

Alan Harris (SBN 146079)
David Garrett (SBN 160274)
HARRIS & RUBLE
655 North Central Avenue, 17th Floor
Glendale, California 91203
Telephone: 323.962.3777
Facsimile: 323.962.3004

Electronically FILED by
Superior Court of California,
County of Los Angeles
5/17/2023 11:59 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By D. Jackson Aubry, Deputy Clerk

Attorneys for Plaintiffs
Aprel Knight
Herman Hawkins
Michael Bradley
Maiya Bradford
Amani Jackson

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MAIYA BRADFORD; APREL
KNIGHT; MICHAEL BRADLEY;
HERMAN HAWKINS; and AMANI
JACKSON, individually, and on
behalf all others similarly situated,

Plaintiff,

v.

CRUNCH, LLC, a Delaware limited
liability company; CASEY
CALLANGAN, an individual;
JONATHAN MOSOFF, an
individual; and Does 1 to 10,
inclusive,

Defendants.

Case No. 23STCV11163

CLASS ACTION COMPLAINT

1. Failure to Pay Overtime
2. Failure to Pay Minimum Wage
3. Failure to Provide Meal Periods
4. Failure to Provide Rest Periods
5. Improper Wage Statements
6. Waiting Time Penalties
7. Failure to Pay Business Expenses
8. Improper Deductions from Wages
9. Unfair Competition
10. PAGA, Labor Code Section 2698
11. Failure to Maintain Records
12. Failure to Provide Records
13. Retaliation, Gov. Code §12940(h)
14. Hostile Work Environment
15. Failure to Take Steps to Prevent Discrimination

Demand for Jury Trial

1 Plaintiffs Maiya Bradford (“Bradford”), Michael Bradley (“Bradley”), Herman
2 Hawkins (“Hawkins”); Amani Jackson (“Jackson”) and April Knight (“Knight”)
3 (hereinafter, “Plaintiff(s)”), on behalf of each as an individual and all other similarly
4 situated, by and through their undersigned attorneys, alleges as follows:

5 **INTRODUCTION:**

6 1. Crunch, LLC (“CRUNCH”) owns and operates a series of gyms in California,
7 including one in West Hollywood, California at Sunset and Crescent Heights.¹ CRUNCH
8 offers private training to its gym members.

9 2. Plaintiffs are informed and believed and thereon allege that CRUNCH has
10 employed a workforce of over 150 trainers, front desk staff, custodial staff, accounting staff
11 and other non-exempt employees during the Class Period who perform hourly, non-exempt
12 manual duties.

13 3. CRUNCH has company-wide policies and procedures that control virtually
14 every facet of the Class Members jobs, including the uniforms they wear, the materials they
15 use, and the jobs they perform, including when and where they perform them.

16 4. Plaintiffs were employed as non-exempt employees for CRUNCH. Each is
17 bringing this suit to recover damages against CRUNCH due to their illegal employment
18 practices as more fully described herein.

19 5. Each Plaintiff is bringing this suit on behalf of himself/herself and a class of
20 CRUNCH employees in California during the period four years prior to the filing of this
21 Complaint (plus the time period extended by Emergency Rule 9 of the Judicial Council of
22 California) and ending on such date as may be determined by the Court (the “Class
23 Period”).

24 6. Emergency Rule 9 as promulgated by the Judicial Council of California
25 and amended May 29, 2020, provides: “Notwithstanding any other law, the statutes of
26 limitations and repose for civil causes of action that exceed 180 days are tolled from
27

28

¹ <https://www.crunch.com/>

1 April 6, 2020, until October 1, 2020.” The Advisory Committee Comment notes that:
2 “Emergency rule 9 is intended to apply broadly to toll any statute of limitations on the
3 filing of a pleading in court asserting a civil cause of action. The term “civil causes of
4 action” includes special proceedings. (See Code Civ. Proc., §§ 312, 363 [“action,” as
5 used in title 2 of the code (Of the Time of Commencing Civil Actions), is construed
6 “as including a special proceeding of a civil nature”) The rule also applies to
7 statutes of limitations on filing of causes of action in court found in codes other than
8 the Code of Civil Procedure.”

9 JURISDICTION AND VENUE

10 7. This is a civil action seeking unpaid wages, continuing wages, damages, and
11 attorneys’ fees and costs, including such reasonable reimbursement of fees and costs as
12 may be required by Section 218.5 of the California Labor Code. CRUNCH has a policy,
13 practice and history of labor law violations including not providing meal and rest breaks
14 to its employees. Neither, does CRUNCH pay proper meal premiums to its employees.
15 Class Members are forced to work off the clock. Employees do not receive rest break
16 penalties as required. The wage statements do not contain the legally required
17 information. Employees are not paid the proper local and state minimum wage.

18 8. Venue as Defendants is proper in this judicial district, pursuant to California
19 Code of Civil Procedure section 395. Defendants maintain an office, transact business,
20 have an agent or are otherwise found in the County of Los Angeles and are within the
21 jurisdiction of this court for the purpose of service of process. The unlawful acts alleged
22 herein had a direct effect on and were committed within the State of California.

23 9. This Court has jurisdiction over Defendants because, upon information and
24 belief, each Defendant is either a resident of California, has minimum contacts in
25 California, or otherwise intentionally avails itself of the protections of California so as to
26 render California’s exercise of jurisdiction over Defendants consistent with traditional
27 notions of fair play and substantial justice.
28

PARTIES

10. Each of Plaintiff is an individual. At all times relevant hereto, each Plaintiff worked in Los Angeles County. Each Plaintiff was employed by CRUNCH during the Class Period. Plaintiffs have complied with all required administrative requirements prior to the filing of this case, including the filing of a PAGA letter and timely application for Right to Sue letters.

11. Plaintiff and informed and believes, and thereon alleges that Defendant CRUNCH is a Delaware corporation and at all times relevant hereto, CRUNCH conducted substantial and regular business in Los Angeles County, California. CRUNCH's business is owning and operating gyms throughout California and the United States. This lawsuit covers only the gyms operated by CRUNCH in California.

12. Plaintiff and informed and believes, and thereon alleges that Defendant Jonathan Mosoff ("Mosoff") is an individual who is a California resident who serves as fitness manager for CRUNCH in West Hollywood. Plaintiff and informed and believes, and thereon alleges that Defendant Casey Callangan ("Callangan") is an individual who is a California resident who serves as general manager for CRUNCH in West Hollywood. Each of Mosoff and Callangan was an "other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission." Cal. Lab. Code § 558.

13. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Each Plaintiff is informed and believe, and based thereon allege, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated

hereinafter as DOES when such identities become known.

14. Each Plaintiff is informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

15. Each Plaintiff was a non-exempt employee within the meaning of the California Labor Code and the implementing rules and regulations of the IWC Wage Orders, and, in particular, Industrial Welfare Commission Wage Order 2-2001 and California Labor Code §515. Employee's primary job duties – including the tasks described in the preceding paragraph – involved tasks that were performed pursuant to an established protocol. The job duties involved a variety of physical demands, including standing, bending, lifting, training, answering the phone, cleaning and moving equipment. This type of work is non-exempt work.

16. In order to meet the requirements of their job duties, employees typically work more than 40 hours per week and more than eight hours per day, and sometimes have to work seven days per week at the direction of CRUNCH . Employees are also not provided meal and rest periods as required by the California Labor Code. Employees are not paid the proper minimum wage. For example, during the Class Period, CRUNCH consistently paid Class Members less than the local minimum wage.

17. CRUNCH pays commission to the employees based on training session sales at the customers' premises. Contrary to federal and California law, including the provisions of Section 510 of the California Labor Code, CRUNCH does not keep proper time records and does not pay proper overtime.

1 18. Plaintiffs are informed and believed and thereon allege that CRUNCH
2 implemented a system to pay its employees an hourly rate plus bonuses. However,
3 CRUNCH often failed to properly pay bonuses and CRUNCH failed to utilize the bonuses
4 to paid to employees in order to compute overtime. Defendant paid commissions as
5 bonuses i.e. “money promised to an employee in addition to the monthly salary, hourly
6 wage, commission or piece rate usually due as compensation”. Division of Labor Standards
7 Enforcement, Enforcement Policies and Interpretations Manual § 2.5.5. Bonuses are in
8 addition to any other remuneration rate and may be predicated on performance over and
9 above that which is paid for hours worked, pieces made, or sales completed. Id. A bonus
10 may be in the form of a gratuity where there is no promise for their payment, for example, a
11 holiday bonus at the end of the year. Additionally, a bonus may be a contractually required
12 payment where a promise is made that a bonus will be paid in return for a specific result,
13 such as exceeding a minimum sales figure or piece quota, or as an inducement to remain in
14 the employ of the employer for a certain period of time.² Defendant failed to utilize the
15 commissions in computation of overtime for Aggrieved Employees. Further, Defendant
16 failed to pay the hourly wages due when commission payments exceeded the hourly wages.

17 19. When Plaintiffs became aware of the unpaid wages and questioned
18 representatives of CRUNCH regarding the wages that were withheld, CRUNCH refused
19 to pay the outstanding wages.

20 20. Plaintiffs were discriminated against by CRUNCH and its managers in
21 violation of the Fair Employment and Housing Act (“FEHA”), Gov. Code §12940 et seq.,
22 by creating a hostile work environment, retaliating against Plaintiffs and discriminating
23 against Plaintiffs. For example, a certain male manager of CRUNCH has engaged in a
24

25 ² The word has been defined as: “An addition to salary or wages normally paid for extraordinary
26 work. An inducement to employees to procure efficient and faithful service.” Duffy Bros. v. Bing &
27 Bing, 217 App.Div.10, 215 N.Y.S. 755, 758 (1939). Bonuses may be in the form of a gratuity where
28 there is no promise for their payment; or they may be a contractually required payment where a promise
is made that a bonus will be paid in return for a specific result (i.e., exceeding a minimum sales or piece
quota). (See detailed discussion of Bonuses at Section 35 of this Manual). Division of Labor Standards
Enforcement, Enforcement Policies and Interpretations Manual § 2.5.5. Sums earned as bonuses
are wages under the definition found in California Labor Code §200.

1 romantic relationship with female employee(s) under his supervision in violation of
2 company policy.³ The same male manager will provide his current romantic partner with
3 preferential treatment, discriminating against other employees. Another male manager
4 abuses employees, along with bombarding female trainers with constant text messages
5 during non-working hours. The same male manager will discipline trainers when they
6 don't respond fast enough to his text messages, even going so far as to harass an employee
7 when she was at a funeral. When Class Members complain about the discrimination and
8 harassment, their complaints are ignored, and they suffer retaliation.

9 21. In performing their job duties, CRUNCH required employees to use
10 clothing, safety equipment and other tools. Employees had to purchase and maintain their
11 safety equipment and tools with their own money, and they were not reimbursed by
12 CRUNCH.

13 22. CRUNCH has not provided proper expense reimbursement such as
14 equipment and cell phone reimbursement.

15 23. CRUNCH failed to comply with the California Labor Code and Wage Order
16 2-2001(6) by failing to maintain time records showing when Plaintiffs began and ended
17 each work and meal break period, and total daily hours worked. Defendants also failed to
18 provide Plaintiffs with itemized wage statements that reflect all deductions from payment
19 of wages.

20 24. At all relevant times mentioned herein, section 201 of the California Labor
21 Code provided that "wages earned and unpaid at the time of discharge are due and payable
22 immediately." Cal. Lab. Code § 201. Similarly, section 202 of the California Labor Code
23 provided:

24 If an employee not having a written contract for a definite period quits his or
25 him employment, his or him wages shall become due and payable not later
26 than 72 hours thereafter, unless the employee has given 72 hours previous
27 notice of his or him intention to quit, in which case the employee is entitled
28 to his or him wages at the time of quitting.

³ Any other employees engaged in an alleged relationship in violation of company policy is threatened with discipline by the same male manager.

1 Id. § 202(a).

2 25. Defendants did not compensate Plaintiff and the Class Members as required
3 by sections 201 and/or 202 of the California Labor Code, as the “final” paycheck
4 Plaintiffs received did not fully compensate Plaintiffs, as Defendants failed to pay
5 overtime to Plaintiffs for hours worked in excess of eight per day.

6 26. Furthermore, at all relevant times mentioned herein, section 203 of the
7 California Labor Code provided:

8 If an employer willfully fails to pay, without abatement or reduction, in
9 accordance with Sections 201, 201.5, 202 and 202.5, any wages of an
10 employee who is discharged or who quits, the wages of the employee shall
11 continue as a penalty from the due date thereof at the same rate until paid or
12 until action therefor is commenced; but the wages shall not continue for more
13 than 30 days.

14 Id. § 203.

15 27. Plaintiffs contend that Defendants failure to pay him and the Class Members
16 within the time provided by sections 201 and/or 202 of the California Labor Code has
17 been and is “willful” within the meaning of section 203 of the California Labor Code and
18 that, accordingly, Plaintiffs are entitled to the “continuing wages” provided for by section
19 203.

20 28. Defendants also violated section 204 of the California Labor Code by failing to
21 regularly pay all wages earned to those of its workers who had not quit or been fired.

22 29. At all relevant times mentioned herein, section 1198 of the California Labor
23 Code provided:

24 The maximum hours of work and the standard conditions of labor fixed by
25 the [Industrial Welfare Commission] shall be the maximum hours of work
26 and the standard conditions of labor for employees. The employment of any
27 employee for longer hours than those fixed by [an] order or under conditions
28 of labor prohibited by [an] order is unlawful.

Cal. Lab. Code § 1198.

1 30. At all relevant times mentioned herein, Wage Order Number 16 (as
2 periodically amended) applied to Plaintiff and the Class Members.

3 31. Wage Order Number 2 requires a one-hour wage premium for each day that
4 an employee is not provided with a mandated ten-minute rest period per four-hour work
5 period. Additionally, Wage Order Number 2 requires a one-hour wage premium for each
6 day that an employee is not provided with a mandated thirty-minute meal period for any
7 shift that is longer than five hours. Finally, Wage Order Number 16 requires that those
8 who are employed more than eight hours in any workday or more than forty hours in any
9 workweek receive overtime compensation.

10 32. The right to rest periods and meal periods has been codified in sections 226.7
11 and 512 of the California Labor Code. At all relevant times mentioned herein, section 512
12 provided:

13 An employer may not employ an employee for a work period of more than five
14 hours per day without providing the employee with a meal period of not less than 30
15 minutes, except that if the total work period per day of the employee is no more than six
16 hours, the meal period may be waived by mutual consent of both the employer and
17 employee. An employer may not employ an employee for a work period of more than 10
18 hours per day without providing the employee with a second meal period of not less than
19 30 minutes, except that if the total hours worked is no more than 12 hours, the second
20 meal period may be waived by mutual consent of the employer and the employee only if
21 the first meal period was not waived.

22 Cal. Lab. Code § 512(a).

23 33. At all relevant times mentioned herein, section 226.7 provided:

24 If an employer fails to provide an employee a meal period or rest period in
25 accordance with an applicable order of the Industrial Welfare Commission,
26 the employer shall pay the employee one additional hour of pay at the
27 employee's regular rate of compensation for each work day that the meal or
rest period is not provided.

28 Cal. Lab. Code § 226.7(b).

1 34. During their employment with Defendants, Plaintiff and the Class Members
2 were not provided ten-minute rest breaks and thirty-minute meal breaks. Neither Plaintiff
3 nor the Class Members were provided the required rest and meal breaks.

4 35. Compensation for missed rest and meal breaks constitutes wages within the
5 meaning of section 201 of the California Labor Code.

6 36. At all relevant times herein, section 226 of the Labor Code provided:

7 (a) Every employer shall, semimonthly or at the time of each payment of
8 wages, furnish each of his or her employees, either as a detachable part of
9 the check, draft, or voucher paying the employee's wages, or separately when
10 wages are paid by personal check or cash, an itemized statement in writing
11 showing (1) gross wages earned, (2) total hours worked by the employee,
12 except for any employee whose compensation is solely based on a salary and
13 who is exempt from payment of overtime under subdivision (a) of Section
14 515 or any applicable order of the Industrial Welfare Commission, (3) the
15 number of piece-rate units earned and any applicable piece rate if the
16 employee is paid on a piece-rate basis, (4) all deductions, provided, that all
17 deductions made on written orders of the employee may be aggregated and
18 shown as one item, (5) net wages earned, (6) the inclusive dates of the period
19 for which the employee is paid, (7) the name of the employee
20 and his or her social security number, except that by January 1, 2008, only
21 the last four digits of his or her social security number or an employee
22 identification number other than a social security number may be shown on
23 the itemized statement, (8) the name and address of the legal entity that is the
24 employer, and (9) all applicable hourly rates in effect during the pay period
25 and the corresponding number of hours worked at each hourly rate by the
26 employee. The deductions made from payments of wages shall be recorded
27 in ink or other indelible form, properly dated, showing the month, day, and
28 year, and a copy of the statement or a record of the deductions shall be kept
on file by the employer for at least three years at the place of employment or
at a central location within the State of California.

....

(e) An employee suffering injury as a result of a knowing and intentional
failure by an employer to comply with subdivision (a) is entitled to recover
the greater of all actual damages or fifty dollars (\$50) for the initial pay
period in which a violation occurs and one hundred dollars (\$100) per
employee for each violation in a subsequent pay period, not exceeding an
aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
award of costs and reasonable attorney's fees.

....

(h) An employee may also bring an action for injunctive relief to ensure
compliance with this section, and is entitled to an award of costs and

reasonable attorney's fees.

Id. § 226.

37. Defendants employed Plaintiff and the Class Members but failed to provide them with the data required by section 226 of the California Labor Code.

38. At all relevant times mentioned herein, section 204(a) of the California Labor Code provided:

All wages, other than those mentioned in Section 201, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

Id. § 204(a).

39. At all relevant times mentioned herein, section 510 of the California Labor Code provided:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of at least one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work. The requirements of this section do not apply to the payment of overtime compensation to an employee working pursuant to any of the following: (1) An alternative workweek schedule adopted pursuant to Section 511. (2) An alternative workweek schedule adopted pursuant to a collective bargaining agreement pursuant to Section 514.

Id. § 510(a).

40. In regard to the employment of Plaintiff and the Class, the provisions of

subparagraphs (1) and (2) of section 510 of the California Labor Code were inapplicable in that no alternative workweek schedule had been adopted pursuant to section 511 and Plaintiff's employment was not governed by any collective bargaining agreement. Similarly members of the Class were not members of any union nor was their work for CRUNCH governed by any collective bargaining agreement.

41. At all relevant times mentioned herein, section 1194 of the California Labor Code provided:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this . . . overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Id. § 1194. At all relevant times mentioned herein, section 1194.2 of the California Labor Code provided that, "[I]n any action under . . . Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon." Id. § 1194.2.

Section 1197.1 (a) of the California Labor Code provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Cal. Lab. Code § 1197.1.

42. IWC Wage Order 2, provides, in part:

2. DEFINITIONS

(D) —"Employ" means to engage, suffer, or permit to work.

(E) —"Employee" means any person employed by an employer.

(F) —"Employer" means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

...

3. HOURS AND DAYS OF WORK

(A) Daily Overtime- General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime as follows:

(a) Employees may be employed up to a maximum of 16 hours including meal periods in any one day from the time they are required and do report until dismissed, provided the employee is compensated for such overtime at not less than:

(i) For daily employees and weekly employees, excluding weekly employees guaranteed more than 40 hours a workweek and —on call employees, one and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any one workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(ii) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday, and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

...

(iv) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

...

4. MINIMUM WAGES

(A) Every employer shall pay to each employee wages not less than nine dollars (\$13.00) per hour for all hours worked, effective January 1, 2021. . . .

7. RECORDS

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Clocks shall be provided in all major work areas or within reasonable distance thereto insofar as practicable.

...

11. MEAL PERIODS

(A) No employer shall employ any person for a work period of more than six (6) hours without a meal period of not less than 30 minutes, nor more than one (1) hour. Subsequent meal period for all employees shall be called not later than six (6) hours after the termination of the preceding meal period.

(B) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an on-duty meal period and counted as time worked. An on-duty meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all

duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(C) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

(D) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

12. REST PERIODS

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

...

20. PENALTIES

(See Labor Code, Section 1199)

(A) In addition to any other civil 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 of:

(1) Initial Violation — \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.

(2) Subsequent Violations — \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

(3) The affected employee shall receive payment of all wages recovered.

IWC Wage Order 2.

43. At all relevant times mentioned herein, section 558 of the California Labor Code provided:

Any employer or other person acting on behalf of an employer who violates,

1 or causes to be violated, a section of this chapter or any provision regulating
2 hours and days of work in any order of the Industrial Welfare Commission
3 shall be subject to a civil penalty as follows: (1) For any initial violation,
4 fifty dollars (\$50) for each underpaid employee for each pay period for which
5 the employee was underpaid in addition to an amount sufficient to recover
6 underpaid wages. (2) For each subsequent violation, one hundred dollars
7 (\$100) for each underpaid employee for each pay period for which the
8 employee was underpaid in addition to an amount sufficient to recover
9 underpaid wages. (3) Wages recovered pursuant to this section shall be paid
10 to the affected employee.

11 Cal. Lab. Code § 558.

12 44. At all relevant times herein, California Labor Code section 2802 provided, in
13 relevant part:

14 (a) An employer shall indemnify his or her employee for all necessary
15 expenditures or losses incurred by the employee in direct consequence of the
16 discharge of his or duties

17 (b) All awards made by a court . . . for reimbursement of necessary
18 expenditures under this section shall carry interest at the same rate as
19 judgments in civil actions. Interest shall accrue from the date on which the
20 employee incurred the necessary expenditure or loss.

21 (c) For purposes of this section, the term “necessary expenditures or losses”
22 shall include all reasonable costs, including, but not limited to, attorney’s fees
23 incurred by the employee enforcing rights granted by this section.

24 Cal. Lab. Code § 2802.

25 45. At all relevant times herein, California Labor Code section 221 provided:

26 It shall be unlawful for any employer to collect or receive from an employee
27 any part of wages theretofore paid by said employer to said employee.

28 Cal. Lab. Code § 221. “[Labor Code] section 221 has long been held to prohibit
deductions from an employee’s wages for cash shortages, breakage, loss of equipment,
and other business losses that may result from the employee’s simple negligence.”

Hudgins v. Neiman Marcus Group, Inc., 34 Cal.App.4th 1109, 1118 (1995). An employer
can lawfully withhold amounts from an employee’s wages only: (1) when required or
empowered to do so by state or federal law, or (2) when a deduction is expressly
authorized in writing by the employee to cover insurance premiums, benefit plan
contributions or other deductions not amounting to a rebate on the employee’s wages, or
(3) when a deduction to cover health, welfare, or pension contributions is expressly

1 authorized by a wage or collective bargaining agreement. Labor Code Sections 221 and
2 224.

3 46. Notwithstanding the foregoing requirements of law, Plaintiff and the Class
4 Members were not timely paid the minimum wages and/or overtime to which they were
5 entitled. Plaintiffs and the Class Members were denied reimbursement, meal breaks, rest
6 breaks and payment of overtime wages although they often worked in excess of eight
7 hours per day and forty hours per week.

8 47. At all relevant times mentioned herein, section 226.8 of the Code provided in
9 pertinent part:

10 (a) It is unlawful for any person or employer to engage in any of the
11 following activities:

12 (1) Willful misclassification of an individual as an independent
13 contractor.

14 (2) Charging an individual who has been willfully misclassified as an
15 independent contractor a fee, or making any deductions from compensation,
16 for any purpose, including for goods, materials, space rental, services,
17 government licenses, repairs, equipment maintenance, or fines arising from
18 the individual's employment where any of the acts described in this paragraph
19 would have violated the law if the individual had not been misclassified.

20 (b) If the Labor and Workforce Development Agency or a court issues
21 a determination that a person or employer has engaged in any of the
22 enumerated violations of subdivision (a), the person or employer shall be
23 subject to a civil penalty of not less than five thousand dollars (\$5,000) and
24 not more than fifteen thousand dollars (\$15,000) for each violation, in
25 addition to any other penalties or fines permitted by law.

26 (c) If the Labor and Workforce Development Agency or a court issues
27 a determination that a person or employer has engaged in any of the
28

1 enumerated violations of subdivision (a) and the person or employer has
2 engaged in or is engaging in a pattern or practice of these violations, the
3 person or employer shall be subject to a civil penalty of not less than ten
4 thousand dollars (\$10,000) and not more than twenty-five thousand dollars
5 (\$25,000) for each violation, in addition to any other penalties or fines
6 permitted by law.

7 Code § 226.8. Defendants violated Code § 226.8 by willfully misclassifying many of its
8 employees, past and present, including Plaintiffs and Aggrieved Employees, as
9 independent contractors.

10 48. Defendants have engaged in a pattern and practice of misclassifying their
11 employees as independent contractors to avoid taxes, insurance and other costs that
12 accompany employee status. Section 2753 of the Code provides:

- 13 (a) A person who, for money or other valuable consideration, knowingly
14 advises an employer to treat an individual as an independent contractor to
15 avoid employee status for that individual shall be jointly and severally
16 liable with the employer if the individual is found not to be an
17 independent contractor.

18 Code § 2753.

19 49. All of the foregoing was intentional misconduct of Defendants that injured
20 Plaintiff and putative Class Members insofar as they were subjected to confusion and
21 deprived of information to which they were legally entitled.

22 **CLASS ACTION ALLEGATIONS**

23 50. Each Plaintiff brings this action on behalf of himself and all others similarly
24 situated pursuant to Code of Civil Procedure section 382. Each Plaintiff seeks to represent
25 a Class which is defined as: all non-exempt CRUNCH employees who provided services
26 in California during the period four years prior to the filing of this Complaint and ending on
27 such date as may be determined by the Court (the "Class Period").
28

1 51. The Class includes all persons who performed work for CRUNCH during the
2 Class Period, even if they were paid by commission, salary, piece rate, or any combination
3 thereof.

4 52. Each Plaintiff reserves the right under Rule 3.765 of the California Rules of
5 Court to amend or modify the class descriptions with greater specificity or to further divide
6 the class into subclasses.

7 53. This action is properly brought as a class action pursuant to Code of Civil
8 Procedure 382 because there is a well-defined community of interest in the litigation and
9 the proposed Class is easily ascertainable.

10 54. Numerosity: The potential members of the Class are so numerous that joinder
11 is impracticable. Plaintiff is informed and believes, and on that basis alleges, that during the
12 relevant time periods CRUNCH employed more than 100 employees. Nevertheless the
13 Class does not consist of so many individuals as to make this case unmanageable.

14 55. Commonality: There are questions of law and fact common to the Class that
15 predominate over any questions affecting only individual Class members. Common
16 questions include, but at not limited to: (a) whether CRUNCH provided proper wage
17 statements to its workers; (b) whether CRUNCH failed to pay Class members proper
18 overtime compensation; (c) whether CRUNCH failed to provide meal and rest periods (d)
19 whether CRUNCH reimbursed class members for expenses and mileage; (e) whether
20 CRUNCH provided accurate itemized wage statements; and (f) whether CRUNCH and/or
21 CRUNCH and/or other CRUNCH Contractors acted intentionally when classifying the
22 “installment managers” as independent contractors. Moreover, there are very few questions
23 of law or fact that are not common to the class.

24 56. Typicality: The claims of each Plaintiff are typical of the claims of the Class.

25 57. Adequacy of representation: Each Plaintiff will fairly and adequately represent
26 and protect the interests of the members of the Class . Counsel for Plaintiff are competent
27 and experienced in litigating employment class action cases.
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1 58. Superiority of Class Action: A class action is superior to other available means
2 for the fair and efficient adjudication of this controversy. The unlawful conduct described in
3 this complaint are based on CRUNCH 's company-wide policies regarding its treatment of
4 employees. Moreover, class action treatment will allow people similarly situated as Plaintiff
5 to litigate their claims in the manner that is most efficient and economical for all parties and
6 for the judicial system.

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8 **FIRST CAUSE OF ACTION**

9 (Failure To Pay Overtime California Labor Code §§ 510 and 1194; Wage Order 2)

10 (By Plaintiffs individually and on behalf of the Class against all Defendants)

11 59. Each Plaintiff realleges and incorporates herein by reference the allegations
12 contained in this Complaint as though fully set forth herein.

13 60. Defendants failed to pay each Plaintiff and the members of the Class for all
14 hours worked. Plaintiff and the members of the Class worked more than 40 hours per week
15 and/or more than 8 hours per day, but they did not receive compensation for this time at
16 their regularly hourly rate or did they receive overtime compensation.

17 61. As a result of CRUNCH 's failure to pay overtime, CRUNCH willfully
18 violated the provisions of Labor Code §§ 510 and 1194.

19 62. Each Plaintiff and the Class members have been deprived of wages in an
20 amount to be determined at trial, and are entitled to recovery of such amounts, plus interest
21 and penalties.

22 **SECOND CAUSE OF ACTION**

23 (Failure To Pay Minimum Wage)

24 (By Plaintiffs individually and on behalf of the Class against all Defendants)

25 63. Each Plaintiff realleges and incorporates herein by reference the allegations
26 contained in this Complaint as though fully set forth herein.

27 64. Under both state and federal law, employees may not agree to waive their
28 entitlement to the minimum wage. Moreover, contrary to the federal averaging method,

1 California workers must receive the minimum wage for each hour worked during the
2 payroll period.

3 65. Each Plaintiff is informed and believes, and thereon alleges, that Plaintiff and
4 members of the Class were not compensated in an amount greater than or equal to the
5 minimum wage while employed as employees by defendant.

6 66. As a proximate result of the aforementioned violations, each Plaintiff has been
7 damaged in an amount according to proof at time of trial.

8 **THIRD CAUSE OF ACTION**

9 (Failure To Provide Meal Periods Labor Code §226.7)

10 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

11 67. Each Plaintiff realleges and incorporates herein by reference the allegations
12 contained in this Complaint as though fully set forth herein.

13 68. Labor Code section 226.7 requires an employer to pay an additional hour of
14 compensation for each meal period the employer fails to provide a compliant meal period.
15 Employees are entitled to meal period of at least thirty 30 minutes per five hour work
16 period.

17 69. Plaintiffs and the Class members consistently worked more than 5 hour shifts,
18 but Plaintiffs and the Class members were not provided with additional compensation for
19 meal periods which were missed, truncated or tardy due to the failure of one or more of the
20 Defendants to provide a compliant meal period. Plaintiffs and the Class members
21 consistently worked more than 10 hour shifts, but Plaintiffs and the Class members were
22 not provided with additional compensation for second meal periods which were missed,
23 truncated or tardy due to the failure of one or more of the Defendants to provide a compliant
24 meal period.

25 70. Pursuant to Labor Code section 226.7, Plaintiff and the Class members are
26 entitled to damages in an amount equal to one hour of wages per missed meal break, in an
27 amount to be proven at trial.
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3 **FOURTH CAUSE OF ACTION**

4 (Failure To Provide Proper Rest Periods Labor Code §226.7)

5 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

6 71. Each Plaintiff realleges and incorporates herein by reference the allegations
7 contained in this Complaint as though fully set forth herein.

8 72. Labor Code Section 226.7 requires an employer to pay an additional hour of
9 compensation for each rest period the employer fails to provide a compliant rest period.
10 Employees are entitled to a rest period of ten minutes for every four hours worked or major
11 fraction thereof.

12 73. Each Plaintiff and the Class members consistently worked over four hour
13 shifts, but defendant failed to provide them with the requisite ten minute rest period.
14 Pursuant to Labor Code section 226.7, Plaintiff and the Class members are entitled to
15 damages in an amount equal to one hour of wages per missed rest period, in an amount to
16 be proven at trial.

17 **FIFTH CAUSE OF ACTION**

18 (Failure To Provide Itemized Wage Statements Labor Code § 226)

19 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

20 74. Each Plaintiff realleges and incorporates herein by reference the allegations
21 contained in this Complaint as though fully set forth herein.

22 75. Defendants knowingly and intentionally failed to comply with Labor Code
23 section 226(a), which requires Defendants to provide the name of the legal entity which is
24 the employer, itemize in wage statements all deductions from payment of wages and
25 accurately report total hours worked by each Plaintiff and members of the Class.

26 76. Wage Order 2-2001(7) requires Defendants to maintain time records showing,
27 among other things, when the employee begins and ends each work period and total daily
28 hours worked in an itemized wage statement. Time records must also show all deductions
from payment of wages and accurately report total hours worked by Plaintiff and members

1 of the Class, as well as the legal entity which is the employer. Further, under Naranjo, there
2 are derivative violations for failure to pay meal penalties.

3 77. An employee suffering injury as a result of a knowing and intentional failure
4 by an employer to comply with Labor Code section 226(a) is entitled to recover the greater
5 of all actual damages of \$50 for the initial pay period in which a violation occurs and \$100
6 per employee for each violation in a subsequent pay period, not exceeding an aggregate
7 penalty of \$4,000 dollars.

8 **SIXTH CAUSE OF ACTION**

9 (Waiting Time Penalties Labor Code § 203)

10 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

11 78. Each Plaintiff realleges and incorporates herein by reference the allegations
12 contained in this Complaint as though fully set forth herein.

13 79. Defendants' failure to pay wages, as alleged above, was willful in that
14 CRUNCH knew wages were due but failed to pay them. This entitles Plaintiff and
15 members of the Class who are no longer working as employees to penalties under Labor
16 Code § 203, which provides that an employee's wages shall continue as penalty until paid
17 for a period of up to 30 days from the time they were due. Under the Naranjo decision,
18 each Plaintiff is also entitled to continuing wages for missed meal and rest breaks.

19 80. Defendants failed to pay each Plaintiff and relevant members of the Class a
20 sum certain at the time of termination or within 72 hours of their resignation, and have
21 failed to pay those sums for 30 days thereafter. Pursuant to Labor Code section 203,
22 Plaintiff and relevant members of the Class are entitled to a penalty in the amount of their
23 respective daily wage multiplied by 30 days.

24 **SEVENTH CAUSE OF ACTION**

25 (Failure To Provide Indemnification of Business Expenses Labor Code §2802)

26 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

27 81. Each Plaintiff realleges and incorporates herein by reference the allegations
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1 contained in this Complaint as though fully set forth herein.

2 82. Labor Code section 2802 requires Defendants to reimburse each Plaintiff and
3 members of the Class for the expenses incurred by them in the performance of their job
4 duties, including but not limited to, expenses incurred by the use of their vehicles,
5 insurance, rental fees, mileage, cell phone usage, uniforms, equipment purchases, and
6 telephone usage resulting from the performance of their job duties.

7 83. Defendants violated Labor Code section 2802 because it required each
8 Plaintiff and members of the Class to incur and pay for such expenses in the discharge of
9 their employment duties and without reimbursement.

10 84. As a proximate result, Plaintiff and members of the Class have been
11 damaged in an amount according to proof at trial.

12 **EIGHTH CAUSE OF ACTION**

13 (Improper Deductions From Wages, Labor Code § 221)

14 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

15 85. Each Plaintiff realleges and incorporates herein by reference the allegations
16 contained in this Complaint as though fully set forth herein.

17 86. Labor Code section 221 prohibits Defendants from deducting from employee
18 wages paid toward employee compensation.

19 87. Each Plaintiff is informed and believed, and on that basis alleges, that
20 Defendants improperly deducted portions of Plaintiff's wages and the wages of members
21 of the Class, in violation of Labor Code section 221.

22 88. As a proximate result, Plaintiff and members of the Class have been
23 damaged in an amount according to proof at trial.

24 **NINTH CAUSE OF ACTION**

25 (Unfair Competition Business and Professions Code Section 17200)

26 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

27 89. Each Plaintiff realleges and incorporates herein by reference the allegations
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1 contained in this Complaint as though fully set forth herein.

2 90. The conduct of Defendants as alleged in this Complaint has been, and
3 continues to be, unfair, unlawful, deceptive, and harmful to Plaintiffs, the Class , and the
4 public in general. Plaintiff seeks to enforce important rights affecting the public interest
5 within the meaning of code of Civil Procedure section 1021.5.

6 91. Each Plaintiff is a “person” within the meaning of Business & Professions
7 Code section 17204, and, therefore, has standing to bring this cause of action for
8 injunctive relief, restitution, and other appropriate equitable relief.

9 92. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
10 business practices.

11 93. California’s wage and hours laws, including the laws described in this
12 Complaint, reflect public policies that are fundamental in the State of California. The
13 FLSA reflects a public policy that is fundamental in the United States. These public
14 policies include the importance of providing employees with proper compensation, meal
15 periods, and rest periods.

16 94. Through the conduct alleged in this Complaint, Defendants have acted
17 contrary to these public policies, have violated the California Labor Code, and have
18 engaged in other unlawful, unfair, and deceptive business practices in violation of
19 California's Business & Professions Code. As a result, Plaintiff, and all persons similarly
20 situated (including the Class members alleged in this Complaint) have been deprived of
21 rights, benefits, and privileges guaranteed to employees by law.

22 95. Defendants, by engaging in the conduct described in this Complaint, either
23 knew or should have known that its conduct was unlawful.

24 96. As a proximate result of Defendants’ conduct, Plaintiff and Class members
25 alleged herein have been damaged in a sum to be proven at trial.

26 97. This Court should therefore make such orders and/or judgments as may be
27 necessary to require Defendants to pay to Plaintiff and the members of the Class the
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1 money Defendants have heretofore unlawfully failed to pay them.

2 **TENTH CAUSE OF ACTION**

3 (California Labor Code - Private Attorneys General Act)

4 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

5 98. Each Plaintiff realleges and incorporates herein by reference the allegations
6 contained in this Complaint as though fully set forth herein.

7 99. Pursuant to section 2699.3(a)(1) of the Labor Code, on approximately March
8 15, 2023, Plaintiffs gave written notice by certified mail to the California Labor and
9 Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code
10 alleged to have been violated by CRUNCH, including the theories set forth in the
11 Complaint. Also on that day, Plaintiffs gave written notice by certified mail to CRUNCH
12 of the specific provisions of the Labor Code alleged to have been violated by them.

13 100. After the appropriate passage of time, Plaintiffs “may as a matter of right
14 amend [the] existing [C]omplaint to add a cause of action arising under [the Labor Code
15 Private Attorney General Act (“LCPAGA”)].” Cal. Lab. Code § 2699.3(a)(2)(C). The
16 LCPAGA establishes civil penalties for violations of the Labor Code, including the
17 violations alleged in this Complaint.

18 101. Each Plaintiff contends that section 2698 et seq. of the Labor Code enables
19 him to recover civil penalties under the LCPAGA, as well as attorney’s fees and costs,
20 from CRUNCH and CRUNCH through a civil action on behalf himself and other
21 aggrieved employees.

22 102. Each Plaintiff will seek to recover the PAGA penalties through a
23 representative action permitted by PAGA and the California Supreme Court in *Arias v.*
24 *Superior Court*, 46 Cal. 4th 969 (2009). Plaintiff will seek civil penalties pursuant to
25 PAGA for violations of the following Labor Code provisions:

- 26 a. failure to pay overtime wages to Employees in violation of Wage Order No.
27 16 and Labor Code §§510, 558, 1194 and 1198;

- 1 b. failure to pay minimum wages to Employees in violation of Wage Order No.
2 16 and Labor Code §§1182.12, 1194, and 1197;
- 3 c. failure to provide meal and rest periods to Employees in violation of Wage
4 Order No. 16 and Labor Code §§ 226.7, 512, and 558;
- 5 d. failure to provide itemized wage statements to Employees in violation of
6 Labor Code §§ 226(a), 1174, and 1174.5;
- 7 e. failure to provide prompt payment of wages upon termination and/or
8 resignation of Employees in violation of Labor Code §§ 201, 202, 203;
- 9 f. failure to reimburse Employees for all reasonably necessary expenditures
10 and losses incurred by Employees in direct consequence of the discharge of their
11 duties, including but not limited costs of their vehicles, insurance, rental fees,
12 mileage, cell phone usage, unions, equipment purchases, and telephone usage in
13 violation of Labor Code § 2802;
- 14 g. improper deductions from wages in violation of Labor Code §§ 221 and
15 225.5.
- 16 h. willful misclassification of Employees as Independent Contractors in
17 violation of Labor Code §226.8;
- 18 i. failure to keep required payroll records in violation of Wage Order No. 16
19 and Labor Code §§ 1174 and 1174.5.
- 20 j. failure to promptly pay owed wages in violation of Labor Code §§ 201.3,
21 204.
- 22 k. With respect to violations of Labor Code §§ 510, 512, Labor Code § 558
23 imposes a civil penalty in addition to any other penalty provided by law of fifty
24 dollars (\$50) for initial violations for each underpaid employee for each pay period
25 for which the employee was underpaid in addition to an amount sufficient to
26 recover unpaid wages, and one hundred dollars (\$100) for subsequent violations for
27 each underpaid employee for each pay period for which the employee was
28 underpaid in addition to an amount sufficient to recover underpaid wages.
Moreover, Plaintiff seeks civil penalties in the amount of unpaid wages owed to
Aggrieved Employees pursuant to Labor Code § 558(a)(3).
1. With respect to violations of Labor Code § 226(a), Labor Code § 226.3

1 imposes a civil penalty in addition to any other penalty provided by law of two
2 hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one
3 thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of
4 Labor Code § 226(a).

5 m. With respect to violations of Labor Code § 204, Labor Code § 210 imposes a
6 civil penalty of \$100, and for subsequent violations \$200.

7 n. With respect to violations of Labor Code § 1174, Labor Code § 1174.5
8 imposes a civil penalty of \$500.

9 o. Labor Code § 2699 *et seq.* imposes a civil penalty of one hundred dollars
10 (\$100) per pay period, per aggrieved employee for initial violations, and two
11 hundred dollars (\$200) per pay period, per aggrieved employee for subsequent
12 violations for all Labor Code provisions for which a civil penalty is not specifically
13 provided, including the applicable Wage Order and Labor Code §§ 201, 201.3, 202,
14 203, 221, 226(a), 226.7, 226.8, 510, 1174, 1182.12, 1194, 1197, 1198, and 2802.

15 **ELEVENTH CAUSE OF ACTION**

16 (Failure to maintain Accurate Payroll Time Records,
17 Labor Code section 1174, IWC Wage Order No. 16)

18 (On Behalf of Plaintiffs and the Class Against Defendant)

19 103. Each Plaintiff repleads, realleges, and incorporates by reference each and
20 every allegation set forth in the Complaint.

21 104. Defendant CRUNCH has violated California Labor Code section 1174 and
22 IWC Wage Order No. 16 by willfully failing to keep required payroll records showing the
23 actual hours and/or the begin and end time worked each day by Plaintiff. Indeed, the IWC
24 Wage Order requires that the employer maintain “[t]ime records showing when the
25 employee begins and ends each work period.” 8 Cal. Code Regs. § 11160(6)(A)(1).
26 Defendant CRUNCH failed to properly maintain such records.

27 105. As a direct and proximate result of Defendant’s failure to maintain payroll
28 records, Plaintiff suffered actual economic harm as he has been precluded from accurately

1 monitoring the number of hours worked and thus seeking all accrued pay.

2 106. Plaintiffs also request relief as described below.

3 **TWELFTH CAUSE OF ACTION**

4 (Cal. Lab. Code §§ 226 & 1198.5—Failure to Provide Employment Records Upon
5 Request)

6 (On Behalf of Plaintiffs Only Against Defendant CRUNCH)

7 107. Each Plaintiff repleads, realleges, and incorporates by reference each and
8 every allegation set forth in this Complaint.

9 108. Pursuant to Labor Code section 226(b), an employer shall afford current and
10 former employees the right to inspect or copy the records pertaining to that current or
11 former employee, upon reasonable request to the employer.

12 109. Each Plaintiff has requested that Defendant CRUNCH permit inspection or
13 copying of each Plaintiff's employment records pursuant to Labor Code section 226(b).
14 Defendant CRUNCH has failed to provide each Plaintiff with all of his employment
15 records within 21 days of her request.

16 110. Pursuant to Labor Code section 1198.5 "has the right to inspect and receive a
17 copy of the personnel records that the employer maintains relating to the employee's
18 performance or to any grievance concerning the employee." Cal. Lab. Code § 1198.5.

19 111. Each Plaintiff requested that Defendant CRUNCH permit inspection or
20 copying of his employment records pursuant to Labor Code section 1198.5. Defendant
21 CRUNCH has failed to provide Plaintiff with an opportunity to inspect or copy all of his
22 employment records within 30 days of her request.

23 112. Pursuant to Labor Code section 1198.5(k) Plaintiff is entitled, and hereby
24 seeks to recover from Defendant CRUNCH a seven-hundred-fifty dollar (\$750) penalty,
25 reasonable attorney's fees, and the cost of bringing this cause of action.

26 113. Pursuant to Labor Code section 226(f) and (g), Plaintiff is entitled, and
27 hereby seeks to recover from Defendant CRUNCH a seven-hundred-fifty dollar (\$750)
28 penalty, reasonable attorneys' fees, and the cost of bringing this cause of action.

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THIRTEENTH CAUSE OF ACTION

(Retaliation for Opposing Discrimination and Harassment, Cal. Gov. Code § 12940(h))
(On Behalf of Plaintiffs Knight, Bradford and Jackson Against All Defendants)

114. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set forth in the Complaint.

115. At all relevant times herein and in violation of California Government Code section 12940(h), Defendant harassed, discriminated and retaliated against each Plaintiff by adversely affecting each Plaintiff's employment after she complained about and/or opposed unlawful labor practices such as failure to pay commissions and wages in a timely manner and harassment.

116. Each Plaintiff repeatedly opposed, rejected, did not welcome, and complained about harassment and discrimination.

117. The conduct of Defendants and/or its agents/employees as described herein was malicious, fraudulent, and/or oppressive, and done with a willful and conscious disregard for each Plaintiff's rights and for the deleterious consequences of Defendant's actions. Defendant and its agents/employees or supervisors, authorized, condoned and ratified the unlawful conduct of each other. Consequently, each Plaintiff is entitled to punitive damages against Defendant.

118. Plaintiffs Knight, Bradford and Jackson filed a complaint with the Department of Fair Employment and Housing ("DFEH"). Plaintiff has received the requisite right-to-sue letter issued by the DFEH regarding the claims involving harassment and discrimination herein. Therefore, each Plaintiff filed this action within one year of the date of the "right to sue" letter received from the DFEH and therefore has properly exhausted her administrative remedies.

FOURTEENTH CAUSE OF ACTION

(Hostile Work Environment, Cal. Gov. Code §§ 12940(j) and (k))
(By Plaintiffs Knight, Bradford and Jackson Against All Defendants)

1 119. Plaintiffs replead, reallege, and incorporate by reference each and every
2 allegation set forth in the Complaint.

3 120. Defendants were the employer of Plaintiffs for purposes of Government Code
4 section 12940(j)(4)(A).

5 121. Each Plaintiff was subjected to severe and pervasive harassment while
6 working for Defendants, which caused the creation and maintenance of a hostile and
7 abusive work environment. Plaintiff was subjected to unwanted harassing conduct,
8 derogatory comments, improper relationships between a manager and other employees, as
9 well as other harassing conduct by Defendants, its employees, and its managers.

10 122. During the course of her employment with Defendant, Plaintiff—because of
11 her gender—was continuously discriminated against, harassed, and subjected to a hostile
12 work environment by the actions, conduct, and comments of Defendants, its employee,
13 and its manager/owner Barnes. These actions constituted a continuing violation of
14 Government Code section 12940 *et seq.*

15 123. Reasonable persons in Plaintiff's circumstances would have considered the
16 work environment to be hostile or abusive.

17 124. The harassment was sufficiently pervasive so as to alter the conditions of
18 employment, and it created an abusive and hostile working environment. Plaintiff
19 considered the work environment to be hostile and abusive.

20 125. The actions of Defendants, their employees, and their managers constituted
21 unlawful discrimination in employment, based on harassment, in contravention of the
22 FEHA, California Government Code section 12900 *et seq.*, and the corresponding
23 regulations of the DFEH, which forbid discrimination in the workplace and adverse
24 employment actions on account of gender, sex, race and marital status. Plaintiff's
25 supervisors were aware, approved, and even participated in, such offending conduct.

26 126. Defendants knew or should have known of the harassment and discrimination
27 and offensive conduct to take immediate and appropriate corrective action, but failed to
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properly investigate the harassment and discrimination, which caused and contributed to the existence of the hostile work environment as alleged herein. Further, Plaintiff alleges that Defendant had full knowledge of the hostile work environment, including by reason of the personal complaint that Plaintiff made to management, but nonetheless, Defendant failed to rectify—or even address—the behavior of the persons creating the hostile work environment.

127. As a proximate result of the actions and failures to act by Defendant, Plaintiffs suffered physical, emotional, and economic injury. As a further proximate, foreseeable and direct result of the discriminatory acts, Plaintiff continues to suffer physical harm, humiliation, embarrassment, mental and emotional distress, and discomfort, all to Plaintiff's damages in an amount according to proof.

128. The actions of Defendant's employee were done with malice, fraud, and/or oppression, and in reckless disregard of Plaintiff's rights under California law

129. Defendant ratified the malicious, fraudulent, and/or oppressive conduct of its employees when it failed to prevent it.

130. Defendant engaged in conduct constituting an unlawful employment practice in violation of California Government Code section 12940(a), which conduct was malicious, fraudulent, and/or oppressive. Thus, each Plaintiff is entitled to recover punitive damages from Defendant, in an amount according to proof.

131. As a direct and proximate result of the conduct of Defendant in violation of the FEHA, *inter alia*, Plaintiff is entitled, pursuant to FEHA, to recover from Defendant and do pray for remedies allowed under the FEHA, including but not limited to, general and special damages, punitive damages, costs, interest, and attorneys' fees.

132. Each Plaintiff filed a complaint with the Department of Fair Employment and Housing ("DFEH"). Each Plaintiff has received the requisite right-to-sue letter issued by the DFEH regarding the claims involving harassment and discrimination herein. Each Plaintiff filed this action within one year of the date of the "right to sue" letter received

1 from the DFEH and therefore has properly exhausted her administrative remedies.

2 **FIFTEENTH CAUSE OF ACTION**

3 (Failure to Take All Reasonable Steps to Prevent Discrimination in Violation
4 of Cal. Government Code § 12940, et seq.)

5 (By Plaintiffs Knight, Bradford and Jackson Against All Defendants)

6 133. Plaintiffs hereby incorporate into this Cause of Action by reference all prior
7 paragraphs of this Complaint, as though fully set forth herein.

8 134. At all times herein mentioned, California's Fair Employment and Housing
9 Act, Government Code § 12940 et seq., was in full force and effect and fully binding upon
10 Defendants. Defendants are "employers" within the meaning of the FEHA.

11 135. At all times relevant herein, Plaintiff was an employee or applicant.

12 136. At all times relevant herein, Plaintiff was member of a class of persons
13 protected from discrimination in employment.

14 137. Defendants, and each of them, had an affirmative duty to take all reasonable
15 steps necessary to prevent discrimination and harassment from occurring in the workplace
16 pursuant to Government Code sections 12940(j)(1) and 12940(k). California Government
17 Code § 12940(k) provides that it is an unlawful employment practice for an employer to
18 fail to take all reasonable steps necessary to prevent discrimination, retaliation, and
19 harassment from occurring in the workplace.

20 138. By Defendants' conduct, as alleged herein, and by failing to express strong
21 disapproval of harassing and discriminatory practices, by failing to develop appropriate
22 sanctions for harassment, by failing to develop appropriate methods to educate its
23 employees and owners of the gravity of consequences for doing so, failed to conduct
24 reasonable and impartial investigations when Plaintiff complained about discriminatory
25 conduct on the part of Defendant, failed to take reasonable steps necessary to investigate
26 the misconduct and prevent it from occurring and continuing and by failing to take
27 immediate and appropriate corrective action to stop the harassment from occurring,
28

1 Defendants, and each of them, breached the affirmative duty as set forth in California
2 Government Code §12940(k) by various actions and failures and refusals to act as
3 described herein. These acts included, but are not limited to failing to train, discipline,
4 monitor, enforce and oversee anti-harassment training.

5 139. Defendants' conduct toward Plaintiff as alleged above, constitutes an
6 unlawful employment practice in violation of California Government Code § 12940.

7 140. As a direct, foreseeable and proximate result of Defendants acts, Plaintiff has
8 suffered and continue to suffer foreseeable damages and injury in amounts not ascertained
9 but in excess of the jurisdictional minimum of this Court, including, but not limited to,
10 losses in the conditions of employment other employment benefits, emotional and
11 physical distress, depression, anxiety, humiliation, embarrassment, pain, discomfort and
12 suffering and loss an injury to reputation.

13 141. Defendants' failure to take reasonable steps to prevent discriminatory
14 conduct was a substantial factor in causing Plaintiff's harm, which includes emotional
15 distress and economic loss. As a direct result thereof, Plaintiff has sustained damages
16 (including incurring medical bills and lost income) with the precise amount to be
17 established according to proof at trial.

18 142. Defendants have committed the outrageous despicable acts, as herein alleged,
19 maliciously, fraudulently, and oppressively, with the wrongful intent of injuring Plaintiff,
20 and done with ill will and intent to injure Plaintiff and to cause Plaintiff mental anguish,
21 anxiety, and distress, and in conscious disregard of Plaintiff's rights.

22 143. Defendants' acts were done in conscious disregard of the risk of severe
23 emotional harm to Plaintiff and with the intent to injure Plaintiff, constituting oppression,
24 fraud, malice under California Civil Code §3294, entitling Plaintiff to punitive damages
25 against these Defendants only.

26 **PRAYER FOR RELIEF**

27 **WHEREFORE**, Plaintiff prays for judgment as follows:
28

1 1. For an Order that this action may proceed and be maintained as a class
2 action, with an appropriate subclass or subclasses; that the named plaintiff be appointed
3 class representative, and that plaintiff's counsel be named class counsel;

4 2. That, under the First Cause of Action for unpaid overtime wages, this Court
5 enter judgment in favor of award Plaintiff and other aggrieved former and current
6 employees their wages, damages, liquidated damages, penalties, civil penalties, attorney's
7 fees, and costs of suit, all according to proof, pursuant to section 218.5 and other relevant
8 sections of the Labor Code.

9 3. That, under the Second Cause of Action for unpaid minimum wages, this
10 Court enter judgment in favor of award Plaintiff and other aggrieved former and current
11 employees their wages, damages, liquidated damages, penalties, civil penalties, attorney's
12 fees, and costs of suit, all according to proof, pursuant to section 218.5 and other relevant
13 sections of the Labor Code.

14 4. That, under the Third Cause of Action for failing to properly provide meal
15 periods, this Court enter judgment in favor of Plaintiff, and other aggrieved former and
16 current employees, their wages, damages, liquidated damages, penalties, civil penalties,
17 attorney's fees, and costs of suit, all according to proof, pursuant to section 218.5 and
18 other relevant sections of the Labor Code.

19 5. That, under the Fourth Cause of Action for failing to properly provide rest
20 periods, this Court enter judgment in favor of award Plaintiff and other aggrieved former
21 and current employees their wages, damages, liquidated damages, penalties, civil
22 penalties, attorney's fees, and costs of suit, all according to proof, pursuant to section
23 218.5 and other relevant sections of the Labor Code.

24 6. That, under the Fifth Cause of Action for failing to provide proper itemized
25 wage statements, this Court enter judgment in favor of award Plaintiff and other aggrieved
26 former and current employees their wages, damages, liquidated damages, penalties, civil
27 penalties, attorney's fees, and costs of suit, all according to proof, pursuant to section
28

1 218.5 and other relevant sections of the Labor Code.

2 7. That, under the Sixth Cause of Action for failing to properly provide final
3 wages upon termination of employment, this Court enter judgment in favor of Plaintiff
4 and other aggrieved former and current employees and award them their wages, damages,
5 liquidated damages, penalties, civil penalties, attorney's fees, and costs of suit, all
6 according to proof, pursuant to section 218.5 and other relevant sections of the Labor
7 Code.

8 8. That, under the Seventh Cause of Action for failing to properly indemnify
9 employees for their out of pocket expenses in violation of section 2802 of the California
10 Labor Code, this Court enter judgment in favor of Plaintiff and other aggrieved former
11 and current employees and award them their wages, damages, liquidated damages,
12 penalties, civil penalties, attorney's fees, and costs of suit, all according to proof, pursuant
13 to section 218.5 and other relevant sections of the Labor Code.

14 9. That, under the Eighth Cause of Action for taking improper deductions from
15 wages, this Court enter judgment in favor of Plaintiff and other aggrieved former and
16 current employees and award them their wages, damages, liquidated damages, penalties,
17 civil penalties, attorney's fees, and costs of suit, all according to proof, pursuant to section
18 218.5 and other relevant sections of the Labor Code.

19 10. That, under the Ninth Cause of Action for violation of the California
20 Business and Professions Code, this Court enter judgment in favor of Plaintiff and other
21 aggrieved former and current employees and award them their wages, damages, liquidated
22 damages, attorney's fees, and costs of suit, all according to proof, pursuant to the relevant
23 sections of the Business and Professions Code, deterring employment by Defendants or its
24 agents and employees of any future unlawful, unfair, or deceptive practice.

25 11. That, under the Tenth Causes of Action, this Court enter judgment in favor of
26 Plaintiffs and award them their wages, damages, liquidated damages, penalties, interest,
27 attorney's fees, and costs of suit, all according to proof, pursuant to the relevant sections
28

1 of the Labor Code.

2 12. That, under the Eleventh Causes of Action, this Court enter judgment in favor
3 of Plaintiffs and award them their wages, damages, liquidated damages, penalties, interest,
4 attorney's fees, and costs of suit, all according to proof, pursuant to the relevant sections
5 of the Labor Code.

6 13. That, under the Twelfth Causes of Action, this Court enter judgment in favor
7 of Plaintiffs and award them their wages, damages, liquidated damages, penalties, interest,
8 attorney's fees, and costs of suit, all according to proof, pursuant to the relevant sections
9 of the Labor Code.

10 14. That, under the Thirteenth Causes of Action, this Court enter judgment in
11 favor of Plaintiffs and award them their wages, damages, liquidated damages, penalties,
12 interest, attorney's fees, and costs of suit, all according to proof, pursuant to the relevant
13 sections of the Labor Code.

14 15. That, under the Fourteenth Causes of Action, this Court enter judgment in
15 favor of Plaintiffs and award them their wages, damages, liquidated damages, penalties,
16 interest, attorney's fees, and costs of suit, all according to proof, pursuant to the relevant
17 sections of the Labor Code.

18 16. That, under the Fifteenth Causes of Action, this Court enter judgment in
19 favor of Plaintiffs and award them their wages, damages, liquidated damages, penalties,
20 interest, attorney's fees, and costs of suit, all according to proof, pursuant to the relevant
21 sections of the Labor Code.

22 17. For statutory attorney's fees pursuant to Labor Code sections 218.5, 227(e),
23 1194 and 29 U.S.C. section 216.

24 18. For costs of suit.

25 19. For prejudgment interest; and

26 20. For such other and further relief as this Court may deem proper and just.
27 Plaintiff demands a trial by jury as to all counts.
28

1 DATED: May 17, 2023

HARRIS & RUBLE

Alan Harris

Alan Harris

David Garrett

Attorney for Plaintiff