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and on behalf of all employees similarly situated

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

SEAN W POWERS, as an individual and on
behalf of all employees similarly situated,

Plaintiff,

v.

MARIO'S PLACE, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CVRI2301652

**Amended as a matter of right, pursuant to
Labor Code Section 2699.3(a)(2)(c)**

FIRST AMENDED COMPLAINT

1. Violation of Labor Code §§ 204, 246, 510, 551, 552, 1194, 1198 (Failure to Pay All Wages and Sick Pay);
2. Violation of Labor Code §§ 226.7, 512 (Failure to Provide Meal Periods);
3. Violation of Labor Code § 226.7 (Failure to Provide Rest Periods);
4. Violation of Labor Code § 226, (Failure to Keep Accurate Itemized Wage Statements);
5. Violation of Labor Code §§ 201-203 (Failure to Pay Wages Upon Termination of Employment);
6. Violation of Labor Code § 2802 (Failure to Reimburse for Necessary Expenditures);
7. Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business Practices); and
8. Violation of the Private Attorneys General Act, Labor Code sections 2698, et seq

DEMAND FOR JURY TRIAL

1 Plaintiff SEAN W POWERS (hereinafter referred to as “Plaintiff”) on behalf of himself
2 and all others similarly situated, and as representative of the State of California and the Labor and
3 Workforce Development Agency (“LWDA”), based upon facts that either have evidentiary
4 support or are likely to have evidentiary support after a reasonable opportunity for further
5 investigation and discovery, complains and alleges as follows:

6 **INTRODUCTION**

7 1. This is a class action brought on behalf of Plaintiff and the class he seeks to
8 represent (“Class” or “Class Members”). Class Members consist of all non-exempt, hourly-paid
9 employees currently and/or formerly employed by MARIO’S PLACE, INC. in the State of
10 California during the Class Period. The term “Class Period” is defined as four (4) years prior to
11 the filing of this Complaint through the date final judgment is entered. Plaintiff reserves the right
12 to amend this Complaint to reflect a different “Class Period” or “Class” as further discovery is
13 conducted.

14 2. Plaintiff, individually and on behalf of the class he seeks to represent, seeks relief
15 against MARIO’S PLACE, INC. (“Defendant”) for Defendant’s failure to pay all wages due in
16 violation of Labor Code Sections 204, 510 and 1194, including minimum, regular and overtime
17 wages; failure to provide meal periods or compensation in lieu thereof pursuant to Labor Code
18 Sections 226.7 and 512, the applicable Industrial Welfare Commission Wage Orders, and Code
19 of Regulations, Title 8, Section 11000 et seq. and failure to provide paid sick leave and written
20 notice of available paid sick leave pursuant to Labor Code Section 246; failure to provide rest
21 periods or compensation in lieu thereof pursuant to Labor Code Sections 226.7 and 512, the
22 applicable Industrial Welfare Commission Wage Orders, and Code of Regulations, Title 8,
23 Section 11000 et seq.; failure to provide accurate itemized wage statements upon payment of
24 wages pursuant to Labor Code Sections 226, subdivision (a), 1174, and 1175; failure to reimburse
25 for necessary expenditures pursuant to Labor Code Section 2802; failure to provide one day of
26 rest in seven pursuant to Labor Code Sections 551, 552; failure to provide suitable seats pursuant
27 to relevant Industrial Wage Order; and failure to pay wages of terminated or resigned employees
28 pursuant to Labor Code Sections 201, 202, and 203.

1 3. Plaintiff seeks equitable remedies in the form of declaratory relief and injunctive
2 relief, and relief under Business and Professions Code Section 17200 et seq. for unfair business
3 practices.

4 4. At all relevant times herein, Defendant has consistently maintained and enforced
5 against Plaintiff and Class the following unlawful practices and policies:

- 6 (a) willfully refusing to pay Plaintiff and Class for all hours worked, including
7 minimum, regular and overtime
- 8 (b) willfully refusing to provide suitable seats;
- 9 (c) willfully refusing to provide paid sick leave and written notice of paid sick
10 leave;
- 11 (b) willfully refusing to permit Plaintiff and Class from taking meal periods or
12 compensation in lieu thereof;
- 13 (c) willfully refusing to permit Plaintiff and Class from taking rest periods or
14 compensation in lieu thereof;
- 15 (d) willfully refusing to maintain accurate records and to furnish to Plaintiff and
16 Class accurate itemized wage statements upon payment of wages;
- 17 (e) willfully refusing to compensate Plaintiff and certain members of the Class
18 wages due and owing at the time of Plaintiff and Class Members'
19 employment with Defendant ended; and
- 20 (f) willfully refusing to reimburse Plaintiff and Class for necessary
21 expenditures.

22 5. On information and belief, Defendant was on actual and constructive notice of
23 the improprieties alleged herein and intentionally refused to rectify their unlawful policies.
24 Defendant's violations, as alleged above, during all relevant times herein were willful and
25 deliberate.

26 6. At all relevant times, Defendant was and is legally responsible for all of the
27 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
28

1 foregoing paragraphs as the employer of Plaintiff and Class. Further, Defendant is responsible
2 for each of the unlawful acts or omissions complained of herein under the doctrine of
3 “respondeat superior”.

4 7. Plaintiff further brings this action as a representative of the State of California and
5 the Labor and Workforce Development Agency (“LWDA”) to recover civil penalties pursuant to
6 the Private Attorneys General Act (“PAGA”), Labor Code sections 2698, *et seq.*, for violations
7 of numerous Labor Code provisions, including, but not limited to, sections 201-203, 204, 226,
8 226.7, 246, 510, 512, 550, 551, 1174, 1194, and 2802, as well as violations of the applicable
9 Wage Order.

10 **JURISDICTION AND VENUE**

11 8. Venue is proper in this judicial district and in the County of Riverside, California
12 because Defendant maintained its location and/or transacted business in this county, the
13 obligations and liability arise in this county, and work was performed by members of the proposed
14 class made the subject of this action in this county.

15 9. The wages, statutory penalties, monetary damages and restitution sought by
16 Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established
17 according to proof at trial. This Court has jurisdiction over this action pursuant to the California
18 Constitution, article VI, Section 10. The statutes under which this action is brought do not specify
19 any other basis for jurisdiction.

20 10. The California Superior Court has jurisdiction in the matter because the individual
21 claims are under the seventy-five thousand dollars (\$75,000.00) jurisdictional threshold for
22 Federal Court and the five million dollars (\$5,000,000.00) aggregate jurisdictional threshold for
23 Federal Court and, upon information and belief, Plaintiff and Defendant are residents of,
24 domiciled in, or otherwise subject to jurisdiction in the State of California. Further, there is no
25 federal question at issue as the issues herein are based solely on California statutes and law
26 including the Labor Code, Industrial Welfare Commission (“IWC”) Wage Orders, the Code of
27 Civil Procedure, the Rules of Court, and the Business and Professions Code.
28

THE PARTIES

A. Plaintiff

11. Plaintiff, at all relevant times herein, was Defendant's employee and was entitled to compensation for all hours worked, including regular time and overtime compensation, and penalties from Defendant. Plaintiff was employed by Defendant as a non-exempt, hourly paid employee during the Class Period. Specifically, Plaintiff worked as a bartender and server for Defendant from approximately August 2021 to April 9, 2022 at Defendant's facility located at 3646 Mission Inn Avenue, Riverside, California 92501. Each of the Class Members are identifiable, current and/or former similarly situated persons who were employed in non-exempt hourly positions in California by Defendant during the Class Period.

B. Defendant

12. Plaintiff is informed and believes, and based thereon alleges, that Defendant is a California corporation. Defendant provides restaurant services. On information and belief, Defendant was and/or is the employer of Plaintiff and Class during the Class Period. Plaintiff also alleges that Defendant is conducting business in good standing in California.

13. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief alleges that these Defendants are legally responsible for the payment of overtime compensation, rest and meal period compensation, and wages to Plaintiff and Class by virtue of their unlawful practices, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of each DOE Defendants when ascertained.

14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, 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 Defendant. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and Class.

1 15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
2 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
3 managing agent, and/or principal of the Defendant, and in performing the actions mentioned
4 below was acting, at least in part, within the course and scope of that authority as such agent,
5 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
6 permission and consent of the Defendant. Plaintiff also alleges the acts of each Defendant are
7 legally attributable to the other Defendant.

8 16. Plaintiff is informed and believes, and based thereon alleges, that each of the
9 Defendant sued herein was, at all times relevant hereto, the employer, owner, shareholder,
10 principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing
11 agent, joint employer and/or alter-ego of the remaining Defendant, and was acting, at least in part,
12 within the course and scope of such employment and agency, with the express and implied
13 permission, consent, and knowledge, approval and/or ratification of the other Defendant.

14 17. The above Defendant, managing agents, and supervisors aided, abetted, condoned,
15 permitted, approved, authorized and/or ratified the unlawful acts described herein.

16 **ADMINISTRATIVE PREREQUISITE**

17 18. On April 3, 2023, prior to filing this complaint, Plaintiff gave written notice by
18 electronically filing the notice with the Labor Workforce Development Agency (“LWDA”)
19 (LWDA Case No. LWDA-946052-23), and by certified mail to Defendant of the specified
20 provisions alleged to have been violated, including the facts and theories to support the alleged
21 violations as required by Labor Code Section 2699.3.

22 19. A true and correct copy of Plaintiff’s letter sent to the LWDA dated April 3, 2023,
23 is attached hereto as “**Exhibit A**”. As of the filing of this complaint, LWDA has not responded
24 to the written notice.

25 20. Under Labor Code Section 2699.3 subsection (a), a plaintiff may bring a cause
26 of action under PAGA only after giving notice to the Labor Workforce Development Agency
27 (“LWDA”) and the employer of the Labor Code Sections alleged to have been violated, and
28 after receiving notice from the LWDA of its intention not to investigate, or after 65 days have

1 passed without notice.

2 21. More than sixty-five (65) days have passed without notice from the LWDA.
3 Accordingly, all administrative prerequisites to filing this action have been fulfilled.

4 **GENERAL ALLEGATIONS**

5 22. Plaintiff was employed as a bartender and server for Defendant from
6 approximately August 2021 to April 9, 2022.

7 23. Labor Code Section 1194 provides that notwithstanding any agreement to work
8 for a lesser wage, an employee receiving less than the legal overtime compensation is entitled to
9 recover in a civil action the unpaid balance of his or her overtime compensation, including interest
10 thereon, reasonable attorneys' fees, and costs of suit.

11 24. Labor Code Section 204 requires employers to pay employees all earned wages
12 two times per month on days designated in advance by the employer as regular paydays.
13 Pursuant to Labor Code Section 204 (a) labor performed between the 1st and 15th days,
14 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the
15 month during which the labor was performed, and labor performed between the 16th and the last
16 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the
17 following month. Pursuant to Labor Code Section 204 (d) the requirements of this Section shall
18 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
19 the wages are paid not more than seven calendar days following the close of the payroll period.
20 Plaintiff and Class were also entitled to be paid twice a month at their regular rates, including all
21 meal period premium wages owed, rest period premium wages owed, and wages owed for hours
22 worked. However, during Class period, Defendant systematically failed and refused to pay the
23 employees all wages due, and failed to pay those wages twice a month, in that employees were
24 not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods
25 not authorized and permitted by Defendant, and all wages for all hours worked.

26 25. Further, Business and Professions Code Section 17203 provides that any person
27 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
28 Business and Professions Code Section 17204 provides that any person who has suffered actual

injury and has lost money or property as a result of the unfair competition may bring an action in a court of competent jurisdiction.

26. During all, or a portion of the Class Period, Plaintiff and each member of the Class was employed by Defendant in the State of California.

27. Plaintiff and Class Members were non-exempt employees covered under one or more IWC Wage Order(s), and Labor Code Section 510, and/or other applicable Wage Orders, regulations and statutes, and each Class Member was not subject to an exemption for executive, administrative or professional employees, which imposed obligations on the part of Defendant to pay Plaintiff and Class Members lawful overtime compensation.

28. Plaintiff and Class were covered by one or more IWC Wage Order(s), and Labor Code Section 226.7 and other applicable Wage Orders, regulations and statutes which imposed an obligation on the part of Defendant to pay Plaintiff and Class rest and meal period compensation.

29. During the Class Period, Defendant were obligated to pay Plaintiff and Class Members for all hours worked. However, Defendant failed to pay Plaintiff and Class Members for all hours worked at the legally mandated wage rates, including minimum wages and overtime wages. During the Class Period, Defendant failed to pay Plaintiff and Class Members the minimum wage fixed by the Labor Commission. For example, Defendant employed more than 26 employees in 2022, but paid \$14 per hour in 2022 instead of \$15 per hour as provided in the Labor Commissioner's Industrial Wage Order. During the Class Period, Defendant also maintained a policy and practice of requiring Plaintiff and Class Members to report for work but has not put them to work. They were required to return home immediately upon arrival at work. This happened at least once every two weeks. In those occasions Defendant failed to pay Plaintiff and Class Members the reporting time pay of half the usual scheduled day of work or at least two hours. During the Class Period, Defendant also required Plaintiff and Class Members to report to work and to wait about 2-3 hours in the immediate area of the jobsite until confirmed by Defendant whether they would be put to work. Defendant failed to pay

1 Plaintiff and Class Members for that standby on-call time. During the Class Period, Defendant
2 also combined voluntary cash tips received by employees with the mandatory service charges
3 made by Defendant's customers in their wage statements. Defendant distributed the portion of
4 mandatory service charges/mandatory tips paid by Defendant's customers to Plaintiff and
5 Class Members as additional non-discretionary remuneration in addition to voluntary cash tips
6 paid by Defendant's customers. However, Defendant has not disaggregated the mandatory and
7 voluntary tips and has not compensated Plaintiff and Class Members at the proper overtime
8 rate. Defendant has not included the mandatory service charges/tips paid to Class Members in
9 the regular rate of pay for purposes of calculating Plaintiff's and Class Members' overtime rate
10 of pay. In maintaining a practice of not paying all wages owed, Defendant failed to maintain
11 accurate records of the hours Plaintiff and Class Members worked.

12
13 30. During the Class Period, Defendant were obligated to pay Plaintiff and Class
14 Members overtime compensation for all hours worked in excess of eight (8) hours of work in one
15 (1) day or forty (40) hours in one (1) week and double-time compensation for hours worked in
16 excess of twelve (12) in one (1) day. However, often times Plaintiff and Class Members were
17 required to work overtime in excess of eight (8) hours per workday and in excess of forty (40)
18 hours per workweek but were not paid at the proper overtime rate of pay.

19 31. During the Class Period, Defendant were obligated to provide Plaintiff and Class
20 with a work-free meal period within the first five (5) hours of a shift when the workday was
21 longer than six (6) hours. Plaintiff and Class Members were entitled to a full, thirty (30) minute,
22 off-duty meal period when they worked in excess of six (6) hours within the first five (5) hours
23 of their shifts. Here, Defendant failed to keep a record of meal periods and failed to provide
24 Plaintiff and Class Members with legally compliant meal periods. Plaintiff and Class Members
25 were not required to clock in and out for meal periods or otherwise record meal periods.
26 Defendant regularly required Plaintiff and Class Members to work in excess of five consecutive
27 hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period
28 for every five hours of work, or without compensating Plaintiff and Class Members for meal

1 periods that were not provided by the end of the fifth hour of work or tenth hour of work.
2 Defendant did not adequately inform Plaintiff and Class Members of their right to take a meal
3 period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the
4 tenth hour of work. Moreover, Defendant did not have adequate written policies or practices
5 providing meal periods for Plaintiff and Class Members, nor did Defendant have adequate
6 policies or practices regarding the timing of meal periods. Defendant also failed to provide
7 second meal periods when Plaintiff and Class Members worked more than 10 hours during one
8 shift. Plaintiff and Class Members have never been authorized or taken their first, second or third
9 meal periods, and Defendant failed to keep a record of meal periods. Accordingly, Defendant's
10 policy and practice was to not provide meal periods to Plaintiff and Class Members in
11 compliance with California law.

12 32. Additionally, Defendant were obligated to provide Plaintiff and Class Members
13 with a ten (10) minute rest break for every four (4) hours, or major fraction thereof, worked each
14 day. Defendant prevented Plaintiff and Class Members from taking rest breaks throughout their
15 shifts. Plaintiff and Class Members were generally precluded from taking rest periods due to
16 Defendant's failure to maintain the rest break policy to provide relief and thereby allow Plaintiff
17 and Class Members the opportunity to take rest breaks. Moreover, Defendant did not have
18 adequate policies or practices permitting or authorizing rest periods for Plaintiff and Class, nor
19 did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant
20 did not schedule rest periods every 4 hours or a major fraction. Plaintiff and Class Members have
21 never been authorized and taken first, second, third or fourth rest breaks. Accordingly,
22 Defendant's policy and practice was for Plaintiff and Class Members to work through rest periods
23 and to not authorize or permit them to take any rest periods.

24 33. Further, due to the pressure from Defendant and failure to maintain an adequate
25 policy, and in violation of Labor Code and applicable IWC Wage Orders, Plaintiff was not
26 authorized and permitted to take a second rest period, on shifts exceeding six hours of work,
27 and/or third rest breaks, on shifts exceeding ten hours of work. *Brinker Restaurant Corp. v.*
28 *Superior Court*, 53 Cal.4th 1004, 1030 (2012). "Employees are entitled to 10 minutes rest for

1 shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours
2 up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.”

3 34. Furthermore, Defendant failed and/or refused to pay Plaintiff and Class Members
4 one (1) hour’s pay at the employees’ regular rate of pay as premium compensation for Defendant’s
5 failure to provide lawful thirty (30) minute, off-duty meal periods and failure to provide lawful
6 ten (10) minute rest periods within the statutory time frames.

7 35. Defendant also failed to indemnify Plaintiff and Class Members all necessary
8 expenditures incurred in direct discharge of their duties including for using their personal cell
9 phones for work and for purchasing masks. Plaintiff and Class incurred these substantial expenses
10 as a direct result of performing their job duties for Defendant, and Defendant have failed to
11 indemnify Plaintiff and Class for these employment-related expenses.

12 36. Defendant continues to employ non-exempt, hourly-paid employees within
13 California.

14 37. Plaintiff and Class Members primarily performed non-exempt work, often in
15 excess of the maximum regular rate hours set forth in the applicable IWC Wage Order(s),
16 regulations or statutes, and therefore entitled the Plaintiff and Class Members to overtime
17 compensation at the rate of one and a half times their regular rate of pay and, when applicable,
18 double time compensation as set forth by the applicable IWC Wage Order(s), regulations and/or
19 statutes.

20 38. During the Class Period, Defendant required Plaintiff and Class Members to work
21 regular hours, off the clock hours, and overtime hours without lawful compensation in violation
22 of the applicable IWC Wage Order(s), regulations and statutes, and Defendant: (1) willfully failed
23 and refused, and continue to fail and refuse to pay compensation for all hours worked, including
24 lawful regular time and overtime compensation, to Class Members; and (2) willfully failed and
25 refused, and continue to fail and refuse to pay due and owing wages promptly upon termination
26 of employment to Plaintiff and affected Class Members.

27 39. Class Members who ended their employment with Defendant during the Class
28 Period but were not paid the above due compensation for all hours worked timely upon the

1 termination of their employment as required by Labor Code Sections 201, 202, and 203 are
2 entitled to penalties as provided by Labor Code Section 203.

3 40. During the Class Period, Defendant failed to furnish Plaintiff and Class with
4 accurate, itemized wage statements showing all applicable hourly rates, and all gross and net
5 wages earned (including correct hourly minimum wage rate, correct hours worked, correct
6 wages earned for hours worked, correct overtime hours worked, correct wages for meal periods
7 that were not provided in accordance with California law, correct wages for rest periods that
8 were not authorized and permitted to take in accordance with California law). As a result of
9 these violations of California Labor Code § 226(a), Plaintiff and Class suffered injury because,
10 among other things:

- 11 (a) the violations led them to believe that they were not entitled to be paid
12 minimum wages, overtime wages, meal period premium wages, and rest
13 period premium wages to which they were entitled, even though they were
14 entitled;
- 15 (b) the violations led them to believe that they had been paid the minimum,
16 overtime, meal period premium, and rest period premium wages, even
17 though they had not been;
- 18 (c) the violations led them to believe they were not entitled to be paid overtime,
19 meal period premium, and rest period premium wages at the correct
20 California rate even though they were;
- 21 (d) the violations led them to believe they had been paid overtime, meal period
22 premium, and rest period premium wages at the correct California rate even
23 though they had not been;
- 24 (e) the violations hindered them from determining the amounts of overtime,
25 meal period premium, and rest period premium owed to them;
26
27
28

1 (f) in connection with their employment before and during this action, and in
2 connection with prosecuting this action, the violations caused them to have
3 to perform mathematical computations to determine the amounts of wages
4 owed to them, computations they would not have to make if the wage
5 statements contained the required accurate information;

6 (g) by understating the wages truly due them, the violations caused them to lose
7 entitlement and/or accrual of the full amount of Social Security, disability,
8 unemployment, and other governmental benefits;

9 (h) the wage statements inaccurately understated the wages, hours, and wages
10 rates to which Plaintiff and Class were entitled, and Plaintiff and Class were
11 paid less than the wages and wage rates to which they were entitled.
12

13 Thus, Plaintiff and Class are owed the amounts provided for in California Labor Code §
14 226(e), including actual damages.

15 41. Defendant knew or should have known that Plaintiff and Class members were
16 entitled to receive accurate wage statements, which would include meal break premiums, and/or
17 rest break premiums, as required by Labor Code 226.

18 42. Defendant knew or should have known that Plaintiff and Class Members were
19 entitled to timely payment of all wages earned upon termination. Plaintiff and Class Members did
20 not receive payment of all wages, including but not limited to, meal and rest break premiums, in
21 violation of the Labor Code.

22 43. Labor Code Section 246 (a) an employee who, on or after July 1, 2015, works in
23 California for the same employer for 30 or more days within a year from the commencement of
24 employment is entitled to paid sick days. Labor Code Section 246 (i) requires employers to provide
25 an employee with written notice that sets forth the amount of paid sick leave available.

26 44. During the Class period, Defendant maintained a policy and practice of failing to
27 provide Plaintiff and Class Members with the paid sick leave as well as to provide a written notice
28 of accrued paid sick leave. On information and belief, Defendant's failure to provide an employee

1 with written notice that sets forth the amount of paid sick leave available was not a single, isolated
2 incident, but was instead part of Defendant's policy and practice that applied to Class Members.

3 45. Pursuant to applicable IWC Section 14(a) all working employees shall be provided
4 with suitable seats when the nature of the work reasonably permits the use of seats. IWC Section
5 14(B) states that when employees are not engaged in the active duties of their employment and
6 the nature of the work requires standing, an adequate number of suitable seats shall be placed in
7 reasonable proximity to the work areas and employees shall be permitted to use such seats when
8 it does not interfere with the performance of their duties. However, Defendant failed to provide
9 Plaintiff and Class with suitable seats.

10 46. Labor Code Section 551 provides that every person employed in any occupation
11 of labor is entitled to one day's rest in seven. Additionally, Labor Code Section 552 prohibits
12 employers from requiring employees to work more than six consecutive days without a day of
13 rest. Sometimes Defendant scheduled Plaintiff and Class Members to work six (6) or more hours
14 per day and more than seven (7) consecutive days in a workweek in violation of Labor Code
15 requirements.

16 **CLASS ALLEGATIONS**

17 47. Plaintiff brings this action on behalf of himself and all other similarly situated
18 persons as a class action pursuant to Code of Civil Procedure Section 382. The Class is composed
19 of and defined as follows:

20 (a) All persons who are employed or have been employed by Defendant in the
21 State of California, and who, within the four (4) years of the filing of this
22 Complaint to the present, have worked as non-exempt employees and were not
23 paid all wages owed, including but not limited to the legally requisite minimum
24 wage, regular time rate, overtime rate and/or double-time rate as well as were
25 not provided a paid sick leave and written notice of accrued paid sick leave as
26 specifically described herein;

27 (b) All persons who are employed or have been employed by Defendant in the
28 State of California, and who, within the four (4) years of the filing of this

1 Complaint to the present, have worked as non-exempt employees and have not
2 been provided a meal period for shifts in excess of five (5) hours within the
3 first five (5) hours such shifts, and were not provided one (1) hour's pay for
4 each day during which a lawful meal period was not provided;

5 (c) All persons who are employed or have been employed by Defendant in the
6 State of California, and who, within the four (4) years of the filing of this
7 Complaint to the present, have worked as non-exempt employees and have not
8 been provided a rest period for every four (4) hours, or major fraction thereof,
9 worked per day, and were not provided compensation of one (1) hour's pay for
10 each day on which such rest period(s) was not provided;

11 (d) All persons who are employed or have been employed by Defendant in the
12 State of California, and who, within the four (4) years of the filing of this
13 Complaint to the present, have worked as non-exempt employees and have not
14 been reimbursed expenditures in discharge of their duties;

15 (e) All persons who are employed or have been employed by Defendant in the
16 State of California, and who, within the three (3) years of the filing of this
17 Complaint to the present, have worked as non-exempt employees and have
18 been terminated or resigned, and have not been paid wages pursuant to Labor
19 Code Section 203 and are owed restitution and waiting time penalties for
20 unpaid wages;

21 (f) All persons who are employed or have been employed by Defendant in the
22 State of California, and who, within the one (1) year of the filing of this
23 Complaint to the present have worked as non-exempt employees and were not
24 provided an accurate payroll record or wage statement as required under Labor
25 Code Sections 226 and 1174;

26 (g) All persons who are employed or have been employed by Defendant in the
27 State of California, and who, within the one (4) year of the filing of this
28 Complaint to the present have worked as non-exempt employees and were not

provided a suitable seat in accordance with IWC relevant order as well as were not provided one day of rest in seven as required under Labor Code Sections 551 and 552;

(h) All persons who are employed or have been employed by Defendant in the State of California, and who, within the four (4) years of the filing of this Complaint to the present, have worked as non-exempt employees and were subjected to unlawful and unfair business practices within the meaning of California's Unfair Competition Law and who suffered injury, including lost money, as a result of Defendant's unlawful and unfair business practices.

48. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or necessary to amend the definition of the Class. Plaintiff will formally define and designate a class definition at such time when Plaintiff seeks to certify the Class alleged in this Complaint.

49. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure Section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the court.

50. The Court should permit this action to be maintained as a class action pursuant to Code of Civil Procedure Section 382 because:

- (a) The questions of law and fact common to Class predominate over any question affecting only individual class members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the Class members;
- (c) Class is so numerous that it is impractical to bring all members of the Class before the Court;
- (d) Plaintiff and Class Members will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other

1 improprieties and in obtaining adequate compensation for the damages
2 and injuries which Defendant's actions have inflicted upon Class;

3 (f) There is a community of interest in ensuring that the combined assets and
4 available insurance of the Defendant are sufficient to adequately
5 compensate Class Members for the injuries sustained;

6 (g) Without class certification, the prosecution of separate actions by
7 individual members of the Class would create a risk of:

8 (1) Inconsistent or varying adjudications with respect to individual
9 members of the Class which would establish an incompatible
10 standard of conduct for Defendant; and/or

11 (2) Adjudications with respect to the individual members which
12 would, as a practical matter, be dispositive of the interests of other
13 members not parties to the adjudications, or would substantially
14 impair or impede their ability to protect their interests, including
15 but not limited to the potential for exhausting the funds available
16 from those parties who are, or may be, responsible Defendant; and

17 (h) Defendant have acted or refused to act on grounds generally applicable to
18 Class, thereby making final injunctive relief appropriate with respect to
19 Class as a whole.

20 51. There is a well-defined community of interest in the litigation and Class is
21 readily ascertainable:

22 (a) Numerosity: The members of Class (and each subclass, if any) are so
23 numerous that joinder of all members would be unfeasible and impractical.
24 The membership of the entire Class is unknown to Plaintiff at this time,
25 however, the Class is estimated to be greater than 100 individuals and the
26 identity of such membership is readily ascertainable by inspection of
27 Defendant's records.
28

1 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the
2 interests of each Class Member with whom there is a shared, well-defined
3 community of interest, and Plaintiff's claims (or defenses, if any) are typical
4 of all Class Members' claims as demonstrated herein.

5 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
6 the interests of each Class Member with whom there is a shared, well-
7 defined community of interest and typicality of claims, as demonstrated
8 herein. Plaintiff has no conflicts with or interests antagonistic to any Class
9 Member. Plaintiff's attorneys, the proposed class counsel, are versed in the
10 rules governing class action discovery, certification, and settlement.
11 Plaintiff has incurred, and throughout the duration of this action, will
12 continue to incur costs and attorneys' fees that have been, are, and will be
13 necessarily expended for the prosecution of this action for the substantial
14 benefit of each class member.

15 (d) Superiority: A Class Action is superior to other available methods for the
16 fair and efficient adjudication of the controversy, including consideration of:

- 17 1. The interests of the members of the Class in individually
18 controlling the prosecution or defense of separate actions;
- 19 2. The extent and nature of any litigation concerning the
20 controversy already commenced by or against members of the
21 Class;
- 22 3. The desirability or undesirability of concentrating the
23 litigation of the claims in the particular forum; and
- 24 4. The difficulties likely to be encountered in the management of
25 a class action.

26 (e) Public Policy Considerations: The public policy of the State of California is
27
28

1 to resolve the California Labor Code claims of many employees through a
2 class action. Indeed, current employees are often afraid to assert their rights
3 out of fear of direct or indirect retaliation. Former employees are also
4 fearful of bringing actions because they believe their former employers
5 might damage their future endeavors through negative references and/or
6 other means. Class actions provide the class members who are not named in
7 the complaint with a type of anonymity that allows for the vindication of
8 their rights at the same time as their privacy is protected.

9 52. Plaintiff contemplates the eventual issuance of notice to the proposed members of
10 the Class that would set forth the subject and nature of the instant action. Defendant's own
11 business records may be utilized for assistance in the preparation and issuance of the
12 contemplated notices. To the extent that any further notices may be required, Plaintiff would
13 contemplate the use of additional techniques and forms commonly used in class actions, such as
14 published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by
15 other methods suitable to Class and deemed necessary and/or appropriate by the Court.

16 **FIRST CAUSE OF ACTION**

17 **Failure to Pay All Wages for All Hours Worked and Provide Paid Sick Leave and Written**
18 **Notice of Accrued Sick Leave**

19 **(Against Defendant, DOES 1 through 50, and each of them)**

20 53. Plaintiff and Class Members re-allege and incorporate by reference all preceding
21 paragraphs of this complaint as though fully set forth herein.

22 54. Labor Code Section 510, subdivision (a) states in pertinent part: "Any work in
23 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek...
24 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for
25 any employee."

26 55. Labor Code Section 1194, subdivision (a) states: "Notwithstanding any agreement
27 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
28

overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.”

56. Further, pursuant to Labor Code Section 1197, payment of less than the minimum wage fixed by the Labor Commission is unlawful.

57. Pursuant to Labor Code Section 1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Order(s).

58. Pursuant to the IWC Wage Order(s), Defendant is required to pay Plaintiff and Class Members for all hours worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work, whether or not required to do so.

59. Pursuant to Labor Code Section 551 that every person employed in any occupation of labor is entitled to one day’s rest in seven. Additionally, Labor Code Section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. Defendant scheduled Plaintiff and Class Members to work six (6) or more hours per day and more than seven (7) consecutive days in a workweek in violation of Labor Code requirements.

60. During the Class Period, Defendant was obligated to pay Plaintiff and Class Members for all hours worked. However, Defendant failed to pay Plaintiff and Class Members for all hours worked at the legally mandated wage rates, including minimum wages and overtime wages. During the Class Period, Defendant failed to pay Plaintiff and Class Members the minimum wage fixed by the Labor Commission. For example, Defendant employed more than 26 employees in 2022, but paid \$14 per hour in 2022 instead of \$15 per hour as provided in the Labor Commissioner’s Industrial Wage Order. During the Class Period, Defendant also maintained a policy and practice of requiring Plaintiff and Class Members to report for work but has not put them to work. They were required to return home immediately upon arrival at work. This happened at least once every two weeks. In those occasions Defendant failed to pay

1 Plaintiff and Class Members the reporting time pay of half the usual scheduled day of work or at
2 least two hours. During the Class Period, Defendant also required Plaintiff and Class Members
3 to report to work and to wait about 2-3 hours in the immediate area of the jobsite until confirmed
4 by Defendant whether they would be put to work. Defendant failed to pay Plaintiff and Class
5 Members for that standby on-call time. During the Class Period, Defendant also combined
6 voluntary cash tips received by employees with the mandatory service charges made by
7 Defendant's customers in their wage statements. Defendant distributed the portion of mandatory
8 service charges/mandatory tips paid by Defendant's customers to Plaintiff and Class Members as
9 additional non-discretionary remuneration in addition to voluntary cash tips paid by Defendant's
10 customers. However, Defendant has not disaggregated the mandatory and voluntary tips and has
11 not compensated Plaintiff and Class Members at the proper overtime rate. Defendant has not
12 included the mandatory service charges/tips paid to Class Members in the regular rate of pay for
13 purposes of calculating Plaintiff's and Class Members' overtime rate of pay. In maintaining a
14 practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours
15 Plaintiff and Class Members worked.

16 61. Plaintiff and Class Members were required to work overtime in excess of eight (8)
17 hours per workday and in excess of forty (40) hours per workweek, but were not paid at the proper
18 overtime rate of pay.

19 62. Labor Code Section 246 (a) an employee who, on or after July 1, 2015, works in
20 California for the same employer for 30 or more days within a year from the commencement of
21 employment is entitled to paid sick days. Labor Code Section 246 (i) requires employers to
22 provide an employee with written notice that sets forth the amount of paid sick leave available.
23 During the Class period, Defendant maintained a policy and practice of failing to provide Plaintiff
24 and Class Members with the paid sick leave as well as to provide a written notice of accrued paid
25 sick leave. On information and belief, Defendant's failure to provide an employee with written
26 notice that sets forth the amount of paid sick leave available was not a single, isolated incident,
27 but was instead part of Defendant's policy and practice that applied to Class Members.

63. Labor Code Section 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as regular paydays. Pursuant to Labor Code Section 204 (a) 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. Pursuant to Labor Code Section 204 (d) the requirements of this Section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Plaintiff and Class were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during Class period, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked.

64. Defendant's pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, pursuant to Labor Code Section 218, to recovery by Plaintiff and the members of the Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the appropriate rate.

65. Pursuant to Labor Code Section 1194.2(a) (which provides that in any action under Labor Code § 1194, an employee shall be entitled to recover liquidated damages), the members of Class seek recovery of liquidated damages on the straight-time portion of uncompensated hours of work (not including the overtime portion thereof) in an amount equal to the wages unlawfully unpaid and interest thereon.

66. That calculation of individual damages for Class Members may at some point be required does not foreclose the possibility of taking common evidence on questions regarding their entitlement to overtime compensation. *Collins v. Rocha* (1972) 7 Cal.3d 232; *Hypolite v.*

1 *Carleson* (1975) 52 Cal.App.3d 566; *Employment Development Dept. v. Superior Court* (1981)
2 30 Cal.3d 256).

3 67. Pursuant to Labor Code Sections 218.6 and 1194(a) and Civil Code Section 3287,
4 Class Members seek recovery of pre-judgment interest on all amounts recovered herein.

5 68. Pursuant to Labor Code Sections 218.5 and/or 1194, Class Members request that
6 the Court award reasonable attorneys' fees and costs incurred by them in this action.

7 **SECOND CAUSE OF ACTION**

8 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

9 **(Against Defendant, DOES 1 through 50, and each of them)**

10 69. Plaintiff and Class Members re-allege and incorporate by reference all preceding
11 paragraphs of this complaint as though fully set forth herein.

12 70. Labor Code Sections 226.7 and 512 provide that no employer shall employ any
13 person for a work period of more than five (5) hours without providing a meal period of not less
14 than thirty (30) minutes within the fifth (5th) hour of work, or employ any person for a work
15 period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30)
16 minutes.

17 71. Labor Code Section 226.7 provides that if an employer fails to provide an
18 employee a meal period in accordance with this Section, the employer shall pay the employee one
19 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
20 period is not provided in accordance with this Section.

21 72. Defendant failed to schedule Plaintiff and Class Members in a manner as to
22 reasonably ensure that Plaintiff and Class Members could take such meal periods within the
23 statutory timeframe. As a result, Plaintiff and Class were often forced to forego their meal
24 periods, work during their meal periods and/or take meal periods after the fifth (5th) hour of their
25 shifts. In so doing, Defendant has intentionally and improperly denied meal periods to Plaintiff
26 and Class Members in violation of Labor Code Sections 226.7 and 512, and other regulations and
27 statutes.
28

1 73. At all times relevant hereto, Plaintiff and Class have worked more than five (5)
2 hours in a workday.

3 74. At all times relevant hereto, Defendant failed to schedule Plaintiff and Class
4 Members in a manner so as to reasonably provide work-free meal periods in accordance with
5 Labor Code Sections 226.7 and 512 and failed to record meal periods.

6 75. By virtue of Defendant's failure to schedule Plaintiff and Class Members in such
7 a way as to provide a timely and/or work free meal period to Plaintiff and Class Members, Plaintiff
8 and Class Members have suffered, and will continue to suffer, damages in an amount which is
9 presently unknown, but which exceed the jurisdictional limits of this Court and which will be
10 ascertained according to proof at trial.

11 76. Plaintiff, individually and on behalf of Class Members, requests recovery of meal
12 period compensation pursuant to Labor Code Section 226.7 for the four (4) years prior to filing
13 this complaint, as well as the assessment of any statutory penalties against Defendant in a sum as
14 provided by the Labor Code and/or other statutes.

15 **THIRD CAUSE OF ACTION**

16 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**

17 **(Against Defendant, DOES 1 through 50, and each of them)**

18 77. Plaintiff and Class Members re-allege and incorporate by reference all preceding
19 paragraphs of this complaint as though fully set forth herein.

20 78. The IWC Wage Orders and Labor Code Section 226.7 provides that employers
21 must authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest
22 time per four (4) work hours or major fraction thereof.

23 79. Labor Code Section 226.7, subdivision (b) provides that if an employer fails to
24 provide an employee rest period in accordance with this Section, the employer shall pay the
25 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
26 that the rest period is not provided.

1 80. During the Class Period, Defendant did not provide Plaintiff and Class Members
2 with a ten-minute rest period for every four (4) work hours or major fraction thereof. Therefore,
3 Plaintiff and Class Members were not provided lawful rest periods.

4 81. Defendant failed and/or refused to implement a policy by which Plaintiff and Class
5 Members could receive rest periods and/or work free rest periods. By and through its actions,
6 Defendant intentionally and improperly denied rest periods to Plaintiff and Class Members in
7 violation of Labor Code Sections 226.7 and 512.

8 82. At all times relevant hereto, Plaintiff and Class have worked more than four (4)
9 hours in a workday.

10 83. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
11 and Class Members, Plaintiff and Class Members have suffered, and will continue to suffer,
12 damages, in amounts which are presently unknown, but which exceed the jurisdictional limits of
13 this Court and which will be ascertained according to proof at trial.

14 84. Plaintiff, individually and on behalf of employees similarly situated, requests
15 recovery of rest period compensation pursuant to Labor Code Section 226.7 for the four (4) years
16 prior to filing this Complaint, as well as the assessment of any statutory penalties against
17 Defendant, and each of them, in a sum as provided by the Labor Code and/or any other statute.

18 **FOURTH CAUSE OF ACTION**

19 **Failure to Provide Accurate Itemized Wage Statements**

20 **(Against Defendant, DOES 1 through 50, and each of them)**

21 85. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs
22 of this complaint as though fully set forth herein.

23 86. Labor Code Section 1174, subdivision (d) requires an employer to keep at a central
24 location in California, or at the plant or establishment at which the employee is employed, payroll
25 records showing the hours worked daily by, and the wages paid to, each employee.

26 87. Labor Code Section 226, subdivision (a) requires an employer to provide
27 employees—either as a detachable part of the check, draft, or voucher paying the employee's
28

1 wages, or separately when wages are paid by personal check or cash—an accurate itemized wage
2 statement in writing showing

3 (1) gross wages earned, (2) total hours worked by the employee . . . , (4) all
4 deductions . . . , (5) net wages, (6) the inclusive dates of the period for which
5 the employee is paid, (7) the name of the employee and only the last four
6 digits of his or her social security number or an employee identification
7 number other than a social security number, (8) the name and address of the
8 legal entity that is the employer . . . , and (9) all applicable hourly rates in
9 effect during the pay period and corresponding number of hours worked at
10 each hourly rate by the employee

11 88. Moreover, the IWC Wage Orders require that every employer shall keep accurate
12 information with respect to each employee, including time records showing when each employee
13 begins and ends each work period, the total daily hours worked by each employee and the total
14 hours worked in each payroll period, and applicable rates of pay.

15 89. Plaintiff is informed and believes that Defendant willfully and intentionally failed
16 to make and/or keep records which accurately reflect the hours worked by Plaintiff and Class.
17 Specifically, Plaintiff believes that Defendant's records do not accurately reflect when Plaintiff
18 and Class worked during their meal and rest periods and/or took untimely meal periods or worked
19 for hours not paid. Defendant also failed to include a correct minimum wage hourly rate which
20 is a blatant violation of the Labor Code and failed to record Plaintiff's and Class Members' meal
21 periods.

22 90. Labor Code Section 226, subdivision (e) provides that if an employer knowingly
23 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,
24 the total hours worked by the employee and the applicable hourly overtime rates, causing the
25 employee injury, then the employee is entitled to recover the greater of all actual damages or
26 fifty dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each
27 subsequent violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes
28 that Defendant willfully failed to make or keep accurate records for Plaintiff and Class.

91. Plaintiff is informed and believes that Defendant's failure to keep accurate payroll records, as described above, violated Labor Code Section 1174, subdivision (d) and Section 226, subdivision (a), and the applicable IWC Wage Order(s). Pursuant to Labor Code Section 2699, subdivision (f)(2), Plaintiff and Class are entitled to penalties of \$100.00 and for the initial violation and \$200.00 for each subsequent violation for every pay period during which these records and information were not kept by Defendant.

92. Plaintiff is informed and believes that Defendant's failure to keep and maintain accurate records and information, as described above, was willful, and Plaintiff and Class are entitled to statutory penalties pursuant to Labor Code Section 1174.5.

FIFTH CAUSE OF ACTION

Failure to Pay Wages upon Termination of Employment
(Against Defendant, DOES 1 through 50, and each of them)

93. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

94. Plaintiff's employment with Defendant ended on or about April 9, 2022. However, Plaintiff received his last paychecks via direct deposit on April 22, 2022 and May 6, 2022. Plaintiff and certain Class who ended their employment with Defendant during the Class Period, were entitled to be promptly paid for all hours worked, including lawful regular time compensation, overtime compensation, double-time compensation, and other premiums, as required by Labor Code Sections 201 through 203. Plaintiff is also entitled to meal period and rest period premium pay in accordance with Labor Code Sections 226 and 226.7.

95. Plaintiff and Class were not compensated for their unlawful and/or missed meal periods and/or rest periods, and were not paid proper regular time compensation, overtime compensation or double-time compensation in accordance with law as a result of Defendant's illegal rounding practice.

96. To date, Plaintiff and Class Members who ended their employment with Defendant during the Class Period have not been compensated for all hours worked.

1 97. Plaintiff and the affected Class Members seek the payment of penalties pursuant
2 to Labor Code Section 203, according to proof.

3 98. Plaintiff is also entitled to attorneys' fees and costs, pursuant to Labor Code
4 Section 1194, and prejudgment interest.

5 **SIXTH CAUSE OF ACTION**

6 **Failure to Reimburse for Necessary Business Expenditures**

7 **(Against Defendant, DOES 1 through 50, and each of them)**

8 99. Plaintiff and Class re-allege and incorporate by reference all the above paragraphs
9 of this complaint as if fully alleged herein.

10 100. California Labor Code §2802, states "An employer shall indemnify his or her
11 employee for all necessary expenditures or losses incurred by the employee in direct consequence
12 of the discharge of his or her duties."

13 101. Plaintiff and Class were not reimbursed by Defendant for necessary expenditures
14 as a direct consequence of the discharge of their duties. Plaintiff and Class incurred expenses as a
15 direct result of performing their job duties for Defendant, and Defendant have failed to
16 indemnify Plaintiff and Class for these employment-related expenses.

17 102. Defendant knowingly, willingly and intentionally attempted to offset the cost of
18 doing business on the Plaintiff and Class.

19 103. Defendant had a corporate practice and policy of requiring Plaintiff and Class to
20 shoulder the burden of Defendant's cost of doing business by failing to reimburse Plaintiff and
21 Class for necessary expenditures.

22 104. Accordingly, Plaintiff and Class are entitled to an award of "necessary
23 expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's
24 fees and interest.

25 **SEVENTH CAUSE OF ACTION**

26 **Unfair Business Practices**

27 **(Against Defendant, DOES 1 through 50, and each of them)**

28 105. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs

of this complaint as though fully set forth herein.

106. Business and Professions Code Section 17200 et seq. (also referred to herein as the “Unfair Business Practices Act” or “Unfair Competition Law”) prohibits unfair competition in the form of any unlawful, unfair or fraudulent business act or practice.

107. Business and Professions Code Section 17204 allows “a person who has suffered injury in fact and has lost money or property as a result of the unfair competition” to prosecute a civil action for violation of the Unfair Competition Law (“UCL”).

108. Labor Code Section 90.5, subdivision (a) states that it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

109. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4) years prior to the filing of this lawsuit, Defendant has committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business practices and acts described in this Complaint including but not limited to violations of Labor Code Sections 201-204, 210, 226.3, 246, 551, 552, 558, 1174.5, 1197.1, 2802, 2699(f)(2) as well as other statutes.

110. The violations of these laws and regulations, as well as of the fundamental California public policies protecting workers, serve as unlawful predicate acts and practices for purposes of Business and Professions Code Section 17200 et seq.

111. The acts and practices described above constitute unfair, unlawful and fraudulent business practices, and unfair competition, within the meaning of Business and Professions Code Section 17200 et seq. Among other things, the acts and practices have forced Plaintiff and other similarly situated employees to labor for many consecutive hours without receiving the meal and rest periods and overtime compensation to which they are entitled by law, while enabling Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

1 112. As a result of Defendant's acts, Plaintiff and Class Members have suffered injury
2 in fact in being denied their statutorily entitled meal and rest periods and full compensation for
3 hours worked.

4 113. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
5 and Class have suffered lost wages in an amount to be proven at trial.

6 114. Business and Professions Code Section 17203 provides that a court may make
7 such orders or judgments as may be necessary to prevent the use or employment by any person
8 of any practice which constitutes unfair competition. Injunctive relief is necessary and
9 appropriate to prevent Defendant from repeating its unlawful, unfair and fraudulent business acts
10 and business practices alleged above.

11 115. Business and Professions Code Section 17203 provides that the Court may restore
12 to any person in interest any money or property that may have been acquired by means of such
13 unfair competition. Plaintiff and Class are entitled to restitution pursuant to Business and
14 Professions Code Section 17203 for all wages and payments unlawfully withheld from
15 employees, including the fair value of the meal and rest periods taken away from them during the
16 four-year period prior to the filing of this Complaint, as well as for all expenses or losses incurred
17 by Plaintiff and Class in direct consequence of the discharge of his or her duties, or of his or her
18 obedience to the directions of the employer.

19 116. Business and Professions Code Section 17202 provides, "Notwithstanding Section
20 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
21 forfeiture, or penal law in a case of unfair competition." Plaintiff and Class are entitled to enforce
22 all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code
23 Section 17202.

24 117. Plaintiff's success in this action will enforce important rights affecting public
25 interest, and in that regard, Plaintiff sues on behalf of the general public, as well as herself and
26 other similarly situated employees. Plaintiff and Class seek and are entitled to restitution, civil
27 penalties, declaratory and injunctive relief, and all other equitable remedies owing them.
28

1 118. Plaintiff herein takes upon herself enforcement of these laws and lawful claims.
2 There is a financial burden involved in pursuing this action. The action is seeking to vindicate a
3 public right, and it would be against the interests of justice to penalize Plaintiff by forcing her to
4 pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to
5 Code of Civil Procedure Section 1021.5 and otherwise.

6 **EIGHTH CAUSE OF ACTION**

7 **Violation of California Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.***
8 **(Against Defendants, DOES 1 through 50, and each of them)**

9 119. Plaintiff re-alleges and incorporates by reference all preceding paragraphs herein,
10 as if fully alleged herein.

11 120. Plaintiff seeks recovery of penalties under the Labor Code Private Attorney
12 General Act of 2004 ("PAGA.") (Labor Code sections 2698 *et seq.*)

13 121. PAGA permits an "aggrieved employee" to recover penalties on behalf of
14 himself/herself and other employees subject to violations of the Labor Code, including violations
15 of sections 201-204, 226, 226.7, 246, 512, 550, 551, 1174, 1194, and 2802, as well as the
16 applicable Wage Order.

17 122. Plaintiff is informed and believes Defendants at all relevant times employed one
18 or more employees.

19 123. For those code sections that provide for the recovery of civil penalties, Plaintiff
20 will seek on behalf of all aggrieved employees those penalties. For those sections of the Labor
21 Code that do not specifically provide for civil penalties, Plaintiff will seek civil penalties of one
22 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
23 and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
24 subsequent violation pursuant to Labor Code section 2699, subdivision (f).

25 124. Section 2699, subdivision (a) provides that civil penalties may be "recovered
26 through a civil action brought by an aggrieved employee on behalf of himself or herself and other
27 current or former employees." (Code Civ. Proc., § 2699, subd. (a).) Section 2699, subdivision (g),
28

1 provides that an employee who prevails in a civil action under section 2699 shall be entitled to an
2 award of reasonable attorneys' fees and costs.

3 125. The State of California, Plaintiff and aggrieved employees are, therefore, entitled
4 to civil penalties, attorneys' fees and costs, according to proof.

5
6 **PRAYER FOR RELIEF**

7 Plaintiff, individually, and on behalf of all others similarly situated only with respect to
8 the class claims, prays for relief and judgment against Defendant as follows:

9 **Class Certification**

10 1. That this action be certified as a class action with respect to the First, Second,
11 Third, Fourth, Fifth, Sixth and Seventh Causes of Action;

12 2. That Plaintiff be appointed as the representative of the Class; and

13 3. That counsel for Plaintiff be appointed as Class Counsel.

14 **As to the First Cause of Action**

15 4. That the Court declare, adjudge and decree that Defendant violated California
16 Labor Code §§ 204, 246, 510, 551, 552, 1194, 1198 and applicable IWC Wage Orders by
17 willfully failing to pay all wages due;

18 5. For general unpaid wages as may be appropriate;

19 6. For pre-judgment interest on any unpaid compensation commencing from the
20 date such amounts were due;

21 7. For liquidated damages;

22 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
23 California Labor Code § 1194(a); and,

24 9. For such other and further relief as the Court may deem equitable and
25 appropriate.

26 **As to the Second Cause of Action**

1 10. That the Court declare, adjudge and decree that Defendant violated California
2 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

3 11. For unpaid meal period premium wages as may be appropriate;

4 12. For pre-judgment interest on any unpaid compensation commencing from the
5 date such amounts were due;

6 13. For reasonable attorneys' fees under California Code of Civil Procedure §
7 1021.5, and for costs of suit incurred herein; and

8 14. For such other and further relief as the Court may deem equitable and
9 appropriate.
10

11 As to the Third Cause of Action

12 15. That the Court declare, adjudge and decree that Defendant violated California
13 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

14 16. For unpaid rest period premium wages as may be appropriate;

15 17. For pre-judgment interest on any unpaid compensation commencing from the
16 date such amounts were due;

17 18. For reasonable attorneys' fees under California Code of Civil Procedure §
18 1021.5, and for costs of suit incurred herein; and

19 19. For such other and further relief as the Court may deem equitable and
20 appropriate.

21 As to the Fourth Cause of Action

22 20. That the Court declare, adjudge and decree that Defendant violated the record
23 keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders,
24 and willfully failed to provide accurate itemized wage statements thereto;

25 21. For penalties and actual damages pursuant to California Labor Code § 226(e);

26 22. For injunctive relief to ensure compliance with this Section, pursuant to
27 California Labor Code § 226(h);
28

1 23. For reasonable attorneys' fees and for costs of suit incurred herein; and

2 24. For such other and further relief as the Court may deem equitable and
3 appropriate.

4 As to the Fifth Cause of Action

5 25. That the Court declare, adjudge and decree that Defendant violated California
6 Labor Code §§ 201, 202, 203 by willfully failing to pay all compensation owed at the time
7 of termination of the employment;

8 26. For statutory wage penalties pursuant to California Labor Code § 203 for former
9 employees who have left Defendant's employ;

10 27. For pre-judgment interest on any unpaid wages from the date such amounts were
11 due;

12 28. For reasonable attorneys' fees and for costs of suit incurred herein; and

13 29. For such other and further relief as the Court may deem equitable and
14 appropriate.
15

16 As to the Sixth Cause of Action

17 30. That the Court declare, adjudge and decree that Defendant violated Labor Code §
18 2802 and the IWC Wage Orders;

19 31. For general unpaid wages and reimbursement of business expenses as may be
20 appropriate;

21 32. For pre-judgment interest on any unpaid compensation commencing from the
22 date such amounts were due;

23 33. For reasonable attorneys' fees and for costs of suit incurred herein; and

24 34. For such other and further relief as the Court may deem equitable and
25 appropriate.
26

27 As to the Seventh Cause of Action
28

35. That the Court declare, adjudge and decree that Defendant violated California Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked (including minimum and overtime wages), failing to provide meal periods, failing to maintain accurate records of meal periods, failing to authorize and permit rest periods, and failing to maintain accurate records of all hours worked and meal periods, failing to furnish accurate wage statements, and failing to indemnify necessary business expenses, failing to provide suitable seats, failing to provide one day of rest in seven, failing to provide sick paid leave;

36. For restitution of unpaid wages to Plaintiff and all Class Members and prejudgment interest from the day such amounts were due and payable;

37. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendant and determined to have been wrongfully acquired by Defendant as a result of violations of California Business & Professions Code §§ 17200 *et seq.*;

38. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;

39. For injunctive relief to ensure compliance with this Section, pursuant to California Business & Professions Code §§ 17200, *et seq.*; and,

40. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

41. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay wages for all hours worked, sick pay, failing to provide meal periods, failing to maintain accurate records of meal periods, failing to authorize and permit rest periods, failing to maintain accurate records of all hours worked and meal periods, failing to indemnify necessary business expenses, failing to pay final

1 wages at termination, and failing to furnish accurate wage statements, failing to provide
2 suitable seats, failing to provide one day of rest in seven, failing to provide sick paid leave;

3 42. For all civil penalties pursuant to California Labor Code § 2699, et seq., and all
4 other applicable Labor Code provisions;

5 43. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
6 California Labor Code § 2699;

7 44. For such other and further relief as the Court may deem equitable and
8 appropriate.
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10 As to all Causes of Action

11 45. For any additional relief that the Court deems just and proper.
12

13 Dated: July 7, 2023

TUNYAN LAW, APC

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18 Lilit Tunyan
19 Artur Tunyan

20 Attorneys for Plaintiff SEAN W POWERS
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2 **DEMAND FOR JURY TRIAL**
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5 Plaintiff SEAN W POWERS hereby demands a jury trial on all issues so triable.
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7

8 Dated: July 7, 2023

TUNYAN LAW, PAC

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11 _____
12 Lilit Tunyan
13 Artur Tunyan

14 Attorneys for Plaintiff SEAN W POWERS
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Exhibit “A”



Lilit Tunyan, Esq.
1336 Rossmoyne Avenue,
Glendale, CA 91207
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

April 3, 2023

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Agent for Service of Process for
Mario's Place, Inc.
Arrigo R Palagi
6949 Valencia Street
Riverside, CA 92504

VIA CERTIFIED MAIL

Return Receipt Requested

Mario's Place, Inc.
3646 Mission Inn Avenue
Riverside, CA 92501

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

Re: *Sean W Powers v. Mario's Place, Inc.*

To Whom It May Concern:

Please be advised that my office has been retained by Sean W Powers ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer Mario's Place, Inc. ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which Plaintiff alleges Defendant engaged in with respect to Plaintiff and all of Defendant's aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of himself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Riverside County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as a bartender and server from approximately August 2021 to April 9, 2022, primarily in Riverside County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and over 8 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Minimum Wage and Overtime

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §1194, subdivision (a) provides that 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 minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit. Further, pursuant to Labor Code §1197, payment of less than the minimum wage fixed by the Labor Commission is unlawful.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their

regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Pursuant to Industrial Welfare Commission Order N 5-2001 Section 5 (a) each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage. Reporting time pay constitutes wages. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094. In addition, failure to pay all reporting time pay due at the time of employment termination may be the basis for waiting time penalties pursuant to Labor Code § 203.

An employee's regular rate of pay is properly determined by "dividing his total remuneration for employment (except statutory exclusions) in any work week by the total number of hours actually worked by him in that workweek for which such compensation was paid." *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal.App.4th 893, 905.) Thus, employees "who receive incentive bonuses in addition to their guaranteed base pay clearly receive a greater regular rate than the minimum base rate." *Id.* quoting *Walling v. Hamischfeger Corp.* 325 U.S. 427.431 (1945).

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked, including minimum wages, straight time wages and overtime wages. Defendant failed to pay Plaintiff and the Aggrieved Employees the minimum wage fixed by the Labor Commission. For example, Defendant employed more than 26 employees in 2022, but paid \$14 per hour in 2022 instead of \$15 per hour as provided in the Labor Commissioner's Industrial Wage Order. Throughout the statutory period, Defendant also maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to report for work but has not put them to work. They were required to return home immediately upon arrival at work. This happened at least once every two weeks. In those occasions Defendant failed to pay Plaintiff and the Aggrieved Employees the reporting time pay of half the usual scheduled day of work or at least two hours. Throughout the statutory period Defendant also required Plaintiff and the Aggrieved Employees to report to work and to wait about 2-3 hours in the immediate area of the jobsite until confirmed by Defendant whether they would be put to work. Defendant failed to pay Plaintiff and the Aggrieved Employees for that standby on-call time. Throughout the statutory period Defendant also combined voluntary cash tips received by employees with the mandatory service charges made by Defendant's customers in their wage statements. Defendant distributed the portion of mandatory service charges/mandatory tips paid by Defendant's customers to Plaintiff and the Aggrieved Employees as additional non-discretionary remuneration in addition to voluntary cash tips paid by Defendant's customers. However, Defendant has not disaggregated the mandatory and voluntary tips and has not compensated Plaintiff and the Aggrieved Employees at the proper overtime rate.

Defendant has not included the mandatory service charges/tips paid to the Aggrieved Employees in the regular rate of pay for purposes of calculating Plaintiff's and the Aggrieved Employees' overtime rate of pay. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s). Pursuant to the Wage Order 5-2001, subdivision 7(A) "(A) Every employer shall keep accurate information with respect to each employee including the following: . . . (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." However, Defendant failed to record employee's meal periods in violation of the Wage order requirements.

Here, Defendant failed to keep a record of meal periods and failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Plaintiff and the Aggrieved Employees were not required to clock in and out for meal periods or otherwise record meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also failed to provide second meal periods when Plaintiff and the Aggrieved Employees worked more than 10 hours during one shift. Plaintiff and the Aggrieved Employees have never been authorized or taken their first, second or third meal periods, and Defendant failed to keep a record of meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant did not schedule rest periods every 4 hours or a major fraction. Plaintiff and the Aggrieved Employees have never been authorized and taken first, second, third or fourth rest breaks. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees. Defendant has never recorded meal periods.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement including for using their personal cell phones for work and for purchasing masks. Plaintiff and the Aggrieved Employees incurred these expenses as a direct result of performing their job duties for Defendant, and Defendant have failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum, straight time and overtime wages), missed meal periods, and missed rest periods.

Additionally, Plaintiff resigned on April 9, 2022. However, he received his last paychecks via direct deposit on April 22, 2022 and May 6, 2022.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her

social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Lab. Code § 226(e)(2)(B)(iii).

The statute further provides: “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 to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendants also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per 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. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the

wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Provide One Day of Rest in Seven

Labor Code § 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. Additionally, Labor Code § 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. Sometimes Defendant scheduled Plaintiff and the Aggrieved Employees to work six (6) or more hours per day and more than seven (7) consecutive days in a workweek in violation of Labor Code requirements.

Failure to Provide Paid Sick Leave and Written Notice of Available Paid Sick Leave

Labor Code § 246 (a) an employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days.

Labor Code § 246 (i) requires employers to provide an employee with written notice that sets forth the amount of paid sick leave available.

During the statutory period, Defendant maintained a policy and practice of failing to provide Plaintiff and the Aggrieved Employees with the paid sick leave as well as to provide a written notice of accrued paid sick leave. On information and belief, Defendant's failure to provide an employee with written notice that sets forth the amount of paid sick leave available was not a single, isolated incident, but was instead part of Defendant's policy and practice that applied to the Aggrieved Employees.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to provide any information on accrued sick leave.

Failure to Provide Suitable Seats

Pursuant to Industrial Welfare Commission Order N 5-2001 Section 14(a) all working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. IWC Section 14(B) states that when employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work areas and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

However, Defendant failed to provide Plaintiff and the Aggrieved Employees with suitable seats.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements;
8. Labor Code § 204 by failing to pay all earned wages two times per month;
9. Labor Code § 551 by failing to provide one day of rest in seven;
10. Labor Code § 246 for failure to provide paid sick leave and written notice of paid sick leave.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service, as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by any other aggrieved employee of Defendant or any additional facts, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1.

Mario's Place, Inc.
3646 Mission Inn Ave.
Riverside, CA 92501



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2. Article Number (Transfer from service label)

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A. Signature

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- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
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TUNYAN LAW, APC
1336 Rossmoyne Ave.
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Riverside, CA 92504

Certified Mail Fee	\$4.15
Extra Services & Fees (check box, add fee as appropriate)	\$3.75
☐ Return Receipt (hardcopy)	\$3.75
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00

Postage	\$1.74
Total Postage and Fees	\$9.24

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Arrigo R Palagi
Agent for Service of Process for
Mario's Place, Inc.
6949 Valencia Street
Riverside, CA 92504

PS Form 3800, April

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04/03/2023

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Certified Mail Fee	\$4.15
Extra Services & Fees (check box, add fee as appropriate)	\$3.75
☐ Return Receipt (hardcopy)	\$3.75
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☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00

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Total Postage and Fees	\$9.24

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Mario's Place, Inc.
3646 Mission Inn Ave.
Riverside, CA 92501

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Return Receipt			\$3.35
Total			\$9.24

Grand Total: \$18.48

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Card Name: VISA
Account #: XXXXXXXXXX0153
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CHASE VISA

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: ltunyan@tunyanlaw.com
Subject: Thank you for submission of your PAGA Case.
Date: Monday, April 3, 2023 2:07:33 PM

4/3/2023

LWDA Case No. LWDA-CM-946052-23
Law Firm : Tunyan Law, APC
Plaintiff Name : Sean W Powers
Employer: Mario's Place, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1336 Rossmoyne Avenue Glendale, California 91207. On July 7, 2023, I served the foregoing document described as:

On the date indicated below, I served the document described as: **FIRST AMENDED COMPLAINT** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

Matthew Kraus (SBN: 260815)
mkraus@lc-lawyers.com
Nickolaus Buchholz (SBN:304214)
nbuchholz@lc-lawyers.com
Marcella Buchheit
mbuchheit@lc-lawyers.com
LESTER, CANTRELL & KRAUS, LLP
1770 Iowa Avenue, Suite 110
Riverside, California 92507
Telephone: (951) 300-2690
Facsimile: (951) 300-2694

Attorneys for Defendant MARIO'S PLACE, INC.

[✓] **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[✓] **BY ELECTRONIC SERVICE:** Based on a court order, Rule of Court, or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via electronic mail. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 7, 2023, at Los Angeles, California.

Lilit Tunyan

Name



Signature