this County, and Defendants' liability arose in this County. The relief requested is within the jurisdiction of this Court.

PARTIES

8. Plaintiff JUAN PABLO JARAZ ORTEGA is an individual who resides in San Mateo County, California and was employed by Defendants in California during the Relevant Time Period.

9. Plaintiff was, at all relevant times herein, employed by Defendants as a non-exempt employee, and was paid an hourly wage as defined by all applicable Industrial Welfare Commission Wage Orders ("Wage Order(s)").

10. During his tenure with Defendants, Plaintiff was not paid proper wages for all hours worked, did not receive all lawful meal and rest breaks, did not receive paid sick leave, received inaccurate itemized wage statements, was not paid all wages due to him at the time of separation, and witnessed other employees who, like himself, were subjected to Defendants' unlawful practices and policies in violation of California law.

11. Plaintiff is informed, believes and thereon alleges that, at all relevant times, Defendant GRS was and is a California corporation that operates a Stacks Restaurant located at 361 California Drive, Burlingame, CA 94010. As part of its business, GRS employs hourly non-exempt employees. GRS regularly conducts business within the State of California and derives substantial revenues from goods consumed or services rendered in California. GRS is, and at all relevant times was, an employer subject to California state wage and hour laws. Plaintiff is informed, believes,

1 and thereon alleges that the unlawful practices and policies that are complained of by way of this
2 Class Action Complaint were implemented at GRS throughout the Relevant Time Period.

3 12. Plaintiff is unaware of the true names and capacities of those Defendants identified
4 as DOES 1 through 100. Therefore, Plaintiff identifies those Defendants fictitiously. Plaintiff is
5 informed, believes and thereon alleges that at all relevant times each DOE Defendant was a parent,
6 sister, or related corporate entity of Defendants, or an owner, employee or agent of Defendants, and
7 each related entity, and was acting with the knowledge and authorization of each of the other
8 Defendants. Plaintiff will seek to amend this complaint to allege the true names and capacities of
9 each DOE Defendant when their names have been ascertained and identified. Plaintiff is informed,
10 believes and thereon alleges that each of the Defendants sued as DOES 1 through 100 participated
11 in, received the benefit of, or was in some way responsible for one or more of the wrongful acts
12 and omissions and some portion of the damages alleged herein.

13 13. Plaintiff is informed, believes and thereon alleges that Defendants, each and all of
14 them, at all times material hereto, were the joint employers, parent companies, successor
15 companies, predecessors in interest, affiliates, agents, employees, servants, joint ventures,
16 directors, fiduciaries, representatives, and/or co-conspirators of each of the remaining Defendants.
17 The Defendants, unless otherwise alleged, at all times material hereto, performed all acts and
18 omissions alleged herein within the course and scope of said relationship, and are a proximate cause
19 of Plaintiff's damages as herein alleged.

20 14. Plaintiff is informed, believes and thereon alleges, that there exists a unity of interest
21 in ownership between Defendants and DOES 1 through 100, inclusive, such that any individuality
22 and separateness between the individual and the corporation does not exist, as Defendants, and
23 DOES 1 through 100, inclusive, are alter egos, in that: (1) Defendants are and at all times mentioned
24 herein were mere shells, instrumentalities and conduits through which DOES 1 through 100,
25 inclusive, carried out their business in the business name, exercising complete control and
26 dominance over such business; (2) that Defendants were conceived, intended and used by DOES 1
27 through 100, inclusive, as devices to avoid individual liability and in place of Defendants, and
28

DOES 1 through 100, inclusive, and were without the financial solvency and responsibility required by law; and (3) that all of the assets of the Defendants have been transferred to DOES 1 through 100, inclusive, or some other individual or entity which he or she owns or controls, with the intent to hinder, delay or defraud creditors of Defendants, leaving Defendants with no assets. Further, Plaintiff is informed, believes and thereon alleges, that there exists a principal-agency relationship between and among Defendants.

15. At all relevant times herein, Defendants were agents of each other and acting within the course and scope of their agency.

CLASS ACTION ALLEGATIONS AND FACTUAL BACKGROUND

16. Plaintiff brings this action individually and as a class action on behalf of a proposed Class defined as follows:

All current and former non-exempt employees who worked for Defendants in the State of California, within the four years prior to the commencement of this action through the date of class certification ("Class").

17. The Class is comprised of the following Sub-Class:

(a) Waiting Time Sub-Class: Those members of the Class no longer employed by Defendants, who were not paid all earned wages and compensation immediately upon their termination or within 72 hours of their resignation.

18. Plaintiff reserves the right pursuant to California Rules of Court Rule 3.764 and 3.765, to amend or modify the respective definitions of the Class and/or Sub-Classes to provide greater specificity and/or further division into subclasses or limitation to particular issues.

19. This action is brought, and may properly be maintained, as a class action pursuant to California Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation, and the proposed class is easily ascertainable. This action presents questions of common interest and satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of this provision.

20. Plaintiff and Class Representative Juan Pablo Jaraz Ortega was employed by Defendants from on or around February of 2021 through June of 2022 as a member of the Class.

21. Plaintiff is informed, believes and thereon alleges that during the Relevant Time Period, Defendants have consistently maintained and enforced against Plaintiff and the Class Members the following unlawful practices and policies, including but not limited to: (a) willfully refusing to pay Plaintiff and the Class Members all of their earned wages and compensation, including minimum, regular and overtime wages as required by both the Labor Code and all applicable Wage Orders, by, *inter alia*, failing to compensate Plaintiff and the Class Members for hours worked at the proper rates, deducting time for meal periods not taken, and rounding their time worked to Defendants' advantage; (b) willfully refusing to provide Plaintiff and the Class Members with compliant meal breaks, or premium compensation in lieu thereof; (c) willfully refusing to permit Plaintiff and the Class Members to take compliant rest breaks, or provide premium compensation in lieu thereof; (d) willfully failing to provide paid sick leave to Plaintiff and Class Members; (e) willfully failing to furnish accurate wage statements to Plaintiff and the Class Members; and (f) willfully failing to timely pay Plaintiff and the Class Members all of their earned wages, compensation and benefits during and/or immediately at the termination of their employment, or within seventy-two (72) hours of their resignation.

22. Plaintiff is informed, believes and thereon alleges, and based thereon alleges, that Defendants currently employ, and during the Relevant Time Period have employed, over 50 employees in the State of California in non-exempt positions.

23. At all relevant times herein, Plaintiff and the Class Members were employed by Defendants and were paid, on information and belief, on an hourly basis.

24. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as described throughout this Complaint were willful.

25. Plaintiff, on behalf of himself and all other Class Members, brings this action pursuant to, *inter alia*, Labor Code sections 201-204, 218, 218.5, 218.6, 226, 226.7, 246, 246.5, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198, and 1199, and all applicable Wage Orders, including

1 but not limited to, seeking unpaid wages, premiums, penalties, and reasonable attorneys' fees and
2 costs.

3 26. Plaintiff, on behalf of himself and all Class Members, pursuant to Cal. Bus. & Prof.
4 Code sections 17200-17208, also seeks injunctive relief and restitution for the unfair, unlawful, or
5 fraudulent practices alleged in this Complaint.

6 27. Plaintiff, on behalf of himself and all Class Members, seeks to enforce important
7 rights affecting the public interest as defined under Code of Civil Procedure section 1021.5.

8 28. Defendants have failed to comply with Labor Code section 226(a) by accurately
9 reporting the total hours worked, all applicable pay rates and corresponding hours worked, and
10 gross and net wages earned by Plaintiff and the Class Members. Plaintiff and Class Members are
11 therefore entitled to penalties not to exceed \$4,000 for each employee pursuant to Labor Code
12 section 226(b).

13 **NUMEROSITY**

14 29. The Class is so numerous that the individual joinder of all of its members is
15 impracticable. While the exact number and identities of Class Members are unknown to Plaintiff
16 at this time and can only be ascertained through appropriate discovery, Plaintiff is informed,
17 believes and thereon alleges that the Class includes more than 50 persons.

18 30. A class action is the only available method for the fair and efficient adjudication of
19 this controversy. The members of the Class are so numerous that joinder of all members is
20 impractical, if not impossible. The identity of Class Members can be determined upon analysis of,
21 *inter alia*, employee and payroll records maintained by Defendants.

22 **COMMONALITY**

23 31. Common questions of fact and law exist as to all members of the Class that
24 predominate over any questions affecting only individual Class Members. These common legal
25 and factual questions, which do not vary from Class Member to Class Member and which may be
26 determined without reference to the individual circumstances of any Class Member include, but are
27 not limited to, the following:
28

1 (a) whether Defendants, in violation of the applicable Labor Code provisions
2 and Wage Orders, failed to pay Plaintiff and Class Members the applicable minimum wage for all
3 hours worked and in a timely manner;

4 (b) whether Defendants, in violation of the applicable Labor Code provisions
5 and Wage Orders, failed to pay Plaintiff and Class Members straight time wages for all hours
6 worked and in a timely manner;

7 (c) whether Defendants, in violation of the applicable Labor Code provisions
8 and Wage Orders, failed to pay Plaintiff and Class Members proper overtime compensation for
9 such hours worked and in a timely manner;

10 (d) whether Defendants rounded time worked by Plaintiff and Class Members
11 to Defendants' advantage;

12 (e) whether Defendants automatically deducted time worked by Plaintiff and
13 Class Members;

14 (f) whether Defendants, in violation of the applicable Labor Code provisions
15 and Wage Orders, failed to provide Plaintiff and Class Members with compliant meal periods, or
16 premium compensation in lieu thereof;

17 (g) whether Defendants, in violation of the applicable Labor Code provisions
18 and Wage Orders, failed to authorize and permit Plaintiff and Class Members to take compliant rest
19 breaks, or provide premium compensation in lieu thereof;

20 (h) whether Defendants, in violation of the applicable Labor Code provisions
21 failed to provide Plaintiff and Class Members with paid sick leave;

22 (i) whether Plaintiff and formerly-employed Class Members are entitled to
23 "waiting time" penalties pursuant to Labor Code section 203;

24 (j) whether Defendants, in violation of Labor Code sections 201-204, failed to
25 timely pay Plaintiff and Class Members all wages due during their employment and upon
26 termination or resignation;

(k) whether Defendants, in violation of Labor Code sections 226 and 1174, systematically failed to maintain and provide accurate records of all of the hours worked by Plaintiff and Class Members and their applicable hourly rates;

(l) whether members of the Class are entitled to restitution under Cal. Bus. & Prof. Code sections 17200 *et seq.*; and

(m) additional common questions of law and fact may develop as the litigation progresses.

TYPICALITY

32. Plaintiff is informed, believes, and thereon alleges that Plaintiff's claims are typical of the claims of the Class because: they sustained injuries and damages arising out of and caused by Defendants' unlawful policies and practices; they arise out of the same course of conduct by Defendants; are based upon the same legal theories as the claims of the Class; and the legal issues raised under the California state laws as a result of Defendants' conduct apply equally to Plaintiff and the Class Members.

ADEQUACY OF REPRESENTATION

33. Plaintiff is an adequate representative of the Class, in that his claims are typical of those of the Class. Plaintiff has no conflicts of interest with his fellow members of the Class and will be able to fairly and adequately protect the interests of all members of the Class. Plaintiff has the same interests in the litigation of this case as the Class Members; and is committed to vigorous prosecution of this case and have retained competent counsel experienced in class action and wage and hour litigation of this nature. Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the Class as a whole and anticipate no management difficulties in this litigation.

PREDOMINANCE

34. Defendants have engaged in a common course of wage and hour abuse toward Plaintiff and Class Members. The common issues arising from this conduct that affect Plaintiff

1 and Class Members predominate over any individual issues. Adjudication of these common issues
2 in a single action has important and desirable advantages of judicial economy.

3 **SUPERIORITY OF CLASS ACTION**

4 35. A class action is superior to other available methods for the fair and efficient
5 adjudication of this controversy because individual litigation of the claims of all Class Members is
6 impracticable. Even if every Class Member could afford individual litigation, the court system
7 could not. It would be unduly burdensome to the courts in which individual litigation of numerous
8 cases would proceed. Individualized litigation would also present the potential for varying,
9 inconsistent, or contradictory judgments and would magnify the delay and expense to all parties
10 and to the court system resulting from multiple trials of the same complex factual issues. Moreover,
11 individual actions by Class Members may establish inconsistent standards of conduct for
12 Defendants. By contrast, the conduct of this action as a class action, with respect to some or all of
13 the issues presented herein, presents fewer management difficulties, conserves the resources of the
14 parties and the court system, and protects the rights of each Class Member.

15 36. Defendants have acted or refused to act in respects generally applicable to the Class,
16 thereby making appropriate relief with regard to the members of the Class as a whole, as requested
17 herein.

18 **FIRST CAUSE OF ACTION**

19 **(FAILURE TO PAY WAGES)**

20 **(Against All Defendants)**

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

23 38. At all times pertinent hereto, Labor Code section 1194 provides: “Notwithstanding
24 any agreement to work for a lesser wage, any employee receiving less than the legal minimum
25 wage...applicable to the employee is entitled to recover in a civil action the unpaid balance of the
26 full amount of this minimum wage...including interest thereon, reasonable attorney's fees, and
27 costs of suit.”
28

1 39. At all times pertinent hereto, Labor Code section 1194.2 provides for the recovery
2 of prejudgment interest in any action brought to recover the nonpayment of wages, at the rate
3 specified in Civil Code section 3289.

4 40. At all times pertinent hereto, Labor Code section 1197 provides that the payment of
5 a lower wage than the minimum wage fixed by under applicable state or local law is unlawful.

6 41. At all times pertinent hereto, Labor Code section 1198 prohibits employers from
7 requiring its employees to work longer hours or under conditions of labor prohibited by an order of
8 the Industrial Welfare Commission is unlawful.

9 42. At all times pertinent hereto, Labor Code section 510 and the applicable Wage
10 Orders require the payment of wages at a rate of one-half times the regular rate of pay for work in
11 excess of eight (8) hours in one workday and/or forty (40) hours in one workweek, and the payment
12 of wages at a rate of two times the regular rate of pay for work in excess of twelve (12) hours in
13 one workweek.

14 43. At all times herein relevant, the applicable Wage Orders and applicable California
15 Code of Regulations have applied and continue to apply to Plaintiff and the Class Members'
16 employment with Defendants. The applicable Wage Orders and applicable California Code of
17 Regulations state that "every employer shall pay to each employee wages . . . for all hours worked."

18 44. "Hours worked" is defined by section 2 of the applicable Wage Orders as "the time
19 during which an employee is subject to the control of an employer, and includes all the time the
20 employee is suffered or permitted to work, whether or not required to do so."

21 45. California Labor Code section 204 and the IWC Wage Orders require timely
22 payment of all wages owed on regularly scheduled paydays at least twice during each calendar
23 month, on days designated in advance by the employer as the regular paydays. All wages earned in
24 excess of the normal work period must be paid no later than the payday for the next regular payroll
25 period.

12

(FAILURE TO PROVIDE MEAL PERIODS)

(Against All Defendants)

52. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set forth herein.

53. At all times pertinent hereto Labor Code section 512 and the applicable Wage Orders require an employer to provide a duty-free, uninterrupted, thirty-minute meal period prior to the start of the sixth hour of work, and a second, duty-free, uninterrupted, thirty-minute meal period prior to the start of the eleventh hour of work.

54. At all times pertinent hereto, the applicable Wage Orders and Labor Code section 226.7 requires an employer to pay an additional one (1) hour of compensation at the employee's regular rate of pay for each workday in which an employer fails to meet its obligations with respect to providing meal periods.

55. Plaintiff is informed, believes, and thereon alleges that Plaintiff and the Class routinely worked shifts in excess of five (5) hours. Despite working these hours, Defendants maintained a policy or practice of prioritizing work demands over allowing employees to take compliant meal periods, and failed to adopt a policy or practice of providing uninterrupted, off-duty 30-minute meal periods within the first five (5) hours of work. Accordingly, Plaintiff and Class Members were frequently unable to take compliant meal periods because their meal periods were short, late, missed, interrupted, not free of all duties, and/or restricted to the worksite. Defendants, however, failed to pay Plaintiff and Class Members meal period premiums for non-compliant or missed meal periods.

56. Plaintiff is informed, believes and thereon alleges that Defendants failed to meet their obligations to Plaintiff and the Class under the applicable Wage Orders and all relevant provisions of the Labor Code with respect to providing meal periods, or premium compensation in lieu thereof, to Plaintiff and the Class.

57. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief as described herein and below.

THIRD CAUSE OF ACTION
(FAILURE TO AUTHORIZE AND PERMIT REST BREAKS)
(Against All Defendants)

58. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set forth herein.

59. At all times pertinent hereto, the applicable Wage Orders requires an employer to provide a duty-free, uninterrupted, ten-minute rest period for every four hours worked by an employee, or greater fraction thereof.

60. At all times pertinent hereto, the applicable Wage Orders and Labor Code section 226.7 requires an employer to pay an additional one (1) hour of compensation at the employee's regular rate of pay for each workday in which an employer fails to meet its obligations with respect to providing rest periods.

61. Plaintiff is informed, believes, and thereon alleges that Plaintiff and the Class routinely worked shifts in excess of 3.5 and/or six (6) hours in a workday. Despite working these hours, Defendants failed to adopt and implement a rest period policy, maintained a policy or practice of prioritizing work demands over allowing employees to take compliant rest periods, and failed to permit Plaintiff and Class Members to take compliant rest periods. Accordingly, Plaintiff and Class Members were unable to take compliant rest periods as Defendants failed to authorize rest periods, and rest periods were frequently missed and/or interrupted. Defendants, however, failed to pay Plaintiff and Class Members rest period premiums for non-compliant or missed rest periods.

62. Plaintiff is informed, believes, and thereon alleges that Defendants failed to meet their obligations to Plaintiff and the Class under the applicable Wage Orders and all relevant provisions of the Labor Code with respect to providing rest periods, or premium compensation in lieu thereof, to Plaintiff and the Class.

63. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief as described herein and below.

FOURTH CAUSE OF ACTION
(FAILURE TO PROVIDE PAID SICK LEAVE)
(Against All Defendants)

64. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set forth herein.

65. Labor Code section 246(a)-(b) provides that employees who work for 30 or more days for the same employer are entitled to paid sick days. Employees shall accrue such paid sick days at the rate of not less than one hour per every 30 hours worked. Employers may use a different accrual method provided that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment, or each calendar year, or in each 12-month period. An employer may satisfy the accrual requirements by providing not less than 24 hours or three days of paid sick leave that is made available to use by the employee by the 120th calendar day of employment.

66. Labor Code section 246(c) provides that an employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which the employee may use paid sick days as they are accrued.

67. Labor Code section 246.5(c) provides that an employer shall not deny an employee the right to use accrued sick days.

68. During the Relevant Time Period, Defendants failed to provide Plaintiff and Class Members with paid sick leave at their regular rate of pay. Specifically, Defendants maintained a policy and practice of requiring Plaintiff and Class Members who were entitled to paid sick leave to take unpaid sick days.

69. Defendants have unfairly and unlawfully violated California Labor Code sections 246 and 246.5, and the applicable IWC Wage Orders by failing to provide Plaintiff and Class Members with paid sick leave benefits to which they were entitled.

71. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief as described herein and below.

FIFTH CAUSE OF ACTION

(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)

(Against All Defendants)

72. Plaintiff incorporates by reference in this cause of action each allegation of all preceding paragraphs, as though fully set forth herein.

73. Section 226(a) of the Labor Code requires Defendants to provide accurate, itemized wage statements listing, in part, the employee’s “(1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned...” and “(9) all applicable hourly rates...and the corresponding number of hours worked...” (Lab. Code § 226(a).)

74. Plaintiff is informed, believes, and thereon alleges that Defendants have knowingly and intentionally failed to comply with Labor Code section 226(a) on each and every wage statement that should have been provided to Plaintiff and the Class Members.

75. As a result of the aforementioned violations of the Labor Code and the applicable Wage Orders, wage statements issued to Plaintiff and Class Members failed to accurately list, among other things, the gross and net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, and total hours worked in violation of Labor Code section 226(a).

76. Labor Code section 226(e) provides that an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of his or his actual damages or a penalty of \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period (up to a maximum of \$4,000), in addition to attorneys' fees and costs.

1 77. Section 7 of the Industrial Wage Commission (“IWC”) Wage Orders requires
2 Defendants to maintain time records showing, among other things, when the employee begins and
3 ends each work period, and total daily hours worked in an itemized wage statement, and must show
4 all deductions from payment of wages, and accurately report total hours worked by Plaintiff and
5 the Class Members. Plaintiff is informed, believes, and thereon alleges that Defendants have
6 knowingly and intentionally failed to comply with these Wage Orders.

7 78. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
8 wage statements to Plaintiff and the Class Members in accordance with Labor Code section 226.
9 The statements provided to Plaintiff and the Class Members have not accurately reflected actual
10 gross wages earned, all applicable hourly rates in effect during the pay period and the corresponding
11 number of hours worked at each hourly rate, and the total hours worked by employees. Plaintiff
12 and the Class are therefore entitled to the damages and penalties provided for under Labor Code
13 section 226(e).

14 79. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
15 as described herein and below.

16 **SIXTH CAUSE OF ACTION**
17 **(WAITING TIME PENALTIES)**
18 **(Against All Defendants)**

19 80. Plaintiff incorporates by reference in this cause of action each allegation of all
20 preceding paragraphs, as though fully set forth herein.

21 81. Sections 201 and 202 of the Labor Code require Defendants to pay their employees
22 all wages due within 72 hours of termination of employment. Section 203 of the Labor Code
23 provides that if an employer willfully fails to timely pay such wages the employer must, as a
24 penalty, continue to pay the subject employees’ wages until the back wages are paid in full or an
25 action is commenced. The penalty cannot exceed 30 days of wages.

26 82. Plaintiff and the Class Members are entitled to compensation for all forms of wages
27 earned, including, but not limited to, wages earned but not paid, but to date have not received such
28

1 compensation, therefore entitling Plaintiff and formerly-employed Class Members to Labor Code
2 section 203 penalties.

3 83. At all times pertinent hereto, California law, including, but not limited to, Labor
4 Code section 1194, provided that for any action brought for the nonpayment of wages, fringe
5 benefits, or health and welfare or pension fund contributions, the court shall award reasonable
6 attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees
7 and costs upon the initiation of the action.

8 84. At all times pertinent hereto, Labor Code section 1194.2 provided that in any action
9 brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages
10 at the rate of interest specified in Civil Code section 3289(b), which shall accrue from the date that
11 the wages were due and payable.

12 85. More than 30 days have passed since affected Class Members have left Defendants'
13 employ, and on information and belief, they have not received payment pursuant to Labor Code
14 section 203. As a consequence of Defendants' willful conduct in not paying all earned wages,
15 Plaintiff and certain Class Members are entitled to 30 days' wages as a penalty under Labor Code
16 section 203 for failure to pay legal wages.

17 86. Plaintiff and certain Class Members are also entitled to an additional 30 days' wages
18 as a penalty under Labor Code section 203 for willful failure to pay one hour's wages in lieu thereof
19 for denied rest and meal periods, together with interest thereon and attorneys' fees and costs.

20 87. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
21 as described herein and below.

22 **SEVENTH CAUSE OF ACTION**
23 **(UNFAIR BUSINESS PRACTICES)**
24 **(Against All Defendants)**

25 88. Plaintiff incorporates in this cause of action each and every allegation of all
26 preceding paragraphs, as though fully set forth herein.

89. Plaintiff brings this action on behalf of himself and each and all members of the general public, including the Class Members, pursuant to Cal. Bus. & Prof. Code sections 17200 *et seq.* Defendants' conduct alleged below constitutes false, fraudulent, unlawful, unfair, and deceptive business practices, in violation of Cal. Bus. & Prof. Code sections 17200 *et seq.* Defendant engaged in unfair competition in violation of the Unfair Competition Law ("UCL") by violating, *inter alia*, each of the following laws: each of these violations constitutes an independent and separate violation of the UCL:

(i) Violations of Labor Code sections 201-204, 510, 1182.12, 1194, 1194.2, 1197, 1198, and 1199 (failure to pay for all hours worked, including minimum and overtime wages);

(ii) Violations of Labor Code sections 226.7 and 512 (failure to provide meal periods);

(iii) Violations of Labor Code section 226.7 (failure to provide rest periods);

(iv) Violations of Labor Code sections 246 and 246.5 (failure to provide paid sick leave);

(v) Violations of Labor Code sections 201-203 (failure to pay accrued wages at termination or resignation);

(vi) Violations of Labor Code section 204 (failure to timely pay wages during employment);

(vii) Violations of Labor Code section 226 (failure to provide accurate itemized wage statements); and

(viii) Violations of all applicable Wage Orders.

90. Plaintiff further brings this cause of action on behalf of the proposed Class, seeking statutory relief to stop the misconduct of Defendants, as complained herein, and to compel restitution and disgorgement of all profits obtained by Defendants through the unfair and unlawful business practices described herein.

1 91. Defendants' course of conduct, acts, and practices in violation of the California laws
2 mentioned in the above paragraph constitute a separate and independent violation of the UCL.
3 Defendants' conduct described herein violates the policy or spirit of such laws or otherwise
4 significantly threatens or harms competition. The harm to Plaintiff and the Class Members in being
5 wrongfully denied lawfully earned wages outweighs the utility, if any, of Defendants' policies or
6 practices and, therefore, Defendants' actions described herein constitute an unfair business practice
7 or act within the meaning of the UCL.

8 92. The conduct of Defendants, as alleged herein, constitutes unlawful practices as set
9 forth in Cal. Bus. & Prof. Code sections 17200, *et seq.* Specifically, Defendants conduct business
10 activities while failing to comply with California wage-and-hour laws and the California common
11 law and statutory law as described herein.

12 93. Section 17200 of the Cal. Bus. & Prof. Code prohibits unfair competition by
13 prohibiting unlawful, unfair, or fraudulent business practices or acts.

14 94. Defendants' failure to adopt policies in accordance with and/or adhere to these laws,
15 all of which are binding upon and burdensome to Defendants' competitors, engenders an unfair
16 competitive advantage for Defendants, thereby constituting an unfair business practice, as set forth
17 in Cal. Bus. & Prof. Code sections 17200, *et seq.*

18 95. Defendants' unlawful and unfair business practices as herein alleged has damaged
19 Plaintiff and the Class Members of the proposed Class by wrongfully denying to them earned
20 wages, overtime pay, and meal and rest breaks and therefore was substantially injurious to Plaintiff
21 and the Class.

22 96. Under the circumstances alleged, it would be inequitable and result in a miscarriage
23 of justice for Defendants to continue to retain the property of Plaintiff and the members of the Class,
24 entitling Plaintiff and the proposed Class to restitution of the unfair benefits obtained and
25 disgorgement of Defendants' ill-gotten gains.

26 97. Pursuant to Cal. Bus. and Prof. Code section 17203, as a direct and proximate result
27 of the unfair business practices of Defendants, Plaintiff, individually, and on behalf of all
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employees similarly situated, is entitled to equitable and injunctive relief, against such unlawful practices in order to prevent future damage, for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits. Plaintiff and the Class Members' remedy includes full restitution of all wages which have been unlawfully withheld from Plaintiff and the Class Members as a result of the business acts and practices described herein, and an order enjoining Defendants to cease and desist from engaging in the practices described herein.

98. Plaintiff, on behalf of himself and the Class Members, seeks restitution in the amount of the respective unpaid wages earned and due.

99. Plaintiff and Class Members also request any other such legal and equitable relief from Defendants' unlawful and willful conduct as the Court deems just and proper, including injunction prohibiting Defendants from engaging in the unfair, unlawful, and/or fraudulent practices alleged in this Complaint.

100. Defendants are also liable to pay attorneys' fees and other applicable costs pursuant to California Code of Civil Procedure section 1021.5 and other applicable law. Plaintiff, on behalf of himself and Class Members, also seeks recovery of attorneys' fees and costs of this action to be paid by Defendants as provided by the UCL and Labor Code sections 218, 218.5 and 1194.

101. As a result of Defendants' unlawful and unfair business practices, Plaintiff and members of the proposed Class are entitled to and seek restitution and disgorgement, and other appropriate relief available under Cal. Bus. & Prof. Code sections 17200 et. seq.

102. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief as described herein and below.

EIGHTH CAUSE OF ACTION

(VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

(Against All Defendants)

103. Plaintiff incorporates in this cause of action each and every allegation of all preceding paragraphs, as though fully set forth herein.

104. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under

1 PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged
2 to have been violated, and after receiving notice from the LWDA of its intention not to investigate
3 or after 65 days have passed without notice from the LWDA.

4 105. On March 14, 2023, Plaintiff gave written notice of the specific Labor Code
5 provisions alleged to have been violated, including the facts and theories to support the alleged
6 violations, as required by Labor Code section 2699.3. This written notice was provided via certified
7 mail to GRS and to the LWDA by electronically filing the notice via the Department of Industrial
8 Relations' website. More than 65 days have passed since Plaintiff submitted his PAGA notice to
9 the LWDA, and without notice from the LWDA. Accordingly, Plaintiff may amend his Complaint
10 to add a PAGA cause of action.

11 106. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
12 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
13 divisions, commissions, boards, agencies or employees for violation of the code may, as an
14 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
15 himself and other current or former employees pursuant to the procedures specified in Labor Code
16 section 2699.3.

17 107. For all provisions of the Labor Code except those for which a civil penalty is
18 specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one
19 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and
20 two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
21 pay period in which Defendants violated these provisions of the Labor Code.

22 108. Defendants' conduct violates numerous Labor Code sections, including, but not
23 limited to, the following:

- 24 (a) Violation of Labor Code sections 201-204, 210, 510, 558, 1194,
25 1197, 1197.1, and 1198 for failure to timely pay all earned wages (including
26 minimum, regular, and overtime wages) owed to Plaintiff and other aggrieved
27 employees during employment and upon separation of employment as herein
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1 alleged;

2 (b) Violation of Labor Code sections 226.7 and 512 for failure to provide
3 meal periods to Plaintiff and other aggrieved employees and failure to pay premium
4 wages for missed meal periods as herein alleged;

5 (c) Violation of Labor Code sections 226.7 for failure to permit rest
6 breaks to Plaintiff and other aggrieved employees and failure to pay premium wages
7 for missed rest periods as herein alleged;

8 (d) Violation of Labor Code sections 226 for failure to provide accurate
9 itemized wage statements to Plaintiff and other aggrieved employees as herein
10 alleged; and

11 (e) Violation of Labor Code sections 1174 and 1174.5 for failure to
12 maintain accurate records regarding the employment of Plaintiff and other aggrieved
13 employees as herein alleged.

14 109. Labor Code section 558(a) provides “[a]ny employer or other person acting on
15 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
16 provision regulating hours and days of work in any order of the Industrial Welfare Commission
17 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
18 underpaid employee for each pay period for which the employee was underpaid . . . (2) For each
19 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period
20 for which the employee was underpaid.”

21 110. Labor Code Section 1174.5 provides a \$500 penalty for an employer’s failure to
22 maintain accurate and complete payroll records showing the hours worked daily by and the wages
23 paid to employees.

24 111. Labor Code section 1197.1 also provides “[a]ny employer or other person acting
25 either individually or as an officer, agent, or employee of another person, who pays or causes to be
26 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by
27 an order of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial
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1 violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee
2 for each pay period for which the employee is underpaid . . . (2) For each subsequent violation for
3 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
4 pay period for which the employee is underpaid regardless of whether the initial violation is
5 intentionally committed.

6 112. As set forth above, Defendants have violated numerous provisions of the Labor
7 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff
8 also seeks the civil penalties set forth in Labor Code sections 558 and 1197.1 for himself, the
9 underpaid employees, and the State of California.

10 113. Plaintiff is an “aggrieved employee” because he was employed by the alleged
11 violators and had one or more of the alleged violations committed against him, and therefore is
12 properly suited to represent the interests of all other aggrieved employees.

13 114. Plaintiff has exhausted the procedural requirements under Labor Code section
14 2699.3 as to GRS and is therefore able to pursue a claim for penalties on behalf of herself and all
15 other aggrieved employees under the PAGA.

16 115. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
17 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited
18 above.

19 116. For bringing this action, Plaintiff is entitled to reasonable attorney’s fees and costs
20 pursuant to statute.

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff, on behalf of himself and the proposed Class, prays for judgment
23 and the following specific relief against Defendants as follows:

- 24 1. That the Court determine that this action may be maintained as a class action under
25 California Code of Civil Procedure section 382;
26 2. That Plaintiff be appointed Class Representative;
27 3. That the attorneys of record for Plaintiff be appointed Class Counsel;

4. For compensatory damages, in an amount according to proof with interest thereon;
5. For such general and special damages as may be appropriate;
6. For penalties, including pursuant to Labor Code sections 203 and 226.
7. For civil penalties pursuant to PAGA.
8. For pre-judgment interest;
9. For the amounts provided for in Labor Code section 226.7;
10. For attorney's fees and costs of suit, including expert fees pursuant to Labor Code sections 218.5, 218.6, 226, 1194.3, 2699(g) and California Code of Civil Procedure section 1021.5;
11. For restitution as described in the cause of action under Cal. Bus. & Prof. Code sections 17200 *et seq.* above;
12. For permanent injunctive and declaratory relief described in the cause of action under Cal. Bus. & Prof. Code sections 17200 *et seq.* above;
13. A declaratory judgment that the practices complained of herein are unlawful under California state law;
14. Such other injunctive and equitable relief as the Court may deem proper;
15. That Plaintiff and the Class be awarded damages for the amount of unpaid compensation (including compensation pursuant to Labor Code section 226.7), including interest thereon (Labor Code section 1194.2 and Civil Code section 3289), liquidated damages, and penalties subject to proof at trial; and
16. An award of such other and further relief as this Court may deem appropriate.

Dated: June 1, 2023

DAILY ALJIAN LLP

By: /s/ Shelly D. Song

Justin E. D. Daily

Reed Aljian

Shelly D. Song

Attorneys for Plaintiff

Juan Pablo Jaraz Ortega, on behalf of
himself and all others similarly situated

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby requests a jury trial on the claims so triable.

Dated: June 1, 2023

DAILY ALJIAN LLP

By: /s/ Shelly D. Song

Justin E. D. Daily

Reed Aljian

Shelly D. Song

Attorneys for Plaintiff

Juan Pablo Jaraz Ortega, on behalf of
himself and all others similarly situated

PROOF OF SERVICE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

Case Name: *ORTEGA v. GRS RESTAURANT GROUP, INC., et al.*

I am employed in the City of Newport Beach, County of Orange, State of California. I am over the age of 18 years and not a party to the above-titled action. My business address is 100 Bayview Circle, Suite 5500, Newport Beach, California 92660. On **June 1, 2023**, I caused the foregoing document(s) to be served:

1. FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

2. NOTICE OF ASSIGNMENT FOR ALL PURPOSES (CIVIL) AND NOTICE OF CASE MANAGEMENT AND TRIAL SETTING CONFERENCE

on the following parties:

Geoff Swenson
68 Castro Street
San Francisco, CA 94114
*Agent for Service of Process for
GRS Restaurant Group, Inc.*

[X] (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Newport Beach, California. I am readily familiar with the practice of DAILY ALJIAN LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **June 1, 2023**, at Newport Beach, California.

/s/ Daisy Lopez
Daisy Lopez