

Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 6/1/2023 7:04 PM
Reviewed By: R. Walker
Case #23CV412452
Envelope: 12127489

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As an individual and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

KOANGWOO CHOI, as an individual on
behalf of himself and on behalf of all others
similarly situated,

Plaintiff,

v.

ALLFO ONE KOREA, LLC, a California
Limited Liability Company; ALL FO ONE
KOREA CO., LTD., a corporation; and
DOES 1-100, inclusive,

Defendants.

Case No.: 23CV412452

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Recovery of Unpaid Minimum Wages and Liquidated Damages
2. Recovery of Unpaid Overtime Wages
3. Failure to Provide Meal Periods or Compensation in Lieu Thereof
4. Failure to Provide Rest Periods or Compensation in Lieu Thereof
5. Failure to Furnish Accurate Itemized Wage Statements
6. Failure to Timely Pay All Wages Due Upon Separation of Employment
7. Failure to Reimburse Business Expenses
8. Unfair Competition *and*
9. Violation of the Private Attorneys General Act of 2004

DEMAND FOR JURY TRIAL

1 Plaintiff, KOANGWOO CHOI (“PLAINTIFF”), an individual on behalf of PLAINTIFF and
2 all other similarly situated Class Members (as defined below), and Aggrieved Employees (defined
3 below), hereby files this First Amended Complaint against Defendants ALLFO ONE KOREA,
4 LLC, a California Limited Liability Company; ALL FO ONE KOREA CO., LTD., a corporation;
5 and DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is
6 informed and believes and thereon alleges as follows:

7 **JURISDICTION AND VENUE**

8 1. This court possesses original subject matter jurisdiction over this matter. Venue is
9 proper in the County of Santa Clara pursuant to California Code of Civil Procedure section 395.5
10 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
11 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
12 PLAINTIFF herein occurred in this this judicial district. *See also Crestwood Behavioral Health,*
13 *Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in any county
14 where the defendants committed Labor Code violations against some of its employees).

15 **THE PARTIES**

16 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
17 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
18 in the State of California as a non-exempt employee from in or around March 2021 through on or
19 around October 6, 2022.

20 3. PLAINTIFF worked for DEFENDANTS as a server and/or similar title(s) from in or
21 around March 2021 through on or around October 6, 2022, at DEFENDANTS’ restaurant
22 venue/facilities located in Sunnyvale, California, which operated/operates under the name(s) 10
23 Butchers, 10Butchers Korean BBQ and/or 10 Butchers Korean BBQ and/or 10 Butchers Korean
24 BBQ and Bar.

25 4. Defendant ALLFO ONE KOREA, LLC is a California limited liability that, at all
26 relevant times, was authorized to do business within the State of California and is doing business in
27 the State of California.

28 5. Defendant ALL FO ONE KOREA CO., LTD., is a corporation that, at all relevant

1 times, was authorized to do business within the State of California and is doing business in the State
2 of California.

3 6. DEFENDANTS own, operate, or otherwise manage a restaurant business.
4 DEFENDANTS own, operate and/or otherwise manage a venue and/or facilities located in
5 Sunnyvale, California, including but not limited to a full-service restaurant and bar, operating under
6 the name(s) 10 Butchers, 10Butchers Korean BBQ and/or 10 Butchers Korean BBQ and/or 10
7 Butchers Korean BBQ and Bar¹.

8 7. The true names and capacities of the DOE Defendants sued herein as DOES 1
9 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
10 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
11 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
12 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
13 become known.

14 8. PLAINTIFF is further informed and believes that, at all relevant times, each
15 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
16 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
17 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
18 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
19 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
20 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
21 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
22 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
23 controlled, aided and abetted the conduct of all other Defendants.

24 **JOINT LIABILITY**

25 9. Under California law, the definition of the terms “to employ” are broadly construed
26 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
27 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)

28 ¹ See <https://www.10butchers.net/> (Last visited on March 73 2023).

1 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
2 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
3 was to reach situations in which multiple entities control different aspects of the employment
4 relationship. Supervision of the work, in the specific sense of exercising control over how services
5 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
6 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
7 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
8 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
9 California, applying a less stringent standard to what constitutes sufficient control by a business
10 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
11 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
12 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
13 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
14 employment,” *Id.* at 875 [emphasis added].

15 10. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and the Class
16 Members (defined below) were jointly employed by DEFENDANTS for purposes of the Wage
17 Orders, under the alternative definitions of “to employ” adopted by the California Supreme Court
18 in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages,
19 hours and working conditions of PLAINTIFF and the Class Members and Aggrieved Employees;
20 (2) suffered or permitted PLAINTIFF and Class Members and Aggrieved Employees to work for
21 them; and (3) engaged PLAINTIFF and Class Members and Aggrieved Employees to work for them.

22 11. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
23 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
24 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
25 across all of their locations/facilities and subjected all of the Class Members and Aggrieved
26 Employees to these same policies and practices regardless of the location(s) where they worked.
27 Among other things, PLAINTIFF is informed and believes that: (1) there is common ownership in,
28 and financial control, in DEFENDANTS’ companies, (2) DEFENDANTS utilize common

1 management, who have control over the day-to-day operations and employment matters, including
2 the power to hire and fire, set schedules, issue employee policies, and determine rates of
3 compensation across its locations in California; (3) DEFENDANTS utilize the same policies and
4 procedures for all California employees, including issuing the same employee handbooks and other
5 form agreements; (4) DEFENDANTS use at least some of the same Human Resources personnel
6 and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.

7 12. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
8 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
9 and Aggrieved Employees upon whose behalf PLAINTIFF brings these allegations and causes of
10 action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class
11 Members and Aggrieved Employees' wages, hours and working conditions, and/or suffered or
12 permitted PLAINTIFF and the Class Members and Aggrieved Employees to work so as to be
13 considered the joint employers of PLAINTIFF and the Class Members and Aggrieved Employees.
14 For example, DEFENDANTS, and each of them, maintain the same California principal office as
15 provided to the California Secretary of State. Moreover, as provided to the California Secretary of
16 State, the individual agents for service of process for DEFENDANTS, and each of them, are located
17 at the same California address.

18 13. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
19 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
20 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
21 working conditions that were distributed to, and/or applied to PLAINTIFF and the Class Members
22 and Aggrieved Employees, and further that DEFENDANTS uniformly compensated and controlled
23 the wages of PLAINTIFF and the Class Members and Aggrieved Employees in a uniform manner.
24 DEFENDANTS collectively represented to PLAINTIFF and the Class Members and Aggrieved
25 Employees that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS
26 collectively retained the right to terminate PLAINTIFF's and Class Members and Aggrieved
27 Employees' employment with or without cause. Upon information and belief, DEFENDANTS
28 further collectively represented to PLAINTIFF and Class Members and Aggrieved Employees in

1 writing the details of their compensation, and the manner in which they were to take meal and rest
2 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
3 and the policies applicable to PLAINTIFF and Class Members and Aggrieved Employees by which
4 DEFENDANTS collectively would evaluate the wage rates of PLAINTIFF and Class Members and
5 Aggrieved Employees.

6 14. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
7 and working conditions of PLAINTIFF and Class Members and Aggrieved Employees. As such,
8 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFF's and
9 the Class Members and Aggrieved Employees' employment, including the instrumentality that
10 resulted in the illegal conduct for which PLAINTIFF seeks relief in this Complaint.

11 15. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
12 control over, applied the same policies and practices, and engaged in the same acts and omissions
13 with regard to the other Class Members and Aggrieved Employees.

14 **CLASS ALLEGATIONS**

15 16. PLAINTIFF brings this action on behalf of PLAINTIFF, and all others similarly
16 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF
17 seeks to represent are defined as follows and referred to as the "Class" or "Class Members":

18 All current and former non-exempt employees that worked either
19 directly or via a staffing agency for any of the DEFENDANTS at any
20 location in California at any time within the four years prior to the
21 filing of the initial Complaint ("Class Period").

22 a. Numerosity. While the exact number of Class Members is unknown to
23 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
24 all members is impractical under the circumstances of this case. PLAINTIFF is
25 informed and believes the Class consists of at least 100 individuals.

26 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
27 because common questions of law and fact predominate over individual issues.

28 Common questions include, but are not limited to, the following: (1) whether

1 DEFENDANTS understated hours worked and failed to pay all amounts due to
2 PLAINTIFF and the Class Members for wages earned, including minimum and
3 overtime wages, under California law; (2) whether DEFENDANTS provided
4 PLAINTIFF and the Class Members with all meal periods or premium payments
5 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
6 provided PLAINTIFF and the Class Members with all rest periods or premium
7 payments in lieu thereof, in compliance with California law; (4) whether
8 DEFENDANTS provided PLAINTIFF and Class Members with accurate,
9 itemized wage statements in compliance with California law, displaying,
10 including but not limited to, the total hours worked during the pay period; (5)
11 whether DEFENDANTS timely paid PLAINTIFF and the Class Members all
12 wages due upon separation of employment; (6) whether DEFENDANTS failed
13 to reimburse PLAINTIFF and the Class Members for all business expenses; and
14 (7) whether DEFENDANTS violated California Business and Professions Code
15 sections 17200, *et seq.*

16 c. Ascertainable Class. The proposed Class is ascertainable as members can be
17 identified and located using information in DEFENDANTS' business, payroll
18 and personnel records.

19 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
20 PLAINTIFF suffered a similar injury as members of the Class as a result of
21 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
22 and pay all owed minimum and overtime wages, failure to provide proper meal
23 periods and rest periods or premium compensation in lieu thereof, failure to
24 provide accurate wage statements, failure to reimburse business expenses, and
25 failure to timely pay all wages due upon separation of employment.

26 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
27 Class Members. PLAINTIFF has no interests adverse to the interests of the other
28 Class Members. Counsel who represent PLAINTIFF are competent and

1 experienced in litigating similar class action cases and are California lawyers in
2 good standing. Counsel for PLAINTIFF have the experience and resources to
3 vigorously prosecute this case.

4 f. Superiority. A class action is superior to other available means for the fair and
5 efficient adjudication of this controversy since individual joinder of all members
6 of the class is impractical. Class action treatment will permit a large number of
7 similarly situated persons to prosecute their common claims in a single forum
8 simultaneously, efficiently, and without the unnecessary duplication of effort
9 and expense that numerous individual actions would engender. Furthermore, as
10 the damages suffered by each individual member of the Class may be relatively
11 small, the expenses and burden of individual litigation would make it difficult
12 or impossible for individual members of the Class to redress the wrongs done to
13 them, while an important public interest will be served by addressing the matter
14 as a class action. The cost to the court system of adjudication of such
15 individualized litigation would be substantial. Individualized litigation would
16 also present the potential for inconsistent or contradictory judgments. Finally,
17 the alternative of filing a claim with the California Labor Commissioner is not
18 superior, given the lack of discovery in such proceedings, the fact that there are
19 fewer available remedies, and the losing party has the right to a trial de novo in
20 the Superior Court.

21 **FACTUAL AND LEGAL ALLEGATIONS**

22 17. During the relevant period, PLAINTIFF, and each of the Class Members and
23 Aggrieved Employees worked for DEFENDANTS in the State of California. At all times referenced
24 herein, DEFENDANTS exercised control over PLAINTIFF and Class Members and Aggrieved
25 Employees, and suffered and/or permitted them to work.

26 18. PLAINTIFF was employed by DEFENDANTS as a non-exempt EMPLOYEE.
27 PLAINTIFF worked for DEFENDANTS as a server and/or similar title(s), from in or around March
28 2021 through on or around October 6, 2022, at DEFENDANTS' restaurant venue/facilities located

1 in Sunnyvale, California, which operated/operates under the name(s) 10 Butchers, 10Butchers
2 Korean BBQ and/or 10 Butchers Korean BBQ and/or 10 Butchers Korean BBQ and Bar.
3 PLAINTIFF regularly worked at five- and one-half hours (5 ½) to nine (9) hours per day, at least
4 five (5) to six (6) days per week. At all relevant times, PLAINTIFF was a non-exempt employee
5 that was paid on an hourly basis for time counted by DEFENDANTS as hours worked. PLAINTIFF
6 also earned tips.

7 19. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
8 PLAINTIFF and Class Members and Aggrieved Employees for all hours worked, resulting in the
9 underpayment of minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF
10 and Class Members and Aggrieved Employees for all hours worked by virtue of, DEFENDANTS'
11 automatic deduction and time rounding policies, and failure to relieve employees of all
12 duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or
13 improper meal periods, as explained below.

14 20. Based on information and belief, DEFENDANTS implemented a policy and/or
15 practice of rounding meal period start and end times and/or automatically deducting at least thirty
16 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
17 PLAINTIFF and other Class Members and Aggrieved Employees were subject to DEFENDANTS'
18 control during purported meal periods and/or were otherwise not afforded lawful meal periods,
19 depriving PLAINTIFF and Class Members and Aggrieved Employees of all wages owed.

20 21. Based on information and belief, Class Members and Aggrieved Employees were
21 not paid for all hours worked due to DEFENDANTS' policy and/or practice of rounding time entries
22 or paying according to scheduled hours worked instead of actual time worked, and/or mandated off-
23 the clock work policies and/or practices. For example, at least once per month, DEFENDANTS
24 required PLAINTIFF to participate in work-related meetings off-the-clock. Each off-the-clock
25 work meeting lasted at least approximately thirty to sixty minutes. DEFENDANTS did not
26 compensate PLAINTIFF at all for the time he was required to spend in these mandated work
27 meetings that occurred at least once per month, resulting in the failure to compensate PLAINTIFF
28 for all time worked, and the significant underpayment of wages owed to PLAINTIFF. Based on

1 information and belief, other Class Members and Aggrieved Employees were also required to
2 participate in work-related meetings and/or complete other work tasks off the clock, resulting in the
3 DEFENDANTS' failure to pay Class Members and Aggrieved Employees for all time worked and
4 the underpayment of minimum wages and overtime wages owed to Class Members and Aggrieved
5 Employees.

6 22. Also, based on information and belief, DEFENDANTS required PLAINTIFF and
7 other Class Members and Aggrieved Employees to arrive at work at least five (5) to ten (10) minutes
8 prior to the start of their scheduled shift start times, to perform off-the-clock work tasks so as to be
9 ready to work at the start of their scheduled shift start times. For example, based on information
10 and belief, Class Members and Aggrieved Employees were not compensated for time spent
11 starting/preparing, retrieving and/or cleaning equipment, time spent bestowing personal items in
12 employee lockers and/or storage area and/or time spent donning protective equipment/safety gear
13 and/or uniforms/work clothing (e.g., gloves, hairnets, aprons, hats, and/or face masks).

14 23. Based on information and belief, DEFENDANTS did not compensate PLAINTIFF
15 and other Class Members and Aggrieved Employees for time spent donning and doffing protective
16 equipment/safety gear and/or uniforms/work clothing (e.g., gloves, hairnets, aprons, hats, and/or
17 face masks) during meal periods, before the start of a scheduled shift, and/or after completing a
18 scheduled shift, resulting in off-the-clock work and the underpayment of wages owed to Class
19 Members and Aggrieved Employees.

20 24. Based on information and belief, Class Members and Aggrieved Employees were
21 also pressured to complete at least some of their work tasks off-the-clock in order to meet
22 DEFENDANTS' goals and expectations. For example, based on information and belief, Class
23 Members and Aggrieved Employees were also required to complete off-the-clock work outside of
24 scheduled shifts due to work-related phone calls and/or messages they received to their personal
25 phones and were required to respond to, including but not limited to, communications from
26 supervisors regarding scheduling and/or other work tasks, resulting in the underpayment of wages
27 owed to Class Members and Aggrieved Employees. Moreover, based on information and belief,
28 Class Members and Aggrieved Employees who opened their work location(s) were required to first

1 unlock the doors, turn on all the lights in the restaurant/facility and/or deactivate the alarm before
2 clocking in for work, resulting in pre-shift off-the-clock work and the underpayment of wages owed
3 to Class Members and Aggrieved Employees. Based on further information and belief, Class
4 Members and Aggrieved Employees in charge of closing their location(s) were required to first
5 clock out for their shifts before enabling the alarm, turning off all the lights in the facility and/or
6 locking the doors. This resulted in additional off-the-clock post-shift work that was not compensated
7 and the underpayment of wages owed to Class Members and Aggrieved Employees.

8 25. Based on information and belief, DEFENDANTS failed to pay Class Members and
9 Aggrieved Employees for time they were required to spend completing orientation, policy
10 questionnaires, and/or time spent completing the onboarding process including but not limited to
11 reviewing various documents and policies provided by DEFENDANTS. Based on information and
12 belief, this work time was completed off-the-clock and was not compensated.

13 26. Based on further information and belief, DEFENDANTS implemented a time-
14 rounding system that as applied systematically deprived PLAINTIFF and other Class Members and
15 Aggrieved Employees of compensable time because the time-rounding system implemented by
16 DEFENDANTS would almost always, if not always, result in understating actual compensable work
17 time. For example, DEFENDANTS' pay records and/or wage statements issued to PLAINTIFF
18 evidence time rounding to the at least the nearest quarter, half and/or whole hour. For instance,
19 DEFENDANTS' pay records and/or wage statement for PLAINTIFF for pay date January 21, 2022
20 shows precisely 80.00 regular hours worked; DEFENDANTS' pay records and/or wage statement
21 for PLAINTIFF for pay date February 18, 2022 shows exactly 79.00 regular hours worked;
22 DEFENDANTS' pay records and/or wage statement for PLAINTIFF for pay date March 4, 2022
23 shows precisely 80.00 regular hours worked; DEFENDANTS' pay records and/or wage statement
24 for PLAINTIFF for pay date April 15, 2022 shows precisely 80.00 regular hours worked;
25 DEFENDANTS' pay records and/or wage statement for PLAINTIFF for pay date May 13, 2022
26 also shows precisely 80.00 regular hours worked. Based on information and belief, DEFENDANTS
27 rounded PLAINTIFF's hours worked to at least the nearest quarter, half and/or whole hour during
28 most if not all pay periods during the Class Period, resulting in the underpayment of wages owed to

1 PLAINTIFF. Based on further information, DEFENDANTS also rounded other Class Members
2 and Aggrieved Employees total hours worked to at least the nearest quarter, half and/or whole hour,
3 during most if not all pay periods during the Class Period, resulting in the substantial underpayment
4 of minimum wages and overtime wages owed to Class Members and Aggrieved Employees.

5 27. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
6 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
7 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
8 minimum wages owed to PLAINTIFF and Class Members and Aggrieved Employees as well as
9 unpaid overtime wages for those Class Members and Aggrieved Employees who worked more than
10 eight (8) hours in a day and/or more than forty (40) hours in a week.

11 28. Based on information and belief, DEFENDANTS had actual and/or constructive
12 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
13 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
14 underpayment of minimum wages owed to PLAINTIFF and other Class Members and Aggrieved
15 Employees, in violation of California's minimum and overtime wage laws.

16 29. Based on information and belief, DEFENDANTS failed and continue to fail to pay
17 Class Members and Aggrieved Employees two times their regular rate of pay for time worked
18 beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh
19 consecutive day of work in a work week, in violation of California's overtime laws.

20 30. Based on information and belief, DEFENDANTS failed and continue to fail to pay
21 premium wage rate for all hours worked beyond eight (8) hours in a workday and/or beyond forty
22 (40) hours in a workweek. For example, DEFENDANTS failed to pay PLAINTIFF wages including
23 but not limited to, all overtime wages, for hours worked, including but not limited to, all recorded
24 hours worked in excess of eight (8) hours in a workday and/or over forty hours in a workweek.
25 Based on information and belief, DEFENDANTS failed to incorporate all non-discretionary
26 remuneration, including but not limited to, shift differential pay, bonus pay, and/or other non-
27 discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting
28 in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other Class

1 Members and Aggrieved Employees.

2 31. **Meal Period Violations.** PLAINTIFF and other Class Members and Aggrieved
3 Employees consistently worked shifts of at least five and one-half hours or more, entitling them to
4 at least one meal period. However, PLAINTIFF and other Class Members and Aggrieved
5 Employees would not receive legally compliant thirty (30) minute first and second meal periods.
6 Based on information and belief, Class Members and Aggrieved Employees were consistently
7 unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take
8 late meal periods, interrupted meal periods, and/or work through part or all their meal periods due
9 to understaffing, the nature and constraints of their job duties and/or commentary from supervisors
10 pressuring them to take non-compliant meal periods or skip meal periods completely.

11 32. Based on information and belief, other Class Members and Aggrieved Employees
12 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had
13 their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise
14 on duty due to commentary from supervisors, understaffing, the nature and constraints of their job
15 duties, and/or the need to meet DEFENDANTS' goals and expectations. For example, based on
16 information and belief, at times, Class Members and Aggrieved Employees had their meal periods
17 interrupted and/or cut short and/or were forced to take them late (i.e. after working more than five
18 (5) hours) due to the need to assist customers, prepare food, clean and/or perform other work tasks.

19 33. Based on information and belief, DEFENDANTS implemented policies and/or
20 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
21 DEFENDANTS' control during unpaid meal periods.

22 34. Based on information and belief, DEFENDANTS required Class Members and
23 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
24 DEFENDANTS failed to take into account when scheduling meal periods for Class Members and
25 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
26 unaccounted pre-shift off-the-clock work.

27 35. Based on information and belief, despite DEFENDANTS' failure to provide lawful
28 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end

1 times of PLAINTIFF's and other Class Members and Aggrieved Employees' meal periods and/or
2 automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal
3 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Class
4 Members and Aggrieved Employees did not receive lawful meal periods.

5 36. Moreover, per DEFENDANTS' uniform policy and practice, Class Members and
6 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
7 compliant thirty (30) minute second meal period.

8 37. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
9 other Class Members and Aggrieved Employees as to the timing and duty-free nature of meal
10 periods. Based on further information and belief, DEFENDANTS did not have a compliant written
11 meal period policy, nor did DEFENDANTS have any sort of compliant policy in practice.

12 38. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
13 records of the true start and end times of PLAINTIFF's and Class Members and Aggrieved
14 Employees' meal periods. Based on information and belief, to the extent meal period were recorded,
15 DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in
16 PLAINTIFF and other Class Members and Aggrieved Employees not being paid for all time worked
17 as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th
18 58.

19 39. Based on information and belief, DEFENDANTS had actual and/or constructive
20 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
21 were free of DEFENDANTS' control owed to PLAINTIFF and other Class Members and Aggrieved
22 Employees, in violation of California's meal period laws.

23 40. DEFENDANTS failed to pay PLAINTIFF and other Class Members and Aggrieved
24 Employees, an additional hour of wages at their respective regular rates of compensation for each
25 workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period
26 premium at all for each workday a lawful meal period was not provided and/or failed to pay the
27 proper meal period premium for failure to incorporate all non-discretionary remuneration, including
28 but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into

1 the regular rate or compensation for purposes of calculating the owed meal period premium.

2 41. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
3 PLAINTIFF and other Class Members and Aggrieved Employees with legally compliant rest
4 periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable,
5 are provided in the middle of the work period, as required by law.

6 42. PLAINTIFF and other Class Members and Aggrieved Employees were not
7 adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest
8 periods per California law. Based on information and belief, DEFENDANTS had no policy in place
9 nor instruction as to the taking of duty-free rest periods.

10 43. Based on information and belief, DEFENDANTS did not have a have a compliant
11 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
12 practice. For example, PLAINTIFF consistently had to work through part or all of his rest periods
13 due to the need to assist customers and/or complete other work tasks. In fact, PLAINTIFF was
14 rarely, if ever, afforded a ten-minute, off duty, rest period during the Class Period. Based on
15 information and belief, Class Members and Aggrieved Employees' rest periods were interrupted,
16 cut short, on duty, restricted to work premises and/or late due to understaffing, the nature and
17 constraints of their job duties, and/or due to commentary from supervisors/managers pressuring
18 them to skip rest periods completely or otherwise take non-compliant rest periods.

19 44. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
20 lasting longer than ten hours.

21 45. Based on information and belief, DEFENDANTS implemented policies and/or
22 practices that failed to relieve PLAINTIFF and other Class Members and Aggrieved Employees of
23 all duties and DEFENDANTS' control during rest periods.

24 46. Based on information and belief, Class Members and Aggrieved Employees were
25 pressured to complete their work duties according to a designated schedule such that rest periods
26 were only taken once tasks were completed, and/or as time permitted.

27 47. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
28 which PLAINTIFF and Class Members and Aggrieved Employees experienced a missed/unlawful

1 rest period in violation of California law. DEFENDANTS either failed to pay a rest period premium
2 at all for each workday a proper rest period was not provided and/or failed to pay the proper rest
3 period premium for failure to incorporate all non-discretionary remuneration, including but not
4 limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
5 regular rate of compensation for purposes of calculating the owed rest period premium.

6 48. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
7 provide PLAINTIFF and other Class Members and Aggrieved Employees with accurate wage
8 statements that complied with Labor Code section 226. As DEFENDANTS failed to provide
9 PLAINTIFF and Class Members and Aggrieved Employees with meal and rest periods that
10 complied with Labor section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and
11 Class Members and Aggrieved Employees failed and continue to fail to correctly set forth the gross
12 wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect
13 during the pay period and the corresponding number of hours worked at each hourly rate by the
14 employee.

15 49. DEFENDANTS issued wage statements to PLAINTIFF and Class Members and
16 Aggrieved Employees that also failed to indicate the earned gross and net wages earned during the
17 pay period, the correct applicable rates of pay for all hours worked, and the total hours worked by
18 PLAINTIFF and Class Members and Aggrieved Employees (by virtue of rounded time entries,
19 automatic deduction for meal periods/failure to relieve Class Members and Aggrieved Employees
20 of all duties and employer control during unpaid meal periods, payment according to scheduled
21 hours worked rather than actual hours worked, and/or other off-the-clock work policies and
22 practices) which results in a violation of Labor Code section 226(a).

23 50. Based on information and belief, wage statements issued by DEFENDANTS failed
24 to list all applicable hourly rates in effect during the pay period and the corresponding number of
25 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).
26 For example, as described herein, based on information and belief, DEFENDANTS also failed to
27 incorporate all forms of non-discretionary compensation earned during the pay period into the
28 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour

1 of overtime worked by Class Members and Aggrieved Employees.

2 51. Moreover, based on information and belief, DEFENDANTS issued wage statements
3 to PLAINTIFF and Class Members and Aggrieved Employees that further violate Labor Code
4 section 226(a), by among other things, failing to list the correct name and/or address of the legal
5 entity that is the employer.

6 52. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
7 Members and Aggrieved Employees that were not accurate and did not include all of the statutorily
8 required information. As such, DEFENDANTS violated Labor Code section 226.

9 53. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
10 information and belief, DEFENDANTS failed to timely pay Class Members and Aggrieved
11 Employees all wages that were due and owing upon termination or resignation. Based on
12 information and belief, DEFENDANTS untimely provide final wages to Class Members and
13 Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-202.

14 54. Upon separation of employment, Class Members and Aggrieved Employees' final
15 paychecks were not timely provided and/or were not timely provided with all owed vacation pay
16 and/or paid time off. Moreover, PLAINTIFF's and Class Members and Aggrieved Employees' final
17 paychecks, once provided, did not include all wages owed as they were devoid of, including but not
18 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
19 sick leave and/or paid time off wages at the properly accrued rates. For example, DEFENDANTS
20 did not furnish PLAINTIFF with his final paycheck until at least three days following PLAINTIFF's
21 termination, and PLAINTIFF's late final paycheck was devoid of all wages owed, including but not
22 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
23 sick leave and/or paid time off wages at the properly accrued rates.

24 55. These violations subject DEFENDANTS to civil penalties under Labor Code section
25 203, 210, and/or 256.

26 56. **Unreimbursed Business Expenses.** Based on information and belief,
27 DEFENDANTS required PLAINTIFF and Class Members and Aggrieved Employees to incur
28 business expenses as a direct consequence of the performance of their job duties without providing

1 reimbursement, in violation of Labor Code section 2802. Based on information and belief,
2 PLAINTIFF and Class Members and Aggrieved Employees were improperly required to provide
3 and maintain work tools that are supposed to be the responsibility of the employer.

4 57. Based on information and belief, DEFENDANTS shifted the costs of doing business
5 onto Class Members and Aggrieved Employees by requiring them to pay for business expenses,
6 including but not limited to, purchase and/or maintenance of uniforms/work
7 clothing/shoes/protective/safety gear and/or the use of Class Members and Aggrieved Employees'
8 personal mobile phone and data usage for work related purposes to receive and respond to work
9 related messages and/or phone calls. For example, DEFENDANTS required PLAINTIFF to
10 purchase and maintain his own uniforms/work clothing, including but not limited to, pants/slacks,
11 socks and shoes of a particular brand and/or specified color as mandated by DEFENDANTS, but
12 PLAINTIFF was not reimbursed by DEFENDANTS in any way for the expenses he incurred in
13 connection therewith.

14 58. Based on information and belief, at times, Class Members and Aggrieved Employees
15 received calls/messages to their personal cell phones/mobile devices from supervisors and/or other
16 Class Members and Aggrieved Employees regarding scheduling and/or other work tasks but were
17 not provided any/full reimbursement from DEFENDANTS for this business use of their personal
18 cell phones.

19 59. Based on information and belief, DEFENDANTS regularly failed to reimburse and
20 indemnify Class Members and Aggrieved Employees for business expenses. Pursuant to California
21 Labor Code section 2802, PLAINTIFF and Class Members and Aggrieved Employees were entitled
22 to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders
23 and/or carrying out the duties assigned by DEFENDANTS.

24 60. DEFENDANTS' failure to provide Class Members and Aggrieved Employees with
25 full reimbursement for all reasonable expenses associated with carrying out their duties required
26 that Class Members and Aggrieved Employees subsidize and/or carry the burden of business
27 expenses in violation of Labor Code section 2802.

28 61. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS

1 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
2 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

3 **FIRST CAUSE OF ACTION**

4 **Recovery of Unpaid Minimum Wages and Liquidated Damages**
5 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

6 62. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

7 63. It is fundamental that an employer must pay its employees for all time worked.
8 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
9 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 224 only
10 permits deductions from wages when the employer is required or empowered to do so by state or
11 federal law or when the deduction is expressly authorized in writing by the employee for specified
12 purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 223
13 prohibits the pay of less than a statutory or contractual wage scale.

14 64. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
15 Commission ("IWC") Wage Orders, an employer must pay its employees for all hours worked, up
16 to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.
17 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
18 period is unlawful.

19 65. DEFENDANTS violated California's minimum wage laws by failing to compensate
20 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
21 DEFENDANTS' time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
22 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work,
23 and/or payment according to scheduled hours worked rather than actual hours worked (described
24 above), which resulted in the failure to account for all hours worked and thus the denial of minimum
25 wages.

26 66. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
27 Class Members for all hours worked.

28 67. Based on information and belief, DEFENDANTS had actual or constructive
knowledge that its time-rounding policies and practices, auto-deduction policies and practices for

1 meal periods, failure to relieve employees of all duties and employer control during unpaid meal
2 periods, policy and practice of payment according to scheduled work time rather than actual work
3 time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
4 owed to PLAINTIFF and other Class Members.

5 68. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
6 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus
7 attorney's fees and costs, in an amount to be proved at trial.

8 **SECOND CAUSE OF ACTION**

9 **Recovery of Unpaid Overtime Wages** 10 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

11 69. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

12 70. Employees in California must be paid overtime, equal to one and one-half times the
13 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
14 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
15 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
16 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
consecutive day of work in a workweek, unless they are exempt.

17 71. PLAINTIFF and the Class Members worked overtime hours for which they were not
18 compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' time rounding,
19 automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods,
20 other pre-shift, post-shift and/or otherwise off-the-clock work, and/or payment according to
21 scheduled hours worked rather than actual hours worked (described above), which resulted in the
22 failure to account for all hours worked and thus the denial of all owed overtime wages.

23 72. Based on information and belief, DEFENDANTS failed to pay twice Class
24 Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
25 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
26 violation of California's overtime laws.

27 73. Based on information and belief, DEFENDANTS further violated California's
28 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not

1 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
2 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
3 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
4 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
5 other Class Members.

6 74. DEFENDANTS' conduct described above is in violation of California Labor Code
7 sections 510 and 1194 and all applicable Wage Orders.

8 75. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
9 wages, plus attorney's fees and costs, in an amount to be proved.

10 **THIRD CAUSE OF ACTION**

11 **Failure to Provide Meal Periods or Compensation in Lieu Thereof (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

12 76. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

13 77. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
14 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
15 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
16 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
17 waived, but only under the following circumstances: (1) if an employee's total work period in a day
18 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
19 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
20 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
21 waived by mutual consent of the employer and employee, but only if the first meal period was not
22 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
23 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
24 done so.

25 78. Employers must pay employees an additional hour of wages at the employees'
26 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
27 meal period, first meal period provided after five (5) hours, second meal period provided after 10
28 hours). Lab. Code § 226.7.

1 79. As explained above, PLAINTIFF and other Class Members were consistently unable
2 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
3 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
4 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
5 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
6 completely.

7 80. Based on information and belief, DEFENDANTS had and continue to have a policy
8 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
9 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and Class
10 Members did not receive compliant meal periods.

11 81. Moreover, based on information and belief, Class Members did not receive a timely,
12 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

13 82. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
14 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
15 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
16 violation of California's meal period laws.

17 83. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
18 periods in violation of California law and/or failed to pay the proper meal period premium for failure
19 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
20 differential pay and/or other non-discretionary compensation into the regular rate or compensation
21 for purposes of calculating the owed meal period premium.

22 84. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
23 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
24 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
25 all in an amount to be proved at trial.

26 **FOURTH CAUSE OF ACTION**
27 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
28 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

 85. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

1 86. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
2 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
3 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
4 “insofar as practicable.” In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
5 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
6 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
7 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
8 The rest period requirement obligates employers to permit and authorize employees to take off-duty
9 rest periods, meaning employers must relieve employees of all duties and relinquish control over
10 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

11 87. If the employer fails to provide any required rest period, the employer must pay the
12 employee one hour of pay at the employee’s regular rate of compensation for each workday the
13 employer did not provide at least one legally required rest period, pursuant to Labor Code section
14 226.7.

15 88. PLAINTIFF and the Class Members did not receive legally compliant, timely 10-
16 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
17 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
18 DEFENDANTS’ control due to the nature and constraints of Class Members’ job duties,
19 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class Members to
20 skip rest periods completely or otherwise take non-compliant rest periods.

21 89. Based on information and belief, DEFENDANTS implemented policies and/or
22 practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer
23 control during rest periods. Based on further information and belief, Class Members were pressured
24 to complete their work duties according to a designated schedule such that rest periods were only
25 taken once tasks were completed, and/or as time permitted.

26 90. As a result, PLAINTIFF and Class Members did not receive legally compliant first,
27 second, or third rest periods as required by California law.

28 91. Moreover, based on information and belief, DEFENDANTS failed to pay a rest

1 period premium to PLAINTIFF and other Class Members for each workday in which there was a
2 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
3 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
4 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
5 regular rate of compensation for purposes of determining the owed rest period premium.

6 92. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
7 hour of additional pay at the regular rate of compensation for each workday that a required rest
8 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
9 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
10 trial.

11 **FIFTH CAUSE OF ACTION**
12 **Failure to Furnish Accurate Itemized Wage Statements**
13 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

14 93. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

15 94. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
16 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
17 wage statement accurately stating the following:

18 (1) gross wages earned, (2) total hours worked by the employee,
19 except for any employee whose compensation is solely based on a
20 salary and who is exempt from payment of overtime under
21 subdivision (a) of Section 515 or any applicable order of the Industrial
22 Welfare Commission, (3) the number of piece-rate units earned and
23 any applicable piece rate if the employee is paid on a piece-rate basis,
24 (4) all deductions, provided that all deductions made on written orders
25 of the employee may be aggregated and shown as one item, (5) net
26 wages earned, (6) the inclusive dates of the period for which the
27 employee is paid, (7) the name of the employee and his or her social
28 security number, except that by January 1, 2008, only the last four
digits of his or her social security number or an employee
identification number other than a social security number may be
shown on the itemized statement, (8) the name and address of the
legal entity that is the employer, and (9) all applicable hourly rates in
effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.

95. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with
meal and rest periods that complied with Labor Code section 226.7, the wage statements
DEFENDANTS issued to PLAINTIFF and other Class Members failed and continue to fail to

1 correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
2 total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
3 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
4 during the pay period and the corresponding number of hours worked at each hourly rate by the
5 employee, in violation of Labor Code section 226(a)(9).

6 96. Moreover, due to violations detailed above, including but not limited to,
7 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
8 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
9 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
10 PLAINTIFF and other Class Members with accurate, itemized wage statements that listed the gross
11 and net wages earned and the correct applicable rates of pay for all hours worked. Based on
12 information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
13 compensation earned during the pay period into the regular rate of pay for purposes of calculating
14 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
15 overtime worked by PLAINTIFF and other Class Members.

16 97. As explained above, wage statements issued by DEFENDANTS failed to list the
17 "total hours worked" by PLAINTIFF and Class Members (by virtue of rounded time entries,
18 automatic deduction for meal periods/failure to relieve Class Members of all duties and employer
19 control during unpaid meal periods, payment according to scheduled hours worked rather than actual
20 hours worked, and/or other off-the-clock work policies and practices all described in greater detail
21 *supra*), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on
22 a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v.*
23 *Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

24 98. Based on information and belief, wage statements issued by DEFENDANTS failed
25 to list all applicable hourly rates in effect during the pay period and the corresponding number of
26 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).
27 For example, as described herein, based on information and belief, DEFENDANTS failed to
28 incorporate all forms of non-discretionary compensation earned during the pay period into the

1 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
2 of overtime worked by Class Members.

3 99. Separately, and independent from the above allegations, DEFENDANTS issued
4 wage statements to PLAINTIFF and Class Members that violate Labor Code section 226(a)(8), by
5 failing to list the correct name and/or address of the legal entity that is the employer.

6 100. Based on information and belief, wage statements issued by DEFENDANTS failed
7 to list the inclusive dates of the pay period for which the Class Member is being paid.

8 101. DEFENDANTS' failure to accurately list all hours worked on all wage statements
9 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
10 Members over whether they received all wages owed to them.

11 102. As a result, PLAINTIFF and other Class Members have suffered injury as they could
12 not easily determine whether they received all wages owed to them and whether they were paid for
13 all hours worked.

14 103. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or
15 address of the legal entity that is the employer, PLAINTIFF and Class Members have suffered injury
16 as they could not contact their employer regarding any question(s) they had about wages paid.

17 104. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
18 Class Members with accurate, itemized wage statements.

19 105. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
20 have suffered injury. The absence of accurate information on their wage statements has prevented
21 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
22 mathematical computations to determine the amount of wages owed, and will cause difficulty and
23 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
24 submission of inaccurate information about wages and amounts deducted from wages to state and
25 federal government agencies. As a result, PLAINTIFF and Class Members are required to
26 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
27 and pay records than if DEFENDANT had complied with its legal obligations.

28 106. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members

1 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
2 violation occurred and one hundred dollars per employee per violation for each subsequent pay
3 period, not to exceed an aggregate penalty of four thousand dollars per employee.

4 107. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
5 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
6 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
7 provide currently employed Class Members with inaccurate wage statements in violation of
8 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
9 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
10 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
11 with California Labor Code § 226(a).

12 108. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class
13 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
14 attorneys' fees, and costs of suit.

15 **SIXTH CAUSE OF ACTION**

16 **Failure to Timely Pay All Wages Due Upon Separation of Employment (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

17 109. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

18 110. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
19 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
20 payable immediately."

21 111. California Labor Code section 202(a) provides, in relevant part, that "[i]f an
22 employee not having a written contract for a definite period quits his or her employment, his or her
23 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
24 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
25 to his or her wages at the time of quitting."

26 112. Based in information and belief, DEFENDANTS failed and continue to fail to timely
27 pay final wages to PLAINTIFF and Class Members upon separation of employment in violation of
28 Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF and Class

1 Members do not include all wages owed as they are devoid of, including but not limited to, all owed
2 minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or
3 paid time off wages at the properly accrued rates.

4 113. Under Labor Code section 203, PLAINTIFF and the Class Members who are no
5 longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days'
6 pay, plus attorney's fees and costs, in an amount to be proved at trial.

7 **SEVENTH CAUSE OF ACTION**
8 **Failure to Reimburse Business Expenses**
9 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

10 114. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

11 115. California law requires employers to indemnify their employees for all necessary
12 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
13 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
14 Wage Orders section 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary
15 expenditure or losses' shall include all reasonable costs, including, but not limited to, attorneys' fees
16 incurred by the employee enforcing the rights granted by this section."

17 116. Among other things, under California law, when employees must use their personal
18 cellphones for work-related purposes, the employer must reimburse them for a reasonable
19 percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228
20 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
21 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
22 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile
23 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
24 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

25 117. As described above, PLAINTIFF and the Class Members were improperly required
26 to pay for business expenses that are legally the responsibility of the employer.

27 118. DEFENDANTS' failure to provide PLAINTIFF and the Class Members with full
28 reimbursement for all reasonable expenses associated with carrying out their duties required that
PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in

1 violation of Labor Code section 2802.

2 119. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
3 Members have suffered injury in that they were not completely reimbursed as mandated by
4 California law.

5 120. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
6 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
7 attorneys' fees, and costs of suit.

8 **EIGHTH CAUSE OF ACTION**

9 **Unfair Competition**

10 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

11 121. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

12 122. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
13 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
14 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
15 failure to pay minimum and overtime wages by virtue of its illegal policies and practices;
16 DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay
17 proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized
18 wage statements; DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure
19 to timely pay all wages owed upon separation of employment; DEFENDANTS' failure to provide
20 paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due to, including but
21 not limited to, DEFENDANTS' failure to incorporate all non-discretionary compensation into the
22 sick pay calculation and failure to base the accrued sick leave on the correct number of hours worked
23 as a result of DEFENDANTS' time-rounding/auto deduction policies and practices, payment
24 according to scheduled hours worked and/or other off-the-clock work policies and practices); and
25 DEFENDANTS' policy and/or practice of intentionally withholding and/or interfering with Class
26 Members' earned tips by withholding portions of PLAINTIFF's and other Class Members' tips by
27 including but not limited to claiming tax deductions and/or otherwise unlawfully withholding such
28 earned tips.

123. Due to DEFENDANTS' unfair and unlawful business practices in violation of the

1 California Labor Code, DEFENDANTS have gained a competitive advantage over other
2 comparable companies doing business in the State of California that comply with their obligations
3 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
4 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
5 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
6 minimum and overtime wages and to pay all wages due upon separation of employment of their
7 employees.

8 124. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
9 and Class Members have suffered injury in fact and lost money or property, as described in more
10 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
11 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
12 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
13 unlawful and unfair business practices.

14 125. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
15 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
16 engaging in each of the unlawful practices and policies set forth herein.

17 126. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
18 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
19 by law.

20 **NINTH CAUSE OF ACTION**

21 **Violation of the Private Attorneys General Act of 2004**

22 **(By PLAINTIFF and the Aggrieved Employees Against All DEFENDANTS)**

23 127. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

24 128. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
25 Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of PLAINTIFF,
26 the State of California and Aggrieved Employees, regarding violations of the California Labor Code
as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

27 All current and former non-exempt employees that worked either directly or via a staffing
28 agency for DEFENDANTS at any location in California at any time from one year plus 65 days

1 from the filing of the initial Complaint through the present ("PAGA Period").

2 129. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
3 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
4 limitations period and suffered one or more of the Labor Code violations set forth herein.
5 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved
6 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
7 PLAINTIFF has standing to bring a PAGA cause of action on behalf of PLAINTIFF, the State of
8 California, and all Aggrieved Employees, as PLAINTIFF was jointly employed by DEFENDANTS
9 and is thereby affected by one or more of the alleged violations. See *Huff v. Securitas Security*
10 *Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties
11 for all known violations committed by the employer - regardless of whether Plaintiff experienced
12 all violations personally. *Id.* at 760-761.

13 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

14 130. On March 15, 2023, PLAINTIFF through counsel, gave written notice by online
15 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
16 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
17 in this Complaint ("PAGA Notice").

18 131. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
19 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
20 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
21 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
22 section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against DEFENDANTS
23 has duly accrued.

24 132. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
25 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
26 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

27 133. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
28 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California

1 Labor Code sections, 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 351, 432, 432.5, 432.7,
2 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all
3 applicable Wage Orders.

4 134. As set forth above, DEFENDANTS have committed numerous violations of the
5 California Labor Code due to including but not limited to their failure to pay all owed minimum
6 wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation
7 in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses,
8 and failure to pay all wages owed upon separation of employment as alleged above. PAGA penalties
9 are in addition to any other relief available under the Labor Code.

10 135. Additionally, DEFENDANTS have violated the following Labor Code sections and
11 provisions of the applicable Wage Order as to the PLAINTIFF and other Aggrieved Employees.

12 **Failure to Keep Accurate Records**

13 136. California Labor Code § 1174 requires employers to keep “accurate and complete”
14 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
15 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
16 times during which all owed meal periods were provided each day.

17 137. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
18 and complete records as required by law, including but not limited to the following records: total
19 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
20 Aggrieved Employees began and ended each work period, time records of meal periods, and
21 accurate itemized wage statements.

22 138. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
23 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
24 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
25 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
26 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
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1 period during which the referenced statutes and Wage Order provisions were violated.²

2 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432**

3 139. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage
4 Orders, section 7 require that employers keep the following information on file for each employee
5 for a minimum of three years: The employee's dates of employment; the employee's hourly rates
6 and the corresponding number of hours worked by the employee at each hourly rate, when the
7 employee begins and ends each work period (including meal periods) and split intervals; total hours
8 worked by the employee; all deductions; gross wages earned; and net wages earned.

9 140. Section (b) of Labor Code section 226 further requires employers to "afford current
10 and former employees the right to inspect or receive a copy of records pertaining to their
11 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
12 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
13 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
14 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
15 violation of this subdivision is an infraction." An employer's failure to comply within this timeframe
16 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
17 the employer. Lab. Code section 226(f).

18 141. Personnel Records. In addition to their right to time and pay records, employees, and
19 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
20 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
21 section 432 further specifies that employers must furnish copies of all employment records bearing
22 the employee's signature. Labor Code section 1198.5 also requires that the file be made available
23 for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days
24 from the date the employer receives a written request." An employer's failure to comply within this

25 ² Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
26 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
27 employee was underpaid"); All applicable wage orders, § 20 (establishing that "[i]n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid") (emphasis added).

1 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
2 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

3 142. Based on information and belief, DEFENDANTS fail to timely produce or make
4 available Aggrieved Employees' personnel records and/or payroll records when requested pursuant
5 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
6 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

7 **Statutory Wage Violations**

8 143. California Labor Code section 223 makes it unlawful for an employer to secretly pay
9 wages lower than required by statute while purporting to pay legal wages. As described above,
10 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
11 earned minimum and overtime compensation for all hours worked which resulted in the payment of
12 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
13 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
14 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
15 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
16 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
17 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
18 Labor Code § 2699(f)-(g).

19 **Refusal to Make Payment**

20 144. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
21 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
22 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
23 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
24 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
25 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
26 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
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1 each Aggrieved Employee, for each pay period during which the statute provisions were violated.³

2 **Standard Conditions of Labor Violations**

3 145. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
4 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
5 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
6 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
7 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
8 minimum/overtime wages and other violations described herein result in separate violations of
9 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
10 1197.1 and 2699.

11 **Reporting Time Pay Violations.**

12 146. Section 5 of all applicable IWC Wage Orders, provides as follows:

13 147. (A) Each workday an employee is required to report for work and does report, but is
14 not put to work or is furnished less than half said employee's usual or scheduled day's work, the
15 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two
16 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less
17 than the minimum wage. (B) If an employee is required to report for work a second time in any one
18 workday and is furnished less than two (2) hours of work on the second reporting said employee
19 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
20 minimum wage.

21 148. PLAINTIFF was not paid reporting time wages in accordance with California law,
22 including but not limited to the applicable IWC Wage Order, including but not limited to Wage
23 Order 5. For example, based on information and belief, at times, PLAINTIFF and/or other
24 Aggrieved Employees reported to work for a scheduled shift but were sent home and/or were not
25 put to work and were not paid all owed reporting time pay wages in accordance with California law.

26 _____
27 ³ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 149. Based on information and belief, DEFENDANTS have a policy and practice of
2 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
3 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to
4 pay all reporting time wages to PLAINTIFF and Aggrieved Employees violated and continues to
5 violate the applicable Wage Order, and the California Labor Code, including but not limited to
6 section 1198.

7 **Failure to Provide Suitable Resting Facilities**

8 150. Per section 13 of all applicable IWC Wage Orders, including but not limited to Wage
9 Order 4, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage
10 Orders provides: "Suitable resting facilities shall be provided in an area separate from the toilet
11 rooms and shall be available to employees during work hours."

12 151. DEFENDANTS' restaurant/locations is of such a layout and design, that there was,
13 and continues to be, space that allows for a resting facility that employees may use to cease work
14 and recover during meal or rest periods. DEFENDANTS could have provided Aggrieved
15 Employees with a resting facility within the restaurant with reasonable or no modification, but
16 instead denied and continues to deny, employees with suitable areas to rest (e.g. an adequate
17 breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive to
18 resting, including but not limited to leaning up against the restaurant wall.

19 152. DEFENDANTS did not provide PLAINTIFF and Aggrieved Employees with
20 suitable resting facilities during their hours of work, particularly during meal and/or rest periods.
21 Based on information and belief, Aggrieved Employees were not allowed to sit in the restaurant
22 during working hours, including but not limited to, during rest periods, nor were they provided with
23 a break room and/or adequate break room. Moreover, DEFENDANTS did not inform Aggrieved
24 Employees of their rights to suitable resting facilities under California law.

25 153. DEFENDANTS' failure to provide suitable resting facilities to PLAINTIFF and
26 Aggrieved Employees violated and continue to violate the applicable Wage Order, section 13(B)
27 and the California Labor Code, including but not limited to section 1198.

28 **Seating Violations**

1 154. Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be
2 provided with suitable seats when the nature of the work reasonably permits the use of seats and
3 when they are not actively engaged in the work duties that would not permit them to be seated.

4 155. All applicable IWC Wage Orders, Section 14(A-B) provides:

5 (A) All working employees shall be provided with suitable seats when the nature of the
6 work reasonably permits the use of seats.

7 (B) When employees are not engaged in the active duties of their employment and the
8 nature of the work requires standing, an adequate number of suitable seats shall be placed in
9 reasonable proximity to the work area and employees shall be permitted to use such seats when it
10 does not interfere with the performance of their duties.

11 156. Suitable seating is one of the worker protections covered by California's Wage
12 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
13 construed to effectuate the goal of protecting the comfort and welfare of employees. Brinker
14 Restaurant Corp. v. Superior Court, 53 Cal.4th 1004, 1027 (2012).

15 157. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF and
16 other Aggrieved Employees with suitable seating, and when such employees were not engaged in
17 duties which required them to stand, no seating was placed in reasonable proximity to their
18 workstations.

19 158. Moreover, based on information and belief, the nature of the work reasonably
20 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
21 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of
22 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
23 of seats would not interfere with the performance of their duties.

24 159. The Aggrieved Employees worked in various positions. The nature of Aggrieved
25 Employees' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide
26 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section
27 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting
28 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each

1 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a
2 separate civil penalty.

3 **Violation of Labor Code section 351 and 353**

4 160. Labor Code Section 351 prohibits employers and their agents from sharing in or
5 keeping any portion of a gratuity left for or given to one or more employees by a patron.
6 Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using
7 gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353
8 mandates employers to keep accurate records of all gratuities received.

9 161. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
10 Employees fully received the gratuities left for them by patrons, in that EMPLOYER and its agents
11 would collect and/or take a portion of the gratuities for themselves, in violation of Labor Code
12 Section 351. For example, at times DEFENDANTS kept some portion of the tips to which
13 PLAINTIFF was entitled claiming deduction of tax from the tips. Based on further information and
14 belief, DEFENDANTS also failed/fails to keep accurate records of all tips received, in violation of
15 Labor Code Section 353.

16 162. Based on information and belief, DEFENDANTS have a policy and/or practice of
17 intentionally withholding and/or interfering with Aggrieved Employees' earned tips by withholding
18 portions of their tips by including but not limited to, claiming tax deductions and/or otherwise
19 unlawfully withholding such earned tips, in violation of California law, including but not limited to,
20 Labor Code sections 221 and/or 351.

21 163. Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period
22 payable to each Aggrieved Employee for the first violation of Labor Code Sections 351 and 353
23 they experienced within the statutory period, and \$200 per pay period for each additional violation.

24 **Sick Leave Violations**

25 164. DEFENDANTS violated California's paid sick leave laws including, Labor Code
26 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
27 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
28 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to

1 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
2 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
3 compensation into the sick leave pay rate calculation.

4 165. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
5 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
6 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
7 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
8 Aggrieved Employees’ intelligent exercise of their paid sick leave.

9 166. But for this failure, PLAINTIFF and other Aggrieved Employees would have used
10 their paid sick leave at least prior to their respective separations, for as on several occasions
11 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
12 compensation.

13 167. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
14 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
15 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
16 were entitled to the maximum number of hours accruable.

17 168. Upon information and belief, DEFENDANTS failed and continue to fail to comply
18 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
19 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
20 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
21 wages.

22 169. These practices violated California’s sick leave laws, Labor Code section 245, *et seq.*

23 170. On information and belief, PLAINTIFF alleges that all of these practices were
24 experienced and continue to be experienced by other Aggrieved Employees.

25 171. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
26 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
27 seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

1 **Failure To Provide Supplemental Paid Sick Leave**

2 172. Labor Code § 248.2 provides that all employers with 26 or more employees are
3 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
4 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.
5 DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and other Aggrieved
6 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information
7 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
8 Labor Code section 248.6.

9 **Failure to Pay Vested Vacation/Paid Time Off**

10 173. California Labor Code section 227.3 provides that when an employer policy provides
11 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
12 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
13 employee's final rate in accordance with such contract of employment or employer policy respecting
14 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
15 off upon termination.

16 174. Based on information and belief, DEFENDANTS had and continue to have a
17 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
18 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
19 to Aggrieved Employees upon separation of employment, in violation of California law, including
20 but not limited to, Labor Code section 227.3.

21 **Unlawful Deductions**

22 175. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
23 an employee any part of wages theretofore paid by said employer to said employee." Based on
24 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
25 paychecks including but not limited to, deducting wages for purported overpayments from previous
26 pay periods and/or unlawfully deducting from wages earned tips claiming tax deductions and/or
27 unlawfully deducting customer credit card processing fees or costs charged to DEFENDANTS from
28 Aggrieved Employees' final paychecks. Such a practice is in violation of including but not limited

1 to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor
2 Code Section 2699. For example, based on information and belief, DEFENDANTS have a policy
3 and/or practice of intentionally withholding and/or interfering with Aggrieved Employees' earned
4 tips by withholding portions of their tips by including but not limited to, claiming tax deductions
5 and/or otherwise unlawfully withholding such earned tips, in violation of California law, including
6 but not limited to, Labor Code sections 221 and/or 351. Such a practice is in violation of including
7 but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties
8 under Labor Code Section 2699.

9 176. Each violation results in a separate civil penalty, for each Aggrieved Employee, for
10 each pay period during which the statute provisions were violated. See Lab. Code §225.5
11 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
12 provided in this article, every person who unlawfully withholds wages due any employee in
13 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
14 to pay each employee”).

15 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

16 177. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
17 require any employee or applicant for employment to agree, in writing, to any term or condition
18 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
19 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
20 conditions of employment including but not limited to unlawful non-solicitation/non-compete
21 agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or
22 waivers, and/or unlawful criminal and/or financial checks as a condition of obtaining and/or
23 continuing employment in violation of Labor Code section 432.5.

24 178. The California Labor Code places certain procedural and substantive limits on an
25 employers' ability to conduct employee background checks and on how employers can use the
26 information they obtain through those background checks. Labor Code section 1024.5 states that
27 employers, except for financial institutions, may order a credit check only if the individual works
28 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,

1 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
2 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
3 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
4 background check, including but not limited to identifying an appropriate reason for the background
5 check, a separate consent form with required disclosures and certain formatting requirements,
6 additional forms such as a summary of rights, a way by which to request a copy of the report, as
7 well as proper notice of adverse actions taken, among other statutory requirements.

8 179. Based on information and belief, DEFENDANTS ordered unlawful financial credit
9 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to
10 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
11 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

12 180. Based on information and belief, DEFENDANTS required Aggrieved Employees to
13 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of
14 obtaining and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

15 181. Based on further information and belief, DEFENDANTS required Aggrieved
16 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
17 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
18 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
19 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

20 182. Based on further information and belief, DEFENDANTS knew that requiring
21 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
22 condition of obtaining and/or holding employment was unlawful.

23 183. By requiring that Aggrieved Employees sign off on the illegal background and/or
24 financial checks, DEFENDANTS violated Labor Code section 432.5.

25 Unlawful Inquires into Criminal History

26 184. Labor Code section 432.7 prohibits an employer from asking applicants about past
27 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
28 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in

1 convictions on its employment application, in violation of California law.

2 185. Upon information and belief, DEFENDANTS, in violation of California law,
3 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
4 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
5 employment and/or otherwise impermissibly inquired into criminal history on its employment
6 application in violation of California law.

7 186. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
8 Code section 432.7. By asking about convictions at the application phase or prior to extending an
9 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
10 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
11 disclose arrests and/or convictions as a condition of employment.

12 187. Under the provisions of PAGA and the above mentioned Labor Code sections,
13 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
14 245-248.6, 256, 351, 353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197,
15 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as
16 all interpretations of these laws by California Courts and administrative bodies, as well as any other
17 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 18 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
19 relevant California Labor Code provisions listed herein only if permitted by the
20 PAGA statute, pursuant to Labor Code section 2699(a); and
21 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
22 violations without a civil penalty recoverable under the PAGA, all in the default
23 amounts provided by Labor Code section 2699(f).
24 c. The proper measure of penalties under PAGA is the number of violations,
25 whether those violations were committed as against PLAINTIFF or any
26 Aggrieved Employee, whether a party to this action or not.

27 188. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
28 PLAINTIFF is entitled to recover civil penalties, costs, and attorney’s fees.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and
3 Class Members and Aggrieved Employees as follows:

- 4 1. For an order that the action be certified as a class action;
5 2. For an order that PLAINTIFF be appointed as class representative;
6 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
7 4. For compensatory damages according to proof;
8 5. For liquidated damages according to proof;
9 6. For penalties according to proof;
10 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
11 withheld from PLAINTIFF and the Class Members;
12 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
13 section 17200, *et seq.*, of the California Business and Professions Code;
14 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
15 10. For pre-judgment interest as permitted by law;
16 11. For attorney's fees and costs reasonably incurred;
17 12. For civil penalties according to proof, including PAGA penalties (75% payable to
18 the LWDA and 25% payable to Aggrieved Employees); and
19 13. For such other and further relief that the Court deems just and proper.
20

21 Dated: June 1, 2023

CROSNER LEGAL, PC

22
23 By: Samantha Smith
24 Zachary M. Crosner, Esq.
25 Jamie Serb, Esq.
26 Samantha Smith, Esq.
27 Attorneys for Plaintiff
28 KOANGWOO CHOI

1 **DEMAND FOR JURY TRIAL**

2 PLAINTIFF demands a trial by jury on all claims so triable.

3
4 Dated: June 1, 2023

CROSNER LEGAL, PC

5
6 By: Samantha Smith
7 Zachary M. Crosner, Esq.
8 Jamie Serb, Esq.
9 Samantha Smith, Esq.
10 Attorneys for Plaintiff
11 KOANGWOO CHOI
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PROOF OF SERVICE

Koangwoo Choi v. Allfo One Korea, LLC, et al.
Santa Clara Superior Court Case No. 23CV412452

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 9440 Santa Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

On June 1, 2023, I served true copies of the following document(s) described as follows:

FIRST AMENDED CLASS ACTION COMPLAINT FOR:

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☐ BY ELECTRONIC TRANSMISSION. I transmitted copies of the above-referenced document(s) on the interested parties in this action by electronic transmission. Said electronic transmission was reported as complete and without error.

☐ BY FACSIMILE TRANSMISSION. I transmitted copies of the above-referenced document(s) on the interested parties in this action by facsimile transmission from (310) 510-6429. A transmission report was properly issued by the transmitting facsimile machine and the transmission was reported as complete and without error.

☒ BY UNITED STATES POSTAL SERVICE. I enclosed the documents in electronic pdf format and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal (letterstream.com) to be mailed addressed to the entities and/or persons listed in the Service List as set forth herein. I caused an envelope containing the documents to be placed for collection and mailing and to be mailed by First Class Mail, following our law firm and Letterstream, Inc.'s ordinary business practices. I am readily familiar with our business practices and the business practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. Pursuant to that practice, the above-referenced document(s) were sealed in an envelope, with postage paid, and deposited with a a post office, mail box, sub-post office, substation, mail chute, or other facility or postal pick up/drop off regularly maintained by the United States Postal Service or an affiliate thereof, at or near Phoenix, Arizona.

☐ BY OVERNIGHT MAIL SERVICE. I enclosed the documents in electronic pdf format and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal (letterstream.com) addressed to the entities and/or persons listed in the Service List as set forth herein. I caused an envelope containing the documents to be placed for collection and mailing and to be mailed by Overnight Mail via Federal Express, following our law firm and Letterstream, Inc.'s ordinary business practices. I am readily familiar with our business practices and the business practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with Federal Express, an express carrier, in Phoenix, Arizona, or delivered with any and all delivery fees to an authorized courier or driver authorized by the express service carrier to receive documents.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct and that I am employed in the office of a member of the bar of this
Court at whose direction the service was made.

3 Executed on June 1, 2023, at Los Angeles, California.

4
5 
Jessica Ball

SERVICE LIST

KOANGWOO CHOI V. ALLFO ONE KOREA, LLC, et al.
Santa Clara Superior Court Case No. 23CV412452

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