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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

IRENE O. FLORES, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

MERCURIO BROTHERS, INC., a California
corporation, doing business as, DOMENICO'S
ON THE WHARF; and DOES 1 through 50,
inclusive,

Defendants.

CASE NUMBER: 23CV001694

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay Timely Wages
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Maintain Required Records
8. Failure to Furnish Accurate Itemized Statements
9. Failure to Provide Sick Leave
10. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
11. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

12. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

INTRODUCTION

1. This is a class and representative action brought by Irene O. Flores (“Plaintiff”), on behalf of herself and all other similarly situated individuals, against Mercurio Brothers, Inc., a California Corporation, doing business as, Domenico’s On The Wharf (“Defendant”), in order to hold Defendant accountable for wage theft and other violations of California wage and hour laws. Plaintiff makes the following allegations on information and belief, except as to allegations pertaining to Plaintiff individually, which are based on her respective personal knowledge.

2. Defendant operates a private, for-profit restaurant located at 50 Fishermans Wharf #1, Monterey, California.

3. At all relevant times herein, Defendant has implemented common policies and practices designed to maximize profits at the expense of its non-exempt employees. These policies and practices have resulted in systematic violations of California’s wage and hour laws.

4. Defendant maximizes profits by cutting labor costs through understaffing, denying meal and rest breaks, cheating its non-exempt employees out of wages and premiums, failing to provide accurate and itemized wage statements, and related violations of California wage and hour laws. For instance, in order to minimize labor costs, Defendant has implemented unlawful policies with respect to meal and rest breaks. Defendant requires its non-exempt employees to work through meal and rest breaks, take their meal periods and breaks at times after the start of the fifth hour from the beginning of their shifts, and/or their meal and rest periods are cut short due to staffing shortages and the needs of Defendant in assisting customers. As a result, Plaintiff and other non-exempt employees have been denied the ability to take the legally-compliant meal and rest breaks that they were and are entitled to take.

5. Defendant also willfully turns a blind eye to off-the-clock work that Plaintiff and other non-exempt employees perform as a direct consequence of Defendant’s inadequate staffing and imposition of an unreasonable workload. Moreover, Defendant uniformly failed to pay Plaintiff and other aggrieved employees proper overtime wages due the fact that it has willfully turned a blind eye to off-the-clock work that Plaintiff and other non-exempt employees perform as a direct consequence of Defendant’s understaffing and imposition of an unreasonable workload. Defendant failed to pay

1 Plaintiff and other aggrieved employees timely wages. Defendant has also failed to pay final wages to
2 Plaintiff and other aggrieved employees who were employed by Defendant. Defendant has failed to
3 maintain required records, including: total daily hours worked by each non-exempt employee;
4 applicable rates of pay; all deductions; meal periods; time records showing when each non-exempt
5 employee begins and ends each workday; sick pay; and other missing records yet to be discovered.
6 Defendant also failed to provide Plaintiff and other aggrieved employees with accurate itemized wage
7 statements. Finally, Defendant has failed to indemnify Plaintiff and other aggrieved employees for
8 necessary expenditures incurred in discharge of duties.

9 6. Plaintiff seeks declaratory, compensatory and other statutorily available relief for
10 herself and a Class of all current and former non-exempt employees of Defendant during the
11 applicable limitations period to compensate these workers for the wages Defendant has stolen from
12 the Class members and to protect current and future workers from being subjected to similar unlawful
13 working conditions perpetrated by Defendant.

14 **JURISDICTION AND VENUE**

15 7. The Superior Court of the State of California has jurisdiction in this matter because
16 Plaintiff is a resident of the State of California, and Defendant is licensed to do business under the laws
17 of the State of California. No federal question is at issue because Plaintiff's claims are based solely on
18 California law.

19 8. Venue is proper in this judicial district and the County of Monterey because Plaintiff,
20 and all other persons similarly situated, performed work for Defendant in the County of Monterey,
21 Defendant maintains a restaurant located within the County of Monterey, and Defendant's illegal
22 payroll policies and practices, which are the subject of this action were applied, at least in part, to
23 Plaintiff, and other persons similarly situated, in the County of Monterey.

24 **THE PARTIES**

25 9. During the statute of limitations period, Plaintiff was employed by Defendant as a
26 Hostess and food preparer, a non-exempt position, at the restaurant owned and operated by Defendant
27 in Monterey, California.

28 10. Plaintiff is informed and believes, and thereon alleges, that Defendant, is and at all times

relevant hereto was, a company organized and existing under the laws of the State of California.

11. As a direct and proximate result of the unlawful actions of Defendant, and each of them, Plaintiff and Class members have suffered, and continue to suffer, from loss of earnings in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

12. The true names and capacities of DOES 1 through 50, inclusive, are unknown to Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is informed and believes, and thereon alleges, that each defendant designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees' injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and capacities of such DOE defendants when ascertained.

13. Plaintiff is informed and believe, and based thereon alleges, that each defendant sued in this action, including each defendant sued by the fictitious names DOES 1 through 50, inclusive, is directly or indirectly responsible in some manner for the occurrences, controversies and damages alleged herein, in various capacities, including but not limited to serving as joint employer, joint tortfeasor, single enterprise, alter ego, or agents of the other defendants. Each defendant approved, participated in, controlled, or ratified the acts of all other defendants.

CLASS ACTION ALLEGATIONS

14. Pursuant to Cal. Code of Civ. P. § 382, Plaintiff brings this action on behalf of herself and the following Class:

All current and former non-exempt employees of Defendant who performed work for Defendant in the State of California at any time during the relevant statute of limitations period.

15. Plaintiff reserves the right to name additional Class representatives as may be necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of the proposed Class and/or add subclasses before the Court determines whether certification is appropriate.

16. This action is appropriately suited for a class action because:

1 A. The proposed Class is a significant number. Plaintiff is informed and believes
2 that the proposed Class consists of at least one hundred (100) current and former non-exempt
3 employees, rendering joinder impractical.

4 B. This action involves common questions of law and fact to the proposed Class
5 because the action focuses on Defendant's systematic course of illegal payroll practices and policies,
6 which was applied to all non-exempt employees in uniform violation of the California Labor Code,
7 IWC Wage Orders, and the California Business and Professions Code, which prohibits unfair
8 business practices arising from such violations. Here are a few common questions of law and fact
9 that will drive resolution of this action:

- 10 1. Whether Defendant failed to provide non-exempt employees with
11 legally compliant meal periods and rest breaks, and whether Defendant
12 properly paid premium pay as a result of missed and non-compliant
13 meal periods and rest breaks;
- 14 2. Whether Defendant failed to pay overtime and minimum wages
15 to non-exempt employees in compliance with California law;
- 16 3. Whether Defendant failed to maintain required records and accurate
17 wage statements for non-exempt employees;
- 18 4. Whether Defendant paid all wages due at the time of separation to
19 the non-exempt employees;
- 20 5. Whether Defendant provided sick leave to non-exempt employees; and
- 21 6. Whether Defendant's engaged in unfair and/or unlawful business
22 practices.

23 C. Plaintiff's claims are typical of the proposed Class because Defendant
24 subjected all of its non-exempt employees to the similar and overlapping violations of the California
25 Labor Code, the applicable IWC wage order, and the California Business and Professions Code.

26 D. Plaintiff is able to fairly and adequately protect the interests of all members of
27 the proposed Class because it is in her best interests to prosecute the claims alleged herein to obtain
28

1 full compensation due to the proposed Class for all services rendered and hours worked. Plaintiff has
2 also retained counsel that is experienced in wage and hour class action litigation.

3 **FIRST CAUSE OF ACTION**

4 **Failure to Provide Required Meal Periods**
5 **[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 5-2001, § 11**
6 **And All Other Applicable Wage Orders and Applicable Sections]**
7 ***(On Behalf of Plaintiff and the Class against all Defendants)***

8 17. Plaintiff incorporates herein by specific reference, as though fully set forth, the
9 allegations in paragraphs 1 through 16 (A-D).

10 18. During the statute of limitations period, as part of Defendant's unlawful policies and
11 practices to deprive its non-exempt employees of all wages earned and due, Defendant required,
12 permitted or otherwise suffered Plaintiff and Class members to perform work during their meal
13 periods, to completely skip their meal periods, to take late and short meal periods, and Defendant has
14 otherwise failed to provide the required meal periods to Plaintiff and Class members as required
15 under California Labor Code §§ 226.7, 512, and §§10-11 of all applicable IWC Orders.

16 19. Defendant has implemented several common policies and practices that have caused
17 Plaintiff and Class members to systematically miss and otherwise take non-compliant meal periods.
18 For example, Defendant has failed to adequately inform Plaintiff and Class members of their rights to
19 take meal periods under California law. Defendant also understaffed its restaurant such that Plaintiff
20 and Class members are given so much work to complete that they regularly miss or take non-
21 compliant meal periods. Plaintiff and Class members are so busy with their assigned duties and
22 responsibilities cooking, preparing food, waiting on customers, etc., which must be completed within
23 their scheduled shifts that they are forced to skip their meal periods altogether, to take them after
24 working longer than five (5) hours, to perform work during their meal periods, or return to work after
25 taking less than a thirty (30) minute meal period.

26 20. Further, Defendant systemically deprived Plaintiff and Class members of the
27 opportunity to take second meal periods even though they regularly work shifts in excess of ten (10)
28 hours.

1 21. Despite work conditions that systematically result in missed and non-compliant meal
2 periods, and in order to keep labor costs down, Defendant has implemented a policy and practice of
3 discouraging payment of meal period premium payments. Moreover, Defendant, to the extent any
4 meal period premiums are paid, fail to pay such premiums at the regular rate of pay of the Class
5 members. In short, Defendant has violated California Labor Code §§ 226.7, §§ 10 and 11 of all
6 applicable IWC Wage Orders, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§
7 17200 *et. seq.*, by failing to compensate Plaintiff and Class members who were not authorized and
8 permitted to take a complete, timely, uninterrupted meal period, one additional hour of compensation
9 at the proper regular rate of pay for each workday that such a meal period was not authorized or
10 permitted. Defendant further violated California Labor Code sections 226.7, 510, 1194, 1197, and §§
11 10 and 11 of all applicable IWC Wage Orders by failing to compensate Plaintiff and Class members
12 for all hours worked during their meal periods.

13 22. As a proximate result of the aforementioned violations, Plaintiff and Class members
14 have been damaged in an amount according to proof at trial, and seek all wages earned and due,
15 interest, penalties, expenses, and costs of suit.

16 **SECOND CAUSE OF ACTION**

17 **Failure to Provide Required Rest Breaks**

18 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 12 And**
19 **All Other Applicable Wage Orders and Applicable Sections]**
20 ***(On Behalf of Plaintiff and the Class against all Defendants)***

21 23. Plaintiff incorporates herein by specific reference, as though fully set forth, the
22 allegations in paragraphs 1 through 22.

23 24. At all times relevant herein, as part of Defendant's illegal policies and practices to
24 deprive its non-exempt employees of all wages earned and due, Defendant failed to permit Plaintiff
25 and Class members to take rest breaks as required under California Labor Code §§ 226.7 and 512,
26 and §§ 11-12 of all applicable IWC Wage Orders.

27 25. As with meal periods, Defendant's policies and practices caused Plaintiff and Class
28 members to miss or otherwise take non-compliant rest periods by, among other things, giving them
unreasonable amounts of work that had to be completed within their shift such that rest periods

1 simply could not be taken. This was the result of systematic understaffing at each of the restaurants.
2 Further, as set forth above, Defendant implemented skeletal staffing policies, which resulted in the
3 inability of Plaintiff and Class members to take compliant rest periods. In addition, Defendant did
4 not adequately notify Plaintiff and Class members of their rights to take rest periods, and
5 systematically denied them the opportunity to take rest periods.

6 26. Defendant further violated California Labor Code § 226.7, IWC Wage Order No. 5-
7 2001, § 12, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by
8 failing to pay Plaintiff and Class members who were not provided with a rest break, in accordance
9 with the applicable wage order, one additional hour of compensation at the proper regular rate of pay
10 for each workday that a rest break was not provided.

11 27. As a proximate result of the aforementioned violations, Plaintiff and Class members
12 have been damaged in an amount according to proof at trial, and seek all wages earned and due,
13 interest, penalties, expenses, and costs of suit.

14 **THIRD CAUSE OF ACTION**
15 **Failure to Pay Overtime Wages**
16 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001, § 3**
17 **And All Other Applicable Wages Orders And Sections]**
18 ***(On Behalf of Plaintiff and the Class against all Defendants)***

19 28. Plaintiff incorporates herein by specific reference, as though fully set forth, the
20 allegations in paragraphs 1 through 27.

21 29. Pursuant to California Labor Code §§ 510, 1194, and § 3 of all applicable wage
22 orders, Defendant is required to compensate Plaintiff and Class members for all overtime, which is
23 calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of
24 eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the
25 seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in
26 any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of
27 work in any workweek.

28 30. During the statute of limitations period, Defendant failed to compensate Plaintiff and
Class members for all overtime hours worked as required under the foregoing provisions of the

1 California Labor Code and IWC Wage Orders by, among other methods, failing to pay overtime at
2 one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§
3 510, 1194 and IWC Wage Order No. 5-2001, § 3 and all other applicable wage orders, requiring,
4 permitting or suffering Plaintiff and Class members to work off-the-clock, and to work through meal
5 and rest breaks, but not compensating them for this time, illegally and inaccurately recording time in
6 which Plaintiff and Class members worked, failing to pay the regular overtime rate of pay based upon
7 Plaintiff and Class members earned non-discretionary bonuses, and other methods to be discovered.

8 31. In violation of California law, Defendant has knowingly and willfully refused to
9 perform its obligations to compensate Plaintiff and Class members for all wages earned and all hours
10 worked at the legally required rates of pay. As a proximate result, Plaintiff and Class members have
11 suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages,
12 lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendant to fully
13 perform its obligations under state law, all to their respective damages in amounts according to proof
14 at time of trial, and within the jurisdiction of this Court.

15 32. Defendant's conduct described herein violates California Labor Code §§ 510, 1194,
16 1198 and § 3 of all applicable IWC Wage Orders. Therefore, pursuant to California Labor Code §§
17 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code
18 and IWC Wage Orders, Plaintiff and Class members are entitled to recover the unpaid balance of
19 wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of
20 suit.

21 **FOURTH CAUSE OF ACTION**

22 **Failure to Pay Minimum Wages**

23 **[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 5-2001,
24 And § 4 And All Other Applicable Wages Orders And Sections]
25 *(On Behalf of Plaintiff and the Class against all Defendants)***

26 33. Plaintiff incorporates herein by specific reference, as though fully set forth, the
27 allegations in paragraphs 1 through 32.

28 34. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of IWC Wage Order No. 5-2001
and all applicable wage orders and sections, payment to an employee of less than the applicable

1 minimum wage for all hours worked in a payroll period is unlawful.

2 35. During the statute of limitations period, the hourly rates for Plaintiff and Class
3 members were at or slightly above minimum wage. Based on this common practice, Defendant failed
4 to actually pay Plaintiff and Class members minimum wages for all hours worked by requiring,
5 permitting or suffering Plaintiff and Class members to work off-the-clock, such as requiring them to
6 work through meal and rest breaks, but not compensating them for this time as Plaintiff and the Class
7 members were required to write down the time of their work shifts on their time cards which did not
8 accurately reflect their actual hours worked, and failing to include this time in all hours worked,
9 unlawfully rounding their time, failing to pay the accurate rate of pay based upon earned non-
10 discretionary bonus payments and other methods to be discovered.

11 36. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4
12 of IWC Wage Order No. 5, and any other applicable IWC Wage Order. As a proximate result of the
13 aforementioned violations, Plaintiff and Class members have been damaged in an amount according
14 to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1,
15 and any other applicable wage orders and law, Plaintiff and Class members are entitled to recover the
16 unpaid balance of wages owed to them by Defendant, plus interest, penalties, attorneys' fees,
17 expenses, and costs of suit.

18 **FIFTH CAUSE OF ACTION**

19 **Failure to Pay Timely Wages**

20 **[Cal. Lab. Code §§ 204, 210]**

21 ***(On Behalf of Plaintiff and the Class against all Defendants)***

22 37. Plaintiff incorporates herein by specific reference, as though fully set forth, the
23 allegations in paragraphs 1 through 36.

24 38. California Labor Code § 204 provides that all wages earned by any person in any
25 employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages
26 due upon termination of an employee, are due and payable between the 16th and 26th day of the
27 month during which the labor was performed. California Labor Code § 204 further provides that all
28 wages earned by any person in any employment between the 16th and the last day, inclusive, of any
calendar month, other than those wages due upon termination of an employee, are due and payable

1 between the 1st and the 10th day of the following month. California Labor Code § 204 further
2 provides that all wages eared for labor in excess of the normal work period shall be paid no later than
3 the payday for the next regular payroll period.

4 39. During the statute of limitations period, Defendant, among other things, willfully
5 failed to pay Plaintiff and Class members all wages earned and due to them, including but not limited
6 to, meal and rest break premiums, overtime and minimum wages, and payment for work performed
7 off-the-clock, within any time period permissible under Labor Code § 204.

8 40. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
9 Class members are entitled to all available statutory penalties, including but not limited to, civil
10 penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and other
11 applicable provisions under the California Labor Code and IWC Wage Orders, and an award of costs,
12 expenses, and reasonable attorneys' fees.

13 **SIXTH CAUSE OF ACTION**
14 **Failure to Pay All Wages Due to Discharged and Quitting Employees**
15 **[Cal. Lab. Code §§ 201-203]**
(On Behalf of Plaintiff and the Class against all Defendants)

16 41. Plaintiff incorporates herein by specific reference, as though fully set forth, the
17 allegations in paragraphs 1 through 40.

18 42. Pursuant to California Labor Code §§ 201, 202, and 203, Defendant is required to pay
19 all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
20 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at
21 the time of discharge are due and payable immediately.

22 43. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay
23 all accrued wages due to an employee no later than seventy-two (72) hours after the employee quits
24 his or her employment, unless the employee provided seventy-two (72) hours previous notice of his
25 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
26 quitting.

27 44. As a result, Plaintiff and Class members are entitled to all available statutory penalties,
28 including the waiting time penalties provided in California Labor Code § 203, together with interest

1 thereon, as well as other available remedies.

2 **SEVENTH CAUSE OF ACTION**
3 **Failure to Maintain Required Records**
4 **[Cal. Lab. Code §§ 226, 1174; IWC Wage Order No. 5-2001, § 6 And**
5 **All Applicable Wage Orders And Sections]**
6 ***(On Behalf of Plaintiff and the Class against all Defendants)***

7 45. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in paragraphs 1 through 44.

9 46. During the statute of limitations period, as part of Defendant's illegal payroll policies
10 and practices to deprive Plaintiff and Class members of all wages earned and due, Defendant
11 knowingly and intentionally failed to maintain records as required under California Labor Code §§
12 226, 1174, and §§ 6 and 7 of the applicable IWC Wage Orders, including but not limited to, the
13 following records: total daily hours worked by each non-exempt employee; applicable rates of pay;
14 all deductions; meal periods; time records showing when each non-exempt employee begins and ends
15 each workday; accurate itemized wage statements, and other missing records yet to be discovered.

16 47. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
17 Class members have been damaged in an amount according to proof at trial, and are entitled to all
18 wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to
19 all available penalties, including but not limited to, penalties pursuant to California Labor Code §§
20 226(a) and (e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees,
21 including but not limited to those provided in California Labor Code § 226(e), as well as other
22 available remedies.

23 **EIGHTH CAUSE OF ACTION**
24 **Failure to Furnish Accurate Itemized Wage Statements**
25 **[Cal. Lab. Code §§ 226; IWC Wage Order No. 5-2001, § 6 And**
26 **All Applicable Wage Orders And Sections]**
27 ***(On Behalf of Plaintiff and the Class against all Defendants)***

28 48. Plaintiff incorporates herein by specific reference, as though fully set forth, the
allegations in paragraphs 1 through 47.

49. During the statute of limitations period, Defendant routinely failed to provide Plaintiff
and Class members with timely, accurate, and itemized wage statements in writing showing each

1 employee's gross wages earned, total hours worked, overtime hours worked and paid, all deductions
2 made, net wages earned, and all applicable and accurate hourly rates in effect during each pay period
3 and the corresponding number of hours worked at each hourly rate, the full legal name and address of
4 the employer on the wage statements; all in violation of California Labor Code § 226 and §§ 6 and 7
5 of the applicable IWC Wage Orders.

6 50. Defendant's pay stubs violate Labor Code § 226 because Defendant routinely and
7 intentionally fail to provide Plaintiff and Class members with proper meal and rest breaks but fail to
8 include in their wage statements one (1) additional hour of compensation at their regular rates of pay
9 for each non-compliant meal or rest break, fail to include all regular and overtime hours worked off
10 the clock by Plaintiff and the other Class members, in addition to failing to provide regular and
11 overtime wages, rendering the wage statements inaccurate; and other violations yet to be discovered.

12 51. Defendant knowingly and intentionally failed to provide Plaintiff and Class members
13 with timely, accurate, and itemized wage statements in accordance with California Labor Code §
14 226(a) so as to prevent Plaintiff and Class members from being able to determine whether they were
15 being paid for, among other things, all of the hours they worked and at the proper rates of pay.

16 52. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
17 Class members have been damaged in an amount according to proof at trial, and seek all wages
18 earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all
19 available penalties, including but not limited to penalties pursuant to California Labor Code §§
20 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including
21 but not limited to those provided in California Labor Code § 226(e), as well as other available
22 remedies.

23 **NINTH CAUSE OF ACTION**
24 **Failure To Provide And Properly Calculate Mandatory California**
Sick Leave [Cal. Labor Code §246]
25 ***(On Behalf of Plaintiff and the Class against all Defendants)***

26 53. Plaintiff incorporates herein by specific reference, as though fully set forth, the
27 allegations in paragraphs 1 through 52.

28 54. Pursuant to California Labor Code §246, any employee who works in the State of

1 California and who works more than “30 or more days within a year ... is entitled to be paid sick
2 days” Labor Code §246(l) provides an employer shall calculate sick pay under the following
3 methods: (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the
4 regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the
5 employee actually works overtime in that workweek.” Alternatively, pursuant to Labor Code
6 §246(l)(2), states, “Paid sick time for nonexempt employees shall be calculated by dividing the
7 employee’s total wages, including overtime premium pay, by the employee’s total hours worked in
8 the full pay periods of the prior 90 days of employment.”

9 55. During the applicable statute of limitations period, Defendant failed to comply with
10 Labor Code Section §246 by not providing Plaintiff and the other Class members with sick pay
11 pursuant to the two (2) methods as set forth in Labor Code §246(l)(1) or (2). Additionally, Plaintiff is
12 informed and believes, during the applicable statute of limitations period, Defendant violated
13 California Labor Code § 246(l)(1) by failing to pay sick leave to the Class Member employees at
14 their regular rate of pay taking into consideration non-discretionary bonus payments and other
15 methods to be discovered. Alternatively, Plaintiff is informed and believes, during the applicable
16 statute of limitations period, Defendant violated Labor Code § 246(l)(2) by failing to divide the Class
17 members total wages by their total hours worked in the “full pay periods of the prior 90 days of
18 employment”.

19 **TENTH CAUSE OF ACTION**
20 **Failure to Indemnify Employees for Necessary Expenditures**
21 **[Cal. Lab. Code § 2802]**
(On Behalf of Plaintiff and the Class Against all Defendants)

22 56. Plaintiff incorporates herein by specific reference, as though fully set forth, the
23 allegations in paragraphs 1 through 55.

24 57. Cal. Lab. Code § 2802(a) requires an employer to indemnify an employee for all
25 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
26 his or her duties, or of his or her obedience to the directions of the employer.

27 58. During the Class period, and in violation of Cal. Lab. Code § 2802, Defendant
28 failed to indemnify Plaintiff and Class members for all business expenses and/or losses incurred in

1 direct consequence of the discharge of their duties, including but not limited to, expenses for their
2 uniforms and uniform maintenance. Plaintiff and Class members were required to use their personal
3 cellular phones for work related purposes and purchase their own personal protective equipment
4 (“PPE’s) and other safety equipment when mask were required to be worn indoors during the
5 COVID-19 pandemic, but Defendant did not reimburse them for these expenses.

6 59. As a proximate result of Defendant’s unlawful actions and omissions, Plaintiff and
7 Class members have been damaged in an amount according to proof at trial, and seek reimbursement
8 of all necessary expenditures, plus interest thereon pursuant to Cal. Lab. Code §2802(b).
9 Additionally, Plaintiff and Class members are entitled to all available statutory penalties and an
10 award of costs, expenses, and reasonable attorneys’ fees, including those provided in Cal. Lab. Code
11 § 2802(c), as well as other available remedies.

12 **ELEVENTH CAUSE OF ACTION**
13 **Unfair and Unlawful Business Practices**
14 **[Cal. Bus. & Prof. Code § 17200 *et seq.*]**
 (On Behalf of Plaintiff and the Class against all Defendants)

15 60. Plaintiff incorporates herein by specific reference, as though fully set forth, the
16 allegations in paragraphs 1 through 59.

17 61. Each and every one of Defendant’s acts and omissions in violation of the California
18 Labor Code and/or the applicable IWC Wage Orders as alleged herein, including but not limited to,
19 Defendant’s failure to provide required meal and rest breaks, unlawful rounding and requiring off-
20 the-clock work, failure to pay all wages due to discharged or quitting employees or to pay timely
21 wages, failure pay the accurate rate of pay, and failure to furnish accurate itemized wage statements
22 or to maintain required records, constitute an unfair and unlawful business practice under California
23 Business and Professions Code § 17200 *et seq.*

24 62. Defendant’s violations of California wage and hour laws constitute a business practice
25 because the aforementioned acts and omissions were done repeatedly over a significant period of
26 time, and in a systematic manner, to the detriment of Plaintiff and Class members.

27 63. Defendant has avoided payment of wages, the provision of meal and rest breaks, and
28 other benefits as required by the California Labor Code, the California Code of Regulations, and the

1 applicable IWC Wage Orders. Further, Defendant has failed to record, report, and pay the correct
2 sums of assessment to the state authorities under the California Labor Code and other applicable
3 regulations.

4 64. As a result of these unfair and unlawful business practices, Defendant has reaped
5 unfair and illegal profits during the Class period at the expense of Plaintiff and Class members, and
6 members of the public. Defendant should be made to disgorge their ill-gotten gains and to restore
7 them to Plaintiff and Class members.

8 65. Defendant's unfair and unlawful business practices entitle Plaintiff and Class members
9 to seek preliminary and permanent injunctive relief, including but not limited to orders that
10 Defendant accounts for, disgorge, and restore to Plaintiff and Class members the wages and other
11 compensation unlawfully withheld from them. Plaintiff and Class members are entitled to restitution
12 of all monies to be disgorged from Defendant in an amount according to proof at the time of trial.

13 **TWELFTH CAUSE OF ACTION**
14 **Representative Action for Civil Penalties**
15 **[Cal. Lab. Code §§ 2698- 2699.5]**

16 ***(On Behalf of Plaintiff and Other Aggrieved Employees against all Defendants)***

17 66. Plaintiff incorporates herein by specific reference as though fully set forth the
18 allegations in paragraphs 1 through 65, with exception of the allegations in Paragraphs 14 through 16
(A-D).

19 67. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code §
20 2699(c), and is a proper representative to bring a civil action on behalf of herself, and other non-
21 exempt employees of Defendant who are California citizens, pursuant to the procedures specified in
22 California Labor Code § 2699.3, because Plaintiff was employed by Defendant and the alleged
23 violations of the California Labor Code were committed against Plaintiff.

24 68. A plaintiff has standing to represent all aggrieved employees for all of his asserted
25 violations of the California Labor Code under PAGA. See *Huff v. Securitas Security Services USA, Inc.*
26 (2018) 23 Cal.App.5th 745, 757.

27 69. Plaintiff seeks to recover civil penalties through a representative action permitted by
28 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class

1 certification is not required.

2 70. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor
3 Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to penalties
4 under California Labor Code §§ 2699, 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1775, 1199, and all
5 applicable IWC wage order penalties, from Defendant in a representative action for the violations set
6 forth above, including but not limited to violations of California Labor Code §§ 201, 202, 203, 226,
7 226.7, 246, 248, 248.1, 248.2, 351, 510, 512, 1174, 1194, 1197, 1198 and 1774. Moreover, Defendant
8 failed to provide supplemental COVID-19 sick leave pursuant to Labor Code §248.2, failure to provide
9 suitable resting facilities in violation of IWC Wage Order No. 5-2001, §13, and failure to provide
10 suitable seating in violation of IWC Wage Order No. 5-2001, §14. Plaintiff is also entitled to an award
11 of reasonable attorneys’ fees and costs pursuant to California Labor Code § 2699(g)(1).

12 71. Pursuant to California Labor Code §§ 2699.3, on March 14, 2023, Plaintiff gave
13 written notice by certified mail to the California Labor and Workforce Development Agency
14 (“LWDA”) and Defendant of the specific provisions of the California Labor Code and IWC Wage
15 Orders alleged to have been violated, including the facts and theories to support the alleged
16 violations. Within sixty-five (65) calendar of the postmark date of Plaintiff’s notice letter, the LWDA
17 did not provide notice to Plaintiff that it intends to investigate the alleged violations. Therefore,
18 Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to
19 commence a representative action under PAGA.

20 72. California Labor Code § 2699(f) provides that for all California Labor Code violations
21 for which a civil penalty is not specifically provided, the following civil penalties are established: one
22 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
23 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

24 73. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f)
25 for Defendant’s violations of California Labor Code provisions for which a civil penalty is not
26 specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 204,
27 226.7, 246, 248.1, 248.2, 1197, 1024.5, and for the violations of the applicable IWC Wage Order
28 alleged above.

74. All civil penalties sought and recovered under this action will be allocated as follows: seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and aggrieved employees.

75. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other persons similarly situated, respectfully prays for relief against Defendant and DOES 1 through 50, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to Plaintiff and Class members, as well as disgorged profits from the unfair and unlawful business practices of Defendant;
3. For meal and rest break compensation pursuant to California Labor Code § 226.7 and IWC Wage Order No. 5-2001 and all applicable IWC Wage Orders and pertinent sections;
4. For liquidated damages pursuant to California Labor Code § 1194.2;
5. For preliminary and permanent injunctive relief enjoining Defendant from violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from engaging in the unlawful business practices complained of herein;
6. For civil penalties under California Labor Code § 2699(f);
7. For waiting time penalties pursuant to California Labor Code § 203;
8. For statutory penalties according to proof, including but not limited to, all penalties authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 558, 354, 1174.5, 1775, 1197.1 and 2699;
9. An award of actual, statutory, and/or punitive damages to Plaintiff and the Class pursuant to California Civil Code §§ 1785.31 and 1786.50, in an amount subject to proof at trial;
10. For interest on the unpaid wages at 10 percent per annum pursuant to California Labor Code §§ 218.6, 1194, 2802 and California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;

1 11. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5,
2 226, 1194, 2802, 2699 and California Code of Civil Procedure § 1021.5, California Civil Code §
3 1786.50(a)(2), California Civil Code § 1785.31(a), and/or any other applicable provisions providing
4 for attorneys' fees and costs;

5 12. For declaratory relief;

6 13. For an order requiring and certifying the First through Eleventh Causes of Action as a
7 class action;

8 14. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
9 Class counsel; and

10 15. For such further relief that the Court may deem just and proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial
13 with respect to all issues triable of right by jury.

14 DATED: May 22, 2023

THE LAW OFFICE OF SCOTT E. WHEELER

15 

16 By: _____
17 SCOTT ERNEST WHEELER
18 JUSTIN A. WHEELER

19 *Attorney for Plaintiff and all others similarly situated*
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