

BRADLEY/GROMBACHER, LLP

Marcus Bradley, Esq. (SBN 174156)

Kiley Grombacher, Esq. (SBN 245960)

Lirit King, Esq. (SBN 252521)

31365 Oak Crest Drive, Suite 240

Westlake Village, CA 91361

Telephone: (805) 270-7100

Facsimile: (805) 618-2939

Email: mbradley@bradleygrombacher.com

Email: kgrombacher@bradleygrombacher.com

Email: lking@bradleygrombacher.com

Attorneys for Plaintiff ELVIA HERRERA on behalf
of herself and others similarly situated

[Additional counsel on following page]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ELVIA HERRERA, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

DEL TACO LLC, a California limited
liability company; and DOES 1 to 10,
inclusive,

Defendant.

CASE NO.

CLASS ACTION COMPLAINT FOR:

- 1. Failure to Pay Overtime Wages in Violation of Labor Code sections 510 and 1198;**
- 2. Failure to pay all Wages and Minimum Wages in Violation of Labor Code sections 221, 223, 1182, 1194, 1197, and 1198;**
- 3. Failure to Provide Meal Periods in Violation of Labor Code sections 226.7, 512, 516 and 1198;**
- 4. Failure to Provide Rest Periods in Violation of Labor Code sections 226.7, 516, 1198;**
- 5. Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Labor Code section 226(a) and Failure to Maintain Accurate Records;**
- 6. Failure to Provide Suitable Seating in Violation of Labor Code section 1198;**
- 7. Failure to Timely Pay Wages During Employment in Violation of Labor Code Section 204;**
- 8. Waiting Time Penalties Pursuant to Labor Code sections 201 and 203; and**
- 9. Violations of Business & Professions Code section 17200 et seq.**

DEMAND FOR JURY TRIAL

MAJARIAN LAW GROUP APC

Garen Majarian, Esq. (SBN 334104)
Sahag Majarian, II, Esq. (SBN 146621)
18250 Ventura Boulevard
Tarzana, California 91356
Telephone: (818) 263-7343
Facsimile: (818) 609-0892
E-Mail: garen@majarianlawgroup.com
E-Mail: sahagii@aol.com

1 Plaintiff, ELVIA HERRERA (hereinafter “Plaintiff”) hereby submits her Complaint against
2 Defendant DEL TACO LLC, a California limited liability company; and DOES 1 to 10 (hereinafter
3 referred to as “Defendant”) on behalf of herself and the class of all other similarly situated current
4 and former employees of Defendant as follows:

5 **NATURE OF THE CASE**

6 1. This is a class action arising out of Defendant’s failure to provide their non-exempt
7 employees with all wages and meal periods in compliance with the applicable wage order and/or
8 the California Labor Code, by failing to provide suitable seating by failing to comply with the
9 applicable wage order and/or the Labor Code regarding the payment of wages.

10 2. Del Taco is an American fast food restaurant chain which specializes in American-
11 style Mexican cuisine and American foods. Del Taco is headquartered in Lake Forest, California.
12 At all relevant times, Defendant issued and maintained uniform, standardized scheduling and
13 timekeeping practices and procedures for all non-exempt, hourly paid employees in California,
14 including Plaintiff and others similarly situated, regardless of their location or position.

15 3. Defendant has maintained practices across its locations which have failed and
16 continue to fail to pay Plaintiff and other non-exempt employees all wages. Specifically, Defendant
17 has a company-wide policy of subjecting Plaintiff and other non-exempt employees to work off-
18 the-clock. Specifically, if an employee is asked to come in early or arrives early for their shift, they
19 are not permitted to clock in until the start of their shift. This has resulted in Defendant’s failure to
20 pay all wages including overtime wages to Plaintiff and other non-exempt employees. Moreover,
21 Defendant fails to provide any seating for Plaintiff and other non-exempt employees, and
22 employees are required to stand for the duration of their shifts.

23 4. Defendant also failed to provide Plaintiff and non-exempt employees with
24 compliant meal and rest breaks because rest and meal breaks are combined and provided within an
25 hour of clocking in. Meal and rest breaks were almost always interrupted and frequently missed
26 altogether.

27 5. In light of the foregoing, Defendant failed to provide Plaintiff and other non-exempt
28 employees with compliant wage statements and failed to timely pay final wages upon termination

1 or separation from employment.

2 6. Plaintiff brings Causes of Action One through Nine (the “class claims”) as a class
3 action on behalf of herself and other similarly situated individuals who have worked for Defendant
4 in California, at any time from four-years prior to the filing of this complaint, through the resolution
5 of this action. Plaintiff, on her own behalf and on behalf of all Class Members, brings the class
6 claims pursuant to Labor Code sections 200-203, 221, 223, 226, 226.7, 500, 510, 512, 1174, 1194,
7 1194.2, 1197, 1198, the applicable wage order and under Business & Professions Code sections
8 17200-17208, for unfair competition due to Defendant’s unlawful, unfair and fraudulent business
9 acts and practices.

10 7. Plaintiff is informed and believes, and based thereon alleges, that Defendant has
11 engaged in, among other things a system of willful violations of the Labor Code and the applicable
12 IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny
13 employees the above stated rights and benefits.

14 **PARTIES**

15 8. Plaintiff, Elvia Herrera is an individual over the age of eighteen (18) and is now,
16 and/or at all relevant times mentioned in this Complaint was, a resident and domiciliary of the State
17 of California. During the relevant time period, Plaintiff worked for Defendant in Glendale,
18 California from approximately 2002 through 2004, and again from 2012 through February 9, 2023.
19 Plaintiff’s latest position was a shift manager.

20 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant Del
21 Taco LLC is a California limited liability company. Plaintiff is further informed and believes that
22 at all times relevant hereto, Defendant has transacted, and continues to transact, business
23 throughout the State of California.

24 10. Plaintiff is informed and believes, and based upon such information and belief
25 alleges, that Defendant is, now and/or at all times mentioned in this Complaint was in some manner
26 legally responsible for the events, happenings and circumstances alleged in this Complaint.

27 11. Plaintiff is further informed and believes, and based upon such information and
28 belief alleges, that at all times herein mentioned, Defendant proximately caused Plaintiff, all others

1 similarly situated, and the general public to be subjected to the unlawful practices, wrongs,
2 complaints, injuries and/or damages alleged in this Complaint.

3 12. Plaintiff is informed and believes and based thereon alleges that at all times herein
4 mentioned Defendant and DOES 1 through 10, are and were corporations, business entities,
5 individuals, and partnerships, licensed to do business and actually doing business in the State of
6 California.

7 13. Plaintiff does not know the true names or capacities, whether individual, partner or
8 corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, said
9 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
10 complaint when the true names and capacities are known. Plaintiff is informed and believes and
11 based thereon alleges that each of said fictitious Defendants were responsible in some way for the
12 matters alleged herein and proximately caused Plaintiff and members of the general public and
13 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

14 14. At all times herein mentioned, each of said Defendants participated in the doing of
15 the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
16 Defendants, and each of them, were the agents, servants and employees of each of the other
17 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
18 within the course and scope of said agency and employment.

19 15. Plaintiff is informed and believes and based thereon alleges that at all times material
20 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint
21 venturer of, or working in concert with each of the other co-Defendants and were acting within the
22 course and scope of such agency, employment, joint venture, or concerted activity. To the extent
23 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
24 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

25 16. At all times herein mentioned, Defendants, and each of them, were members of, and
26 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
27 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

28 17. At all times herein mentioned, the acts and omissions of various Defendants, and

1 each of them, concurred and contributed to the various acts and omissions of each and all of the
2 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
3 herein mentioned, Defendants, and each of them, ratified each and every act or omission
4 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and
5 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
6 damages as herein alleged.

7 18. The members of the Classes (as defined below), including the representative
8 Plaintiff named herein, have been employed during the Class Period in California. The practices
9 and policies which are complained of by way of this Complaint are enforced throughout the State
10 of California.

11 **JURISDICTION AND VENUE**

12 19. The Court has jurisdiction over this class action pursuant to article 6, section 10 of
13 the California Constitution and Code of Civil Procedure section 410.10.

14 20. Additionally, this Court has jurisdiction over Plaintiff's and the Class' claims for
15 injunctive relief, including restitution of earned wages, arising from Defendant's unfair
16 competition under Business & Professions Code section 17203 and 17204. The Court also has
17 jurisdiction over Plaintiff's and the Class' claims pursuant to the applicable provisions.

18 21. The Court has jurisdiction over Defendant because they are authorized to do
19 business in the State of California and are registered with the California Secretary of State.
20 Defendant does sufficient business with sufficient minimum contacts in California, and/or
21 otherwise intentionally avails itself of the California market through the advertising, marketing and
22 sale of goods and services, to render the exercise of jurisdiction over Defendant by the California
23 court consistent with traditional notions of fair play and substantial justice.

24 22. Venue is proper in Los Angeles County because the acts which give rise to this
25 litigation occurred in this county and because Defendant has employed class members in this
26 county and transacts business in this county.

27 **FACTUAL ALLEGATIONS**

28 23. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

1 24. Defendant has engaged in, and continues to engage in, unfair business practices in
2 California by practicing, employing and utilizing the employment practices and policies outlined
3 above.

4 25. As a direct result of the wage and hour violations herein alleged, Plaintiff and
5 members of the Classes have suffered, and continue to suffer substantial losses related to the use
6 and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking
7 to compel Defendant to fully perform its obligations under state law, all to Plaintiff's respective
8 damage in amounts according to proof at the time of trial.

9 ***Defendant's Failure to Pay Overtime Wages***

10 26. During the Class Period, upon information and belief, Defendant had, and continues
11 to have, a company-wide policy of discouraging and impeding Plaintiff and members of the
12 Classes from recording hours worked that were outside of their scheduled shifts in order to limit
13 the amount of overtime employees could accrue. On information and belief, this policy of limiting
14 overtime, led Plaintiff and members of the Classes to work off-the-clock before their scheduled
15 shift times. For example, if Plaintiff or class members were asked to arrive prior to the start of their
16 shifts, or if they arrived any time before their shift was to start, they were unable to clock in.
17 Specifically, the time clock would not permit anyone to clock in early and Plaintiff and members of
18 the classes were unable to request for this time to be compensated. Plaintiff typically arrived prior
19 to the start of her shift due to her heavy workload and would have to assist crew members with
20 counting the register.

21 27. Because Plaintiff and members of the Classes worked shifts of eight (8) hours a day
22 or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
23 premium pay.

24 28. Therefore, Plaintiff and members of the Classes were not paid overtime wages for
25 all of the overtime hours they actually worked.

26 ***Defendant's Failure to Pay all Wages and Minimum Wages***

27 29. As stated above, during the relevant time period, as a result of Defendant's policy of
28 limiting the amount of overtime employees could accrue, coupled with being under Defendant's

1 control before and after their scheduled shift times, Plaintiff and members of the Classes were
2 forced to work off-the-clock.

3 30. Thus, Defendant did not pay at least minimum wages for all hours worked by
4 Plaintiff and members of the Classes. To the extent that these off-the-clock hours did not qualify
5 for overtime premium payment, Defendant did not pay at least minimum wages for those hours
6 worked off-the-clock.

7 ***Failure to Provide Compliant Meal Periods***

8 31. Plaintiff alleges that meal breaks were short and frequently missed entirely.
9 Specifically, Plaintiff would get called back to the floor if the restaurant was busy or if she needed
10 to assist crew members. As a result, Plaintiff and members of the Classes were forced to work in
11 excess of five (5) hours before taking a meal period.

12 32. Plaintiff and members of the Classes did not sign valid meal period waivers on days
13 that they were entitled to meal periods and were not relieved of all duties.

14 ***Defendant's Failure to Provide Compliant Rest Breaks***

15 33. During the relevant time period, Defendant regularly failed to authorize and permit
16 Plaintiff and members of the Classes to take a ten (10) minute rest period per each four (4) hour
17 period worked or major fraction thereof.

18 34. Specifically, Plaintiff alleges that meal breaks were combined with rest breaks and
19 were provided within the first hour worked. In addition to these rest breaks being interrupted or
20 missed entirely, Plaintiff and members of the classes were not permitted to take second rest breaks.

21 ***Defendant's Failure to Provide Compliant Wage Statements***

22 35. During the relevant time period, Defendant has knowingly and intentionally
23 provided Plaintiff and members of the Classes with uniform, incomplete, and inaccurate wage
24 statements. For example, Defendant issued uniform wage statements to Plaintiff and members of
25 the Classes that fail to correctly list: gross wages earned; total hours worked; net wages earned; and
26 all applicable hourly rates in effect during the pay period, including rates of pay for overtime
27 wages and/or meal and rest period premiums, and the corresponding number of hours worked at
28 each hourly rate.

1 36. Because Defendant did not record the time Plaintiff and members of the Classes
2 spent working off-the-clock and deducted time from their meal periods that were missed and/or
3 interrupted (and therefore time for which they should have been paid), Defendant did not list the
4 correct amount of gross wages and net wages earned by Plaintiff and members of the Classes in
5 compliance with Labor Code sections 226(a)(1) and 226(a)(5), respectively.

6 37. For the same reason, Defendant failed to accurately list the total number of hours
7 worked by Plaintiff and members of the Classes and failed to list the applicable hourly rates of pay
8 in effect during the pay period and the corresponding accurate number of hours worked at each
9 hourly rate. Further, on Plaintiff's wage statement dated 12/30/22, Defendant failed to provide
10 hours worked or rates of pay.

11 38. Because Defendant failed to provide the correct net and gross wages earned,
12 applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and
13 members of the Classes have been prevented from verifying, solely from information on the wage
14 statements themselves, that they were paid correctly and in full. Instead, Plaintiff and members of
15 the Classes have had to look to sources outside of the wage statements themselves and reconstruct
16 time records to determine whether in fact they were paid correctly and the extent of underpayment,
17 thereby causing them injury.

18 ***Defendant's Failure to Provide Suitable Seating***

19 39. Defendant's California restaurants are generally similar in their layout and design
20 and there was, and continues to be, space in the restaurants to allow for the presence and use of a
21 seat or stool by Plaintiff and class members (with reasonable or no modification to these work
22 areas) during the performance of their work duties. Defendants could provide Plaintiff and class
23 members with a seat or stool, but instead denies them seating and forces aggrieved employees to
24 stand throughout the day. Plaintiff and other class members spent a substantial portion of their day
25 standing, regardless of their actual job title or description. The nature of the work of an employee
26 performing their job duties can reasonably be accomplished from a seated position. However,
27 Defendant systematically, and on a company-wide basis, did not provide seats or stools at or near
28 counters, forcing Plaintiff and other class members to stand throughout their work shifts.

40. Defendant did not provide Plaintiff and other class members with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Plaintiff and class members engaged in duties in which the nature of the work required standing, Defendant denied them the use of seats nearby during lulls in their work duties. Moreover, Defendant did not inform Plaintiff and other class members of their rights to a seat or stool under California law.

Defendant's Failure to Timely Pay all Wages During Employment

41. Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all 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 between the 1st and the 10th day of the following month.

42. Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

43. During the class period, Defendant willfully failed to pay Plaintiff and members of the Classes all wages due including, but not limited to, minimum wages, and meal period premiums, within the time periods specified by Labor Code section 204.

Defendant's Failure to Timely Pay Final Wage Upon Termination

44. Defendant willfully failed to pay Plaintiff and members of the Classes who are no longer employed by Defendant the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and meal period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ.

1 ***Facts Regarding Willfulness***

2 45. Plaintiff is informed and believes, and based thereon alleges, that Defendant is and
3 was advised by skilled lawyers, other professionals, employees with human resources background
4 and advisors with knowledge of the requirements of California wage and hour laws and that at all
5 relevant times, Defendant knew or should have known, that the Plaintiff Class Members, including
6 Plaintiff, were entitled to receive one hour of pay at the employee's regular rate of compensation
7 for each day that a meal and period was not provided and were and are entitled to receive pay for
8 all hours worked, accurate itemized wage statements, and final pay in a timely manner.

9 ***Unfair Business Practices***

10 46. Defendant has further engaged in, and continues to engage in, unfair business
11 practices in California by practicing, employing and utilizing the unlawful employment practices
12 and policies outlined above.

13 47. As a direct result of the wage and hour violations herein alleged, Plaintiff and
14 members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the
15 use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in
16 seeking to compel Defendant to perform their obligations under state law, all to Plaintiff's and the
17 Plaintiff Class members' respective damage in amounts according to proof at the time of trial.

18 ***Plaintiff's Exhaustion of Administrative Remedies***

19 48. Plaintiff is currently complying with the procedures for bringing suit specified in
20 Labor Code section 2699.3.

21 49. By letter dated March 6, 2023, required notice was provided to the Labor and
22 Workforce Development Agency ("LWDA") and Defendant, of the specific provisions of the
23 Labor Code alleged to have been violated, including the facts and theories to support the alleged
24 violations.

25 50. This Complaint will be amended when more than sixty-five (65) days have passed
26 since the date the notice was mailed to Defendant and the LWDA, if the LWDA chooses not to
27 investigate the allegations herein.

28 ///

1 **CLASS ACTION ALLEGATIONS**

2 51. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

3 52. Pursuant to Code of Civil Procedure section 382, this action is brought and may be
4 properly maintained as a class action. This action satisfies the ascertainability, numerosity,
5 commonality, typicality, adequacy, predominance, and superiority requirements of those
6 provisions.

7 53. Plaintiff brings this suit as a class action on behalf of two classes of individuals
8 defined as follows (collectively the “Classes”):

9 54. Plaintiff Class: All persons who have been, or currently are, employed by Defendant
10 and who held, or hold, job positions which Defendant has classified as “non-exempt” employees in
11 the State of California, at any time since four years prior to filing this action, through the date
12 judgment is rendered in this action.

13 55. Terminated Sub Class: All members of the Plaintiff Class whose employment ended
14 during the Class Period.

15 56. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that during
16 the class period hundreds of class members have been employed by Defendant as non-exempt
17 employees in the State of California. Because so many persons have been employed by Defendant
18 in this capacity, the members of the Plaintiff Class are so numerous that joinder of all members is
19 impossible and/or impracticable.

20 57. Common Questions of Law and/or Fact: Common questions of law and fact exist as
21 to all members of the Plaintiff Class and predominate over any questions affecting solely individual
22 members of the Plaintiff Class. Among the questions of law and fact, that are relevant to the
23 adjudication of Class Members’ claims are as follows:

- 24 a. Whether Plaintiff and Class Members are subject to and entitled to the benefits of
25 California wage and hour statutes;
26 b. Whether Defendant failed to pay Plaintiff and Class Members for all hours worked;
27 c. Whether Defendant failed to pay Plaintiff and Class Members all overtime;
28 d. Whether Defendant had a standard policy of not providing compliant meal breaks

and premiums to Plaintiff and members of the Plaintiff Class;

- e. Whether Defendant had a standard policy of not providing compliant rest breaks and premiums to Plaintiff and members of the Plaintiff Class;
- f. Whether Defendant unlawfully and/or willfully failed to provide Plaintiff and members of the Plaintiff Class with true and proper wage statements upon payment of wages, in violation of Labor Code section 226;
- g. Whether Defendant failed to timely pay wages to Plaintiff and members of the Plaintiff Class during their employment
- h. Whether Defendant unlawfully and/or willingly failed to timely pay Plaintiff and the Terminated Sub Class upon termination;
- i. Whether Defendant unlawfully and/or willingly failed to provide Plaintiff and members of the Classes with suitable seating;
- j. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so, the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief;
- k. Whether Defendant's conduct as alleged herein violates the Unfair Business Practices Act of California (Bus. & Prof. Code, § 17200 et seq.)

58. Typicality: The claims of the named Plaintiff are typical of the claims of the members of the Plaintiff Class. Defendant's common course of conduct in failing to provide their non-exempt employees with meal and rest periods or premium compensation at the regular rate in lieu thereof, all wages in compliance with the applicable wage order, failing to provide them with proper wages and overtime, failing to provide suitable seating, and failing to provide them with compliant wage statements has caused Plaintiff and the proposed Class to sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the proposed Class. Plaintiff and the proposed Class sustained the same or similar injuries and damages arising from Defendant's common policies, practices, procedures, protocols, routines, and rules which were applied to other Class Members as well as Plaintiff. Plaintiff seeks recovery for the same type of losses, injuries, and damages as were suffered by other members of

1 the proposed class.

2 59. Adequacy of Representation: Plaintiff is an adequate representative of the proposed
3 classes because she is a member of the class, and her interests do not conflict with the interests of
4 the members he seeks to represent. Plaintiff has retained competent counsel, experienced in the
5 prosecution of complex class actions, and together Plaintiff and her counsel intend to prosecute this
6 action vigorously for the benefit of the classes. The interests of the Class Members will fairly and
7 adequately be protected by Plaintiff and her attorneys.

8 60. Superiority of Class Action: A class action is superior to other available methods for
9 the fair and efficient adjudication of this litigation since individual litigation of the claims of all
10 Class Members is impracticable. It would be unduly burdensome to the courts if these matters were
11 to proceed on an individual basis, because this would potentially result in hundreds of individual,
12 repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or
13 contradictory judgments, and the prospect of a “race to the courthouse,” and an inequitable
14 allocation of recovery among those with equally meritorious claims. By contrast, the class action
15 device presents far fewer management difficulties, and provides the benefit of a single
16 adjudication, economics of scale, and comprehensive supervision by a single court.

17 61. The various claims asserted in this action are additionally or alternatively certifiable
18 under the provisions of the Code of Civil Procedure section 382 because:

19 a. The prosecution of separate actions by hundreds of individual class members would
20 create a risk of varying adjudications with respect to individual class members, thus establishing
21 incompatible standards of conduct for Defendant, and

22 b. The prosecution of separate actions by individual class members would also create
23 the risk of adjudications with respect to them that, as a practical matter, would be dispositive of the
24 interest of the other class members who are not a party to such adjudications and would
25 substantially impair or impede the ability of such non-party class members to protect their interests.

26 ///

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **Unpaid Overtime**

3 **(By Plaintiff and Members of the Putative Class Against Defendant)**

4 62. Plaintiff incorporates herein by reference the allegations set forth above.

5 63. At all times relevant herein, which comprise of the time period not less than four (4)
6 years preceding the filing of this action, Defendant was required to compensate their hourly
7 employees for all overtime hours worked.

8 64. California Labor Code sections 510 and 1198 and the applicable Industrial Welfare
9 Commission ("IWC") wage order require employers to pay employees working more than eight (8)
10 hours in a day or more than forty (40) hours in a workweek at the rate of one-and-one-half (1 ½)
11 times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than
12 forty (40) hours in a workweek. The applicable IWC wage order further provides that employers
13 are required to pay employees working more than twelve (12) hours in a day overtime
14 compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay
15 includes all remuneration for employment paid to, or on behalf of, the employee, including
16 nondiscretionary bonuses and incentive pay.

17 65. Defendant willfully failed to pay all overtime wages owed to Plaintiff and members
18 of the Classes. During the relevant time period, Plaintiff and members of the Classes were not paid
19 overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess
20 of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that
21 they worked were not recorded. For example, if Plaintiff or class members were asked to arrive
22 prior to the start of their shifts, or if they arrived any time before their shift was to start, they were
23 unable to clock in. Specifically, the time clock would not permit anyone to clock in early and
24 Plaintiff and members of the classes were unable to request for this time to be compensated.
25 Plaintiff typically arrived early for her shift because she had a heavy workload and would have to
26 assist crew members with their tasks such as counting the registers.

27 66. Defendant knew or should have known that as a result of company-wide practices
28 and/or policies, that prevents Plaintiff and members of the Classes from earning overtime, Plaintiff

1 and members of the Classes were performing assigned duties off-the-clock before their shifts, and
2 were suffered or permitted to perform work for which they were not paid. Because Plaintiff and
3 members of the Classes worked shifts of eight (8) hours a day or more or forty (40) hours a week
4 or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff
5 and members of the Classes were not paid overtime wages for all of the overtime hours they
6 actually worked.

7 67. Defendant's failure to pay Plaintiff and members of the Classes the balance of
8 overtime compensation, as required by California law, violates the provisions of Labor Code
9 sections 510 and 1198. Plaintiff and members of the Classes are entitled to recover civil penalties,
10 attorney's fees, costs, and interest thereon.

11 **SECOND CAUSE OF ACTION**

12 **Failure to Pay All Wages**

13 **(By Plaintiff and Members of the Putative Class Against Defendant)**

14 68. Plaintiff incorporates herein by reference the allegations set forth above.

15 69. At all times relevant herein, which comprise the time period not less than four (4)
16 years preceding the filing of this action, Defendant was required to compensate their hourly
17 employees for all hours worked.

18 70. For at least the four (4) years preceding the filing of this action, Defendant failed to
19 compensate employees for all hours worked. Defendant implemented policies that actively
20 prevented employees from being compensated for all time worked by subjecting Plaintiff and
21 members of the Classes to work off-the-clock as mentioned above.

22 71. Under the applicable wage order and state regulations, Plaintiff and the Plaintiff
23 Class are entitled to recover compensation for all hours worked, but not paid, for the four (4) years
24 preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit in
25 accordance with Labor Code section 218.5, and penalties pursuant to Labor Code sections 203 and
26 206.

27 72. The applicable IWC wage order section 2(G) defines "hours worked" to mean "the
28 time during which an employee is subject to the control of an employer and includes all the time

1 the employee is suffered or permitted to work, whether or not required to do so.”

2 73. Defendant suffered or permitted Plaintiff and members of the Classes to work
3 portions of the day for which Defendant failed to compensate them. This includes time spent under
4 Defendant’s control prior to clocking in, after clocking out. For example, if Plaintiff or class
5 members were asked to arrive prior to the start of their shifts, or if they arrived any time before
6 their shift was to start, they were unable to clock in. Specifically, the time clock would not permit
7 anyone to clock in early and Plaintiff and members of the classes were unable to request for this
8 time to be compensated. Plaintiff typically arrived prior to the start of her shift due to her heavy
9 workload and would have to assist crew members with counting the register.

10 74. Labor Code section 1194(a) provides in relevant part: “Notwithstanding any
11 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ...
12 is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
13 ... including interest thereon, reasonable attorney’s fees, and costs of suit.”

14 75. Labor Code section 1194.2(a) provides in relevant part: “In any action under section
15 1193.6 or section 1194 to recover wages because of the payment of a wage less than the minimum
16 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated
17 damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

18 76. Labor Code section 1197 provides: “The minimum wage for employees fixed by the
19 commission is the minimum wage to be paid to employees, and the payment of a less wage than
20 the minimum so fixed is unlawful.”

21 77. Plaintiff is informed and believes, and therefore alleges, that Defendant’s
22 compensation schemes do not fairly compensate Plaintiff and other Class Members for all hours
23 spent performing their job duties.

24 78. The failure to pay at least minimum wages to Plaintiff and members of the Plaintiff
25 Class for each and every hour worked violates Labor Code sections 1182.11-1182.12, 1194,
26 1194.2, and 1197; the applicable IWC wage order section 4; and Business & Professions Code.

27 79. The failure to pay designated wages to Plaintiff and members of the Plaintiff Class
28 for each and every hour worked violates Labor Code section 221 and 223; the applicable IWC

1 wage order section 3; and Business & Professions Code.

2 80. During the applicable time period, Defendant has and continues to have a pattern
3 and practice of not providing its employees all wages, by failing to include all compensable time,
4 including time worked off-the-clock.

5 81. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff
6 Class have been damaged in an amount according to proof at time of trial.

7 **THIRD CAUSE OF ACTION**

8 **Non-Compliant Meal Breaks**

9 **(By Plaintiff and Members of the Putative Class Against Defendant)**

10 82. Plaintiff hereby incorporates by reference each and every one of the allegations
11 contained in the preceding paragraphs as if the same were fully set forth herein.

12 83. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and the Class
13 Members regularly worked more than five (5) hours per shift and were entitled to a meal period of
14 not less than thirty (30) minutes without duty.

15 84. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendant
16 routinely failed to provide Plaintiff and the members of the Classes with such meal periods without
17 duty, notwithstanding the fact that Plaintiff and the members of the Classes had not waived their
18 right to the same. Thus, Defendant failed to provide Plaintiff and the members of the Classes with
19 meal periods required by Labor Code sections 226.7, 512, 516 and the applicable IWC wage order
20 section 10, and categorically failed to pay any and all meal period wages due.

21 85. Plaintiff and Class Members seek damages pursuant to Labor Code section 226.7(b)
22 and the applicable IWC wage order section 10(F), in the amount of one additional hour of pay at
23 the regular rate for each work day that the meal period is/was not provided to Plaintiff and any
24 member of the Classes, the cumulative sum of which is to be determined at trial.

25 86. Under the foregoing, California employers must provide meal periods and authorize
26 and permit rest periods to all employees during their shifts. In *Augustus et al. v. ABM Security*
27 *Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme Court reaffirmed that the required meal
28 and rest periods must be “off-duty,” which means that employees must be relieved of “all work-

1 related duties,” including the duty to remain “on call,” and they must be “free from employer
2 control” over how they “spend their time.” *Id.* at 264, 269. Employees must have the freedom to
3 use meal and rest periods for their own purposes. *Id.* at 270; *Brinker Rest. Corp. v. Superior Court*
4 (2012) 53 Cal.4th 1004, 1038-39.

5 87. When employees must either “remain at the ready and capable of being summoned
6 to action,” “respond when the employer seeks contact with [them],” “perform other work if the
7 employer so requests,” and/or remain “on call” during their meal and rest periods, the employees
8 have not been “relieve[d] ... of all work-related duties and employer control.” *Augustus, supra*, 2
9 Cal.5th at 270. Such a meal or rest period is not “off duty” and therefore is “impermissible.” *Ibid.*

10 88. The Supreme Court’s decision in *Augustus* is just the latest in a series of meal and
11 rest break cases that have affirmed California’s broad, protective standard for employees.¹

12 89. Moreover, as the mere existence of a facially lawful meal and rest break policy is
13 unavailing if there are practical constraints and pressures on employees to perform their duties in
14 ways that omit breaks. See *Brinker, supra*, 53 Cal.4th at 1040.

15 90. Yet Defendant did and does not provide Plaintiff and members of the Classes with
16 meal periods during which they are completely relieved of duty for at least thirty (30) minutes by
17 the fifth hour of work and again by the tenth hour of work.

18 91. Rather, Plaintiff alleges that meal breaks were short and frequently missed entirely.
19 Specifically, Plaintiff would get called back to the floor if the restaurant was busy or if she needed
20 to assist crew members. Further, if the restaurant was busy, she would miss her meal break
21 altogether.

22 92. Thus, Defendant has failed to perform its obligations to provide Plaintiff and the
23 members of the Plaintiff Class with off-duty meal periods by the end of the fifth hour of work and
24

25 ¹ See, e.g., *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004; *Lubin v.*
26 *Wackenhut Corp.* (2016) 5 Cal.App.5th 926 , *rehg. denied* (Dec. 14, 2016); *Faulkinbury v. Boyd &*
27 *Assocs., Inc.* (2013) 216 Cal.App.4th 220; *Berlanga v. Equilon Enterprises LLC* (N.D.Cal., Aug.
28 31, 2017, No. 17-CV-00282-MMC) 2017 WL 3782245 at *3 (a policy requiring employees to
“remain in contact with supervisors and other employees working in their units throughout their
shifts... would appear to be unlawful under [*Augustus.*]”)

1 a second meal period by the end of the tenth hour of work. Defendant has also failed to pay
2 Plaintiff and the members of the Plaintiff Class one (1) hour of pay at the regular rate for each off-
3 duty meal period that they have been denied.

4 93. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews*
5 *Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 where the court unanimously held that employers
6 must pay premium payments to employees for missed meal, rest, and recovery breaks at the
7 employee's "regular rate of pay" instead of their base hourly rate.

8 94. Defendant knew or should have known that as a result of its policies and/or
9 practices, that Plaintiff and members of the Classes were not actually relieved of all duties to take
10 timely, uninterrupted meal periods. Defendant further knew or should have known that it did not
11 pay Plaintiff and members of the Classes all meal period premiums when meal periods were
12 missed, late, short, and/or interrupted. Furthermore, Defendant has engaged in a company-wide
13 practice and/or policy of not paying meal period premiums owed when compliant meal periods are
14 not provided. Because of this practice and/or policy, Plaintiff and members of the Classes have not
15 received all premium pay for missed, interrupted, or late meal periods. Accordingly, Defendant
16 failed to provide all meal periods in violation of Labor Code sections 226.7, 512(a), 516, and 1198.

17 95. Plaintiff and members of the Classes are entitled to civil penalties, attorney's fees,
18 costs, and interest thereon.

19 **FOURTH CAUSE OF ACTION**

20 **Non-Compliant Rest Breaks**

21 **(By Plaintiff and Members of the Putative Class Against Defendant)**

22 96. Plaintiff hereby incorporates by reference each and every one of the allegations
23 contained in the preceding paragraphs as if the same were fully set forth herein.

24 97. Labor Code sections 226.7, 516, and 1198, and the applicable IWC wage order
25 require employers to provide rest periods and to pay an employee one (1) additional hour of pay at
26 the employee's regular rate for each work day that a meal or rest period is not provided. Labor
27 Code section 226.7 provides that no employer shall require an employee to work during any rest
28 period mandated by an applicable order of the IWC. The applicable IWC wage order provides that

1 “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as
2 practicable shall be in the middle of each work period” and that the “rest period time shall be based
3 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or
4 major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

5 98. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and Class
6 Members were entitled to a paid rest period of not less than ten (10) minutes without duty for each
7 and every four (4) hours or major fraction thereof worked during the workday.

8 99. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendant
9 routinely failed to provide Plaintiff and the members of the Classes with such paid rest periods
10 without duty, notwithstanding the fact that Plaintiff and the members of the Classes had not waived
11 their right to the same. Thus, Defendant failed to provide Plaintiff and Class Members with rest
12 periods required by Labor Code sections 226.7, 512, and 516, the applicable IWC wage order
13 section 11 and categorically failed to pay any and all rest period wages due.

14 100. Specifically, Plaintiff alleges that meal breaks were combined with rest breaks and
15 were provided within the first hour worked. In addition to these rest breaks being interrupted or
16 missed entirely, Plaintiff and members of the classes were not permitted to take second rest breaks.

17 101. Plaintiff and Class Members seek damages pursuant to Labor section 226.7(b) and
18 the applicable IWC wage order section 11(D), in the amount of one additional hour of pay at the
19 regular rate for each work day that the rest period is/was not provided or provided late to Plaintiff
20 and any member of the Classes, the cumulative sum of which is to be determined at trial.

21 102. Therefore, Plaintiff and members of the Plaintiff Class are entitled to compensation
22 for Defendant’s failure to provide rest periods, plus interest, attorneys’ fees, expenses, and costs of
23 suit pursuant to Labor Code section 226.7(b) and the applicable wage order

24 **FIFTH CAUSE OF ACTION**

25 **Failure to Furnish Accurate Itemized Wage Statements and Maintain Accurate Records**

26 **(By Plaintiff and Members of the Putative Class Against Defendant)**

27 103. Plaintiff hereby incorporates by reference each and every one of the allegations
28 contained in the preceding paragraphs as if the same were fully set forth herein.

1 104. Labor Code section 226(a) and the applicable IWC wage order section 6(B) requires
2 employers to furnish each employee with a statement itemizing, among other things, the total hours
3 worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

4 105. Labor Code section 226(e) provides that if an employer fails to comply with
5 providing an employee with properly itemized wage statements as set forth in section 226(a), then
6 the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period
7 in which a violation occurs and \$100 per employee for each violation in a subsequent pay period,
8 not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates
9 section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation
10 in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which
11 the employer fails to provide the employee a wage statement or fails to keep the required records
12 pursuant to section 226(a).

13 106. Defendant knowingly and intentionally failed to furnish Plaintiff and the members
14 of the Classes with timely, itemized statements in compliance with Labor Code section 226(a) and
15 the applicable IWC Wage order section 6(B).

16 107. Plaintiff is informed and believes, and thereon alleges, that Defendant knowingly
17 and intentionally failed to furnish Plaintiff and members of the Classes with timely, itemized
18 statements showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d) all
19 applicable hourly rates in effect during each respective pay period and the corresponding number
20 of hours worked at each hourly rate by each respective individual. Moreover, Plaintiff's pay
21 statement dated 12/30/22 does not show hours worked or rates of pay.

22 108. Plaintiff is informed and believes, and thereon alleges, that Defendant did not
23 maintain accurate business records pertaining to the total hours worked for Defendant by Plaintiff
24 and the members of the Classes as required under Labor Code section 1174.5. This is a result of
25 missing hours worked, and missed meal-break premiums, as illustrated above.

26 109. As a result of not having kept accurate records, Plaintiff and the Class Members
27 suffered injuries in the form of confusion over whether they received all wages owed to them, and
28 difficulty and expense in reconstructing pay records in addition to other injuries which may come

1 to light during the discovery process.

2 110. Labor Code section 1198 provides that the maximum hours of work and the
3 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
4 applicable IWC wage order. Section 1198 further provides that “[t]he employment of any
5 employees for longer hours than those fixed by the order or under conditions of labor prohibited by
6 the order is unlawful.” Pursuant to the applicable IWC Wage order, employers are required to keep
7 accurate time records showing when the employee begins and ends each work period and meal
8 period.

9 111. Plaintiff and the members of the Classes herein seek damages and penalties pursuant
10 to Labor Code section 226(e) for Defendant’s violations of Labor Code section 226(a).

11 112. Plaintiff and Class Members also seek preliminary and permanent injunctive relief
12 and an award of reasonable attorneys’ fees and costs pursuant to Labor Code section 226(h).

13 **SIXTH CAUSE OF ACTION**

14 **Failure to Provide Suitable Seating**

15 **(By Plaintiff and Members of the Putative Class Against Defendant)**

16 113. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
17 forth herein.

18 114. Labor Code section 1198 makes it illegal to employ an employee under conditions
19 of labor that are prohibited by the applicable wage order. Labor Code section 1198 requires that
20 “the standard conditions of labor fixed by the commission shall be the ... standard conditions of
21 labor for employees. The employment of any employee ... under conditions of labor prohibited by
22 the order is unlawful.” Code of Regulations, title 8, section 11070(14)(A) provides that “[a]ll
23 working employees shall be provided with suitable seats when the nature of the work reasonably
24 permits the use of seats.”

25 115. “The ‘nature of the work’ refers to an employee’s tasks performed at a given
26 location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the
27 entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks
28 being performed at a given location reasonably permit sitting, and provision of a seat would not

1 interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby*
2 *v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 8. “Whether the nature of the work reasonably permits
3 sitting is a question to be determined objectively based on the totality of the circumstances. An
4 employer’s business judgment and the physical layout of the workplace are relevant but not
5 dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s
6 characteristics.” *Ibid.* The burden of proof to show suitable seating is not available is on the
7 employer. *Id.* at 24. In other words, the employer must show that compliance is “infeasible because
8 no suitable seating exists.” See *ibid.*

9 116. Defendant violated Labor Code section 1198 and Code of Regulations, title 8,
10 section 11070(14)(A) because Plaintiff and members of the Classes were not allowed to sit, even
11 when it would not have interfered with the performance of their duties, nor were they provided
12 with suitable seats within the restaurants. Defendant’s management did not inform Plaintiff and
13 members of the Classes that they were allowed to sit down, provide any means for them to sit
14 down, or mention any policy regarding sitting.

15 117. As a result of Defendant’s company-wide policy and/or practice of prohibiting
16 employees from sitting during their shifts and company-wide failure to provide suitable seating,
17 Plaintiff and members of the Classes were forced to stand during shifts and denied seats when
18 working. Defendant’s failure to provide suitable seating to Plaintiff and members of the Classes
19 violates Labor Code section 1198 and the applicable IWC wage order section 14(A).

20 118. Labor Code section 1198 makes it illegal to employ an employee under conditions
21 of labor that are prohibited by the applicable wage order. Labor Code section 1198 requires that
22 “the standard conditions of labor fixed by the commission shall be the ... standard conditions of
23 labor for employees. The employment of any employee ... under conditions of labor prohibited by
24 the order is unlawful.” Code of Regulations, title 8, section 11070(14)(B) provides that “[w]hen
25 employees are not engaged in the active duties of their employment and the nature of the work
26 requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to
27 the work area and employees shall be permitted to use such seats when it does not interfere with
28 the performance of their duties.”

119. The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby* citing IWC, 1976 Wage orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Ibid.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Ibid.*

120. Defendant did not provide Plaintiff and members of the Classes with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing.

121. As a result of Defendant's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Plaintiff and members of the Classes were forced to stand during shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiff and members of the Classes violates Labor Code section 1198 and the applicable IWC Wage order section 14(B).

122. Plaintiff and members of the Classes are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring Defendants into compliance with California's seating requirements, pursuant to Labor Code section 1194.5.

SEVENTH CAUSE OF ACTION

Failure to Timely Pay Wages During Employment

(By Plaintiff and Members of the Putative Class Against Defendant)

123. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

124. Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th

1 day of the month during which the labor was performed, and that all wages earned by any person in
2 any employment between the 16th and the last day, inclusive, of any calendar month, other than
3 those wages due upon termination of an employee, are due and payable between the 1st and the
4 10th day of the following month.

5 125. Labor Code section 204 also requires that all wages earned for labor in excess of the
6 normal work period shall be paid no later than the payday for the next regular payroll period.
7 Alternatively, Labor Code section 204 provides that the requirements of this section are deemed
8 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
9 paid not more than seven (7) calendar days following the close of the payroll period.

10 126. During the class period, Defendant willfully failed to pay Plaintiff and members of
11 the Classes all wages due including, but not limited to, all wages and/or meal period premiums,
12 within the time periods specified by Labor Code section 204.

13 127. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff
14 Class have been damaged in an amount according to proof at time of trial.

15 **EIGHTH CAUSE OF ACTION**

16 **Waiting Time Penalties**

17 **(By Plaintiff and Members of the Terminated Sub Class Against Defendant)**

18 128. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
19 forth herein.

20 129. At all times, relevant herein, Defendant was required to pay their employees all
21 wages owed in a timely fashion during and at the end of their employment, pursuant to Labor Code
22 section 201-203.

23 130. As a pattern and practice, Defendant regularly failed to pay Plaintiff and the
24 members of the Terminated Sub Class their final wages pursuant to Labor Code sections 201-203,
25 and accordingly owe waiting time penalties pursuant to Labor Code section 203.

26 131. Labor Code sections 201 and 202 provide that if an employer discharges an
27 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
28 and that if an employee voluntarily leaves his or her employment, his or her wages shall become

1 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
2 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is
3 entitled to his or her wages at the time of quitting.

4 132. On information and belief, Defendant has a company-wide practice or policy of
5 paying departing employees their final wages late, instead of adhering to the time requirements set
6 forth in Labor Code sections 201 and 202.

7 133. Specifically, Defendant willfully failed to pay Plaintiff and members of the
8 Terminated Sub Class the earned and unpaid wages set forth above, including but not limited to,
9 overtime wages, minimum wages, and/or meal period premiums, either at the time of discharge, or
10 within seventy-two (72) hours of their leaving Defendant's employ.

11 134. Plaintiff and members of the Terminated Sub Class are entitled to recover civil
12 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 256.

13 **NINTH CAUSE OF ACTION**

14 **Violation of California**

15 **Business and Professions Code Section 17200 et seq.**

16 **(By Plaintiff and the Members of the Plaintiff Class Against Defendant)**

17 135. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
18 forth herein.

19 136. Business and Professions Code section 17200 defines unfair competition to include,
20 "unlawful, unfair or fraudulent business practices."

21 137. Plaintiff and all proposed Class Members are "persons within the meaning of
22 Business and Professions Code section 17204, who have suffered injury in fact and have lost
23 money or property as a result of Defendant's unfair competition.

24 138. Defendant has been committing, and continues to commit, acts of unfair
25 competition by engaging in the unlawful, unfair and fraudulent business practices and acts
26 described in this Complaint, including, but not limited to:

27 a) violations of Labor Code sections 510, 1198;

28 b) violations of Labor Code sections 221, 223, 1182.11-1182.12, 1194, 1194.2, 1197,

1 1198;

2 c) violations of Labor Code sections 226.7, 512, 516, and 1198;

3 d) violations of Labor Code sections 226, 1174;

4 e) violations of Labor Code sections 201 and 202;

5 f) violations of Labor Code section 204;

6 g) violations of Labor Code section 1198.

7 139. As a result of its unlawful, unfair, and/or fraudulent business acts and practices,
8 Defendant has reaped and continues to reap unfair benefits and illegal profits at the expense of
9 Plaintiff and proposed Class Members. Defendant's unlawful, unfair, and/or fraudulent conduct has
10 also enabled Defendant to gain an unfair competitive advantage over law-abiding employers and
11 competitors.

12 140. Business and Professions Code section 17203 provides that the Court may restore to
13 an aggrieved party any money or property acquired by means of the unlawful, unfair, and/or
14 fraudulent business acts or practices.

15 141. Plaintiff seeks a court order enjoining Defendant from the unlawful, unfair, and/or
16 fraudulent activity alleged herein.

17 142. Pursuant to Civil Code section 3287(a), Plaintiff and other members of the Plaintiff
18 Class are entitled to recover pre-judgment interest on wages earned, but not paid.

19 143. Plaintiff further seeks an order requiring an audit and accounting of the payroll
20 records to determine the amount of restitution of all unpaid wages owed to herself and members of
21 the proposed Plaintiff Class, according to proof, as well as a determination of the amount of funds
22 to be paid to current and former employees that can be identified and located pursuant to a court
23 order and supervision.

24 144. Plaintiff seeks restitution for herself and all others similarly situated of these
25 amounts, including all earned and unpaid wages and attorneys' fees and costs pursuant to Code of
26 Civil Procedure section 1021.5.

27 ///

28 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, and the Class Members pray for judgment as follows:

1. For an order certifying the proposed Plaintiff and Terminated Sub-Class;
2. For an order that counsel for Plaintiff be appointed class counsel
3. Certification of this class action on behalf of the proposed Plaintiff and Terminated Sub-Class;
4. Designation of Plaintiff as the class representative of the Plaintiff and Terminated Sub Class;
5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class and disgorgement of all profits from the unlawful business practices of Defendant;
6. An order appointing Plaintiff's counsel as class counsel;
7. Prejudgment and post judgment interest on all sums awarded;
8. For compensatory damages;
9. For penalties pursuant to Labor Code sections 200, 226, 226.7, 226.3, 2699(a) and 2699(f);
10. For interest accrued to date;
11. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226 and 1194;
12. For reasonable attorneys' fees pursuant to Labor Code section 226, 2699(g)(1) and Code of Civil Procedure section 1021.5, and/or other applicable law; and
13. A declaratory judgment that Defendant has knowingly and intentionally violated the following provisions of law;
 - a. Labor Code sections 510, 1198 for failing to pay overtime;
 - b. Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198, 221, 223, for failing to pay all wages;
 - c. Labor Code sections 226.7, 512, 516, and 1198 for failing to provide compliant meal breaks;
 - d. Labor Code sections 226.7, 512, 516, and 1198 for failing to provide

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- compliant rest breaks;
- e. Labor Code sections 226, 1174 for failing to provide compliant wage statements;
- f. Labor Code sections 204 for failing to pay wages timely during employment;
- g. Labor Code sections 201 and 202 for failing to pay wages at termination;
- h. Labor Code section 1198 for failing to provide suitable seating;
- i. Business & Professions Code sections 17200-08 for violating the provisions set forth herein above.

14. For all such other and further relief that the Court may deem just and proper.

DATED: March 6, 2023

BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC

By: 

Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Lirit King, Esq.
Garen Majarian, Esq.
Sahag Majarian, II, Esq.
Attorneys for Plaintiff and others similarly situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of Plaintiff's and the members of the Classes' claims by jury to the extent authorized by law.

DATED: March 6, 2023

BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC

By: 

Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Lirit King, Esq.
Garen Majarian, Esq.
Sahag Majarian, II, Esq.
Attorneys for Plaintiff and others similarly situated