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Attorneys for Plaintiff YVETTE PUERTO-
GONZALEZ on behalf of herself and others
similarly situated

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE**

YVETTE PUERTO-GONZALEZ, on behalf
of herself and all others similarly situated,

Plaintiff,

v.

MARIE CALLENDERS, INC., a Wyoming
corporation; and DOES 1 to 10, inclusive,

Defendant.

CASE NO. CVRI2301958

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. Failure to Pay Overtime Wages in Violation of Labor Code sections 510 and 1198;**
- 2. Failure to pay all Wages and Minimum Wages in Violation of Labor Code sections 221, 223, 1182, 1194, 1197, and 1198;**
- 3. Failure to Provide Meal Periods in Violation of Labor Code sections 226.7, 512, 516 and 1198;**
- 4. Failure to Provide Rest Periods in Violation of Labor Code sections 226.7, 516, 1198;**
- 5. Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Labor Code section 226(a) and Failure to Maintain**

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- Accurate Records;
- 6. Failure to Provide Suitable Seating in Violation of Labor Code section 1198;
 - 7. Failure to Timely Pay Wages During Employment in Violation of Labor Code Section 204;
 - 8. Waiting Time Penalties Pursuant to Labor Code sections 201 and 203;
 - 9. Failure to Reimburse Business Expenses in Violation of Labor Code section 2802 ;
 - 10. Violations of Business & Professions Code section 17200 et seq.; and
 - 11. Civil Penalties Pursuant to PAGA Labor Code §§ 2698, et seq.
- DEMAND FOR JURY TRIAL**

1 Plaintiff, YVETTE PUERTO-GONZALEZ (hereinafter “Plaintiff”) hereby submits her First
2 Amended Complaint against Defendant MARIE CALLENDERS, INC., a Wyoming corporation; and
3 DOES 1 to 10 (hereinafter referred to as “Defendant”) on behalf of herself and the class of all other
4 similarly situated current and former employees of Defendant as follows:

5 **NATURE OF THE CASE**

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

11 2. Marie Callenders is an American restaurant chain serving home-style meals and pies. It
12 is headquartered in Mission Viejo, California and has 25 locations in California, Nevada, and Utah. At
13 all relevant times, Defendant issued and maintained uniform, standardized scheduling and timekeeping
14 practices and procedures for all non-exempt, hourly paid employees in California, including Plaintiff
15 and others similarly situated, regardless of their location or position.

16 3. Defendant has maintained practices across its locations which have failed and continue
17 to fail to pay Plaintiff and other non-exempt employees all wages. Specifically, Defendant has a
18 company-wide policy of subjecting Plaintiff and other non-exempt employees to work off-the-clock. If
19 an employee is asked to come in early or arrives early for their shift, they are not permitted to clock in
20 until the start of their shift. This has resulted in Defendant’s failure to pay all wages including overtime
21 wages to Plaintiff and other non-exempt employees. Plaintiff and other non-exempt employees that
22 worked the opening shifts would have to get the bakery case ready, make whipped cream, decorate
23 pies, make coffee, put out bread, brew tea and get the condiments ready before the restaurant opened.
24 As a result, Plaintiff and other non-exempt employees would arrive early for their shifts so that they
25 could get their opening tasks completed. However, Defendant would not let them clock-in even a
26 minute early, to avoid paying all wages, including overtime wages.

27 4. Moreover, Defendant fails to provide any seating for Plaintiff and other non-exempt
28 employees, and employees are required to stand for the duration of their shifts.

1 5. Defendant also failed to provide Plaintiff and non-exempt employees with compliant
2 meal and rest breaks. When Plaintiff worked as a server the restaurant would typically be short staffed
3 and very busy. As a result, meal breaks were frequently missed. Although, Defendant required
4 employees to clock-out for meals whether or not they were actually taken. Further, rest breaks were
5 never provided.

6 6. In light of the foregoing, Defendant failed to provide Plaintiff and other non-exempt
7 employees with compliant wage statements and failed to timely pay final wages upon termination or
8 separation from employment.

9 7. Defendant also required all non-exempt employees to purchase their own uniform,
10 including non-slip shoes, aprons, black shirt, black socks and servers were required to purchase their
11 own note paper and pens. Moreover, management frequently texted Plaintiff regarding her shifts, yet
12 did not provide a phone allowance. Thus, Defendant did not reimburse Plaintiff and non-exempt
13 employees for business-related expenses.

14 8. Plaintiff brings Causes of Action One through Ten (the “class claims”) as a class action
15 on behalf of herself and other similarly situated individuals who have worked for Defendant in
16 California, at any time from four-years prior to the filing of this complaint, through the resolution of
17 this action. Plaintiff, on her own behalf and on behalf of all Class Members, brings the class claims
18 pursuant to Labor Code sections 200-203, 221, 223, 226, 226.7, 500, 510, 512, 1174, 1194, 1194.2,
19 1197, 1198, 2802 the applicable wage order and under Business & Professions Code sections 17200-
20 17208, for unfair competition due to Defendant’s unlawful, unfair and fraudulent business acts and
21 practices.

22 9. Plaintiff brings Cause of Action Eleven as a proxy of the State of California on
23 behalf of other aggrieved employees for penalties under the Private Attorneys General Act
24 (PAGA). PAGA provides that any civil penalty assessed and collected by the Labor and Workforce
25 Development Agency (LWDA) for violations of applicable provisions of the California Labor
26 Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee
27 on behalf of herself and other current or former employees pursuant to procedures outlined in
28 California Labor Code § 2699.3. PAGA also provides that an aggrieved employee can bring a civil

1 action on behalf of other aggrieved employees for violation of any other Labor Code provision that
2 does not itself contain a civil penalty, in which case the civil penalties are assessed at \$100 for each
3 aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee
4 per pay period for each subsequent violation.

5 10. On April 18, 2023, Plaintiff provided written notice to the LWDA and by certified
6 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
7 violated, including the facts and theories to support the alleged violations. More than sixty-five
8 (65) calendar days have passed since the date notice was provided to the LWDA and Defendants.
9 Accordingly, Plaintiff has satisfied the administrative prerequisites under California Labor Code
10 Section 2699.3(a) to recover civil penalties against Defendants for violations of California Labor
11 Code identified in this Complaint.

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

16 **PARTIES**

17 12. Plaintiff, YVETTE PUERTO-GONZALEZ is an individual over the age of eighteen
18 (18) and is now, and/or at all relevant times mentioned in this Complaint was, a resident and
19 domiciliary of the State of California. During the relevant time period, Plaintiff worked for Defendant
20 in Riverside, California from approximately 2021 through December 6, 2022. Plaintiff worked as a
21 cashier and server.

22 13. Plaintiff is informed and believes, and based thereon alleges, that Defendant MARIE
23 CALLENDERS, INC., a Wyoming corporation. Plaintiff is further informed and believes that at all
24 times relevant hereto, Defendant has transacted, and continues to transact, business throughout the State
25 of California.

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

1 15. Plaintiff is further informed and believes, and based upon such information and belief
2 alleges, that at all times herein mentioned, Defendant proximately caused Plaintiff, all others similarly
3 situated, and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries
4 and/or damages alleged in this Complaint.

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

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

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

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

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

of, and in pursuance of, said joint venture, partnership and common enterprise.

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

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

JURISDICTION AND VENUE

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

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

25. The Court also has jurisdiction over Plaintiff and other aggrieved employees for penalties sought to the Private Attorney General Act of 2004, Labor Code Section 2698-2699, as well as pursuant to the applicable provisions.

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

27. Venue is proper in Riverside County because the acts which give rise to this litigation

1 occurred in this county and because Defendant has employed class members in this county and
2 transacts business in this county.

3 **FACTUAL ALLEGATIONS**

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

5 29. Defendant has engaged in, and continues to engage in, unfair business practices in
6 California by practicing, employing and utilizing the employment practices and policies outlined above.

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

8 30. During the Class Period, upon information and belief, Defendant had, and continues to
9 have, a company-wide policy of discouraging and impeding Plaintiff and members of the Classes from
10 recording hours worked that were outside of their scheduled shifts in order to limit the amount of
11 overtime employees could accrue. On information and belief, this policy of limiting overtime, led
12 Plaintiff and members of the Classes to work off-the-clock before their scheduled shift times and during
13 their meal periods. Specifically, if an employee is asked to come in early or arrives early for their shift,
14 they are not permitted to clock in until the start of their shift. This has resulted in Defendant's failure to
15 pay all wages including overtime wages to Plaintiff and class members. Plaintiff and class members
16 that worked the opening shifts would have to get the bakery case ready, make whipped cream, decorate
17 pies, make coffee, put out bread, brew tea and get the condiments ready before the restaurant opened.
18 As a result, Plaintiff and class members would arrive early for their shifts so that they could get their
19 opening tasks completed. However, Defendant would not let them clock-in even a minute early, to
20 avoid paying all wages, including overtime wages. Further, Defendant would require Plaintiff and
21 members of the Classes to clock-out for meal breaks yet would be required to continue to work.

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

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

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

28 33. As stated above, during the relevant time period, as a result of Defendant's policy of

1 limiting the amount of overtime employees could accrue, coupled with being under Defendant's control
2 before and their scheduled shift times, Plaintiff and members of the Classes were forced to work off-
3 the-clock.

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

8 ***Failure to Provide Compliant Meal Periods***

9 35. Plaintiff alleges that meal breaks were frequently missed entirely. Specifically, Plaintiff
10 would have to clock-out and continue working due to being short staffed and working in a busy
11 restaurant. As a result, Plaintiff and members of the Classes were forced to work in excess of five (5)
12 hours before taking a meal period.

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

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

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

19 38. Specifically, Plaintiff alleges that rest breaks were never provided.

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

21 39. During the relevant time period, Defendant has knowingly and intentionally provided
22 Plaintiff and members of the Classes with uniform, incomplete, and inaccurate wage statements. For
23 example, Defendant issued uniform wage statements to Plaintiff and members of the Classes that fail to
24 correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates
25 in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period
26 premiums, and the corresponding number of hours worked at each hourly rate. Further, wage
27 statements do not have the total number of hours worked.

28 40. Because Defendant did not record the time Plaintiff and members of the Classes spent

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

5 41. For the same reason, Defendant failed to accurately list the total number of hours
6 worked by Plaintiff and members of the Classes and failed to list the applicable hourly rates of pay in
7 effect during the pay period and the corresponding accurate number of hours worked at each hourly
8 rate.

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

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

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

27 44. Defendant did not provide Plaintiff and other class members with seats or stools in
28 reasonable proximity to their work areas to allow them to use seats when it would not interfere with the

1 performance of their duties for times when they were not engaged in active duties that require standing.
2 In other words, to the extent Plaintiff and class members engaged in duties in which the nature of the
3 work required standing, Defendant denied them the use of seats nearby during lulls in their work duties.
4 Moreover, Defendant did not inform Plaintiff and other class members of their rights to a seat or stool
5 under California law.

6 ***Defendant's Failure to Timely Pay all Wages During Employment***

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

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

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

22 ***Defendant's Failure to Timely Pay Final Wage Upon Termination***

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

27 ***Defendants' Failure to Reimburse Business Expenses***

28 49. During the relevant time period, Defendants had a company-wide policy of requiring

1 Plaintiff and members of the Classes to purchase their own uniform, including non-slip shoes, aprons,
2 black shirt, black socks and servers were required to purchase their own note paper and pens.
3 Moreover, management frequently texted Plaintiff regarding her shifts, yet did not provide a phone
4 allowance. Defendants failed to reimburse them for these costs.

5 ***Facts Regarding Willfulness***

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

13 ***Unfair Business Practices***

14 51. Defendant has further engaged in, and continues to engage in, unfair business practices
15 in California by practicing, employing and utilizing the unlawful employment practices and policies
16 outlined above.

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

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

23 53. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
24 section 2699.3.

25 54. By letter dated April 18, 2023, required notice was provided to the Labor and
26 Workforce Development Agency ("LWDA") and Defendants, of the specific provisions of the Labor
27 Code alleged to have been violated, including the facts and theories to support the alleged violations.

28 55. More than sixty-five (65) days have passed since the date the notice was mailed to

Defendants and the LWDA, and Plaintiff has received no response from the LWDA indicating that it plans to investigate.

56. Accordingly, Plaintiff has satisfied the administrative prerequisites under California Labor Code Section 2699.3(a) to recover civil penalties against Defendants for violations of California Labor Code identified in this Complaint.

CLASS ACTION ALLEGATIONS

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

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

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

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

61. Terminated Sub Class: All members of the Plaintiff Class whose employment ended during the Class Period.

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

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

a. Whether Plaintiff and Class Members are subject to and entitled to the benefits

of California wage and hour statutes;

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

64. Typicality: The claims of the named Plaintiff are typical of the claims of the members of the Plaintiff Class. Defendant's common course of conduct in failing to provide their non-exempt employees with meal and rest periods or premium compensation at the regular rate in lieu thereof, all wages in compliance with the applicable wage order, failing to provide them with proper wages and

overtime, failing to provide suitable seating, and failing to provide them with compliant wage statements has caused Plaintiff and the proposed Class to sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the proposed Class. Plaintiff and the proposed Class sustained the same or similar injuries and damages arising from Defendant's common policies, practices, procedures, protocols, routines, and rules which were applied to other Class Members as well as Plaintiff. Plaintiff seeks recovery for the same type of losses, injuries, and damages as were suffered by other members of the proposed class.

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

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

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

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

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

FIRST CAUSE OF ACTION

Unpaid Overtime

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

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

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

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

71. Defendant willfully failed to pay all overtime wages owed to Plaintiff and members of the Classes. During the relevant time period, Plaintiff and members of the Classes were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded. For example, if Plaintiff or class members were asked to arrive prior to the start of their shifts, or if they arrived any time before their shift was to start, they were unable to clock in. Further, they would have to work during meal breaks as described above.

72. Defendant knew or should have known that as a result of company-wide practices and/or policies, that prevents Plaintiff and members of the Classes from earning overtime, Plaintiff and members of the Classes were performing assigned duties off-the-clock before their shifts, and were suffered or permitted to perform work for which they were not paid. Because Plaintiff and members of the Classes worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and members of the Classes were not paid overtime wages for all of the overtime hours they actually worked.

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

SECOND CAUSE OF ACTION

Failure to Pay All Wages

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

74. Plaintiff incorporates herein by reference the allegations set forth above.

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

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

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

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

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

2 79. Defendant suffered or permitted Plaintiff and members of the Classes to work portions
3 of the day for which Defendant failed to compensate them. This includes time spent under Defendant’s
4 control prior to clocking in, after clocking out. For example, if Plaintiff or class members were asked to
5 arrive prior to the start of their shifts, or if they arrived any time before their shift was to start, they were
6 unable to clock in.

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

11 81. Labor Code section 1194.2(a) provides in relevant part: “In any action under section
12 1193.6 or section 1194 to recover wages because of the payment of a wage less than the minimum
13 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages
14 in an amount equal to the wages unlawfully unpaid and interest thereon.”

15 82. Labor Code section 1197 provides: “The minimum wage for employees fixed by the
16 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
17 minimum so fixed is unlawful.”

18 83. Plaintiff is informed and believes, and therefore alleges, that Defendant’s compensation
19 schemes do not fairly compensate Plaintiff and other Class Members for all hours spent performing
20 their job duties.

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

24 85. The failure to pay designated wages to Plaintiff and members of the Plaintiff Class for
25 each and every hour worked violates Labor Code section 221 and 223; the applicable IWC wage order
26 section 3; and Business & Professions Code.

27 86. During the applicable time period, Defendant has and continues to have a pattern and
28 practice of not providing its employees all wages, by failing to include all compensable time, including

1 time worked off-the-clock.

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

4 **THIRD CAUSE OF ACTION**

5 **Non-Compliant Meal Breaks**

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

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

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

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

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

22 92. Under the foregoing, California employers must provide meal periods and authorize
23 and permit rest periods to all employees during their shifts. In *Augustus et al. v. ABM Security Services,*
24 *Inc.* (2016) 2 Cal.5th 257, the California Supreme Court reaffirmed that the required meal and rest
25 periods must be “off-duty,” which means that employees must be relieved of “all work-related duties,”
26 including the duty to remain “on call,” and they must be “free from employer control” over how they
27 “spend their time.” *Id.* at 264, 269. Employees must have the freedom to use meal and rest periods for
28 their own purposes. *Id.* at 270; *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038-39.

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

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

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

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

14 97. Rather, Plaintiff alleges that meal breaks frequently missed entirely. This was a result of
15 being short staffed and working in a busy restaurant as described above.

16 98. Thus, Defendant has failed to perform its obligations to provide Plaintiff and the
17 members of the Plaintiff Class with off-duty meal periods by the end of the fifth hour of work and a
18 second meal period by the end of the tenth hour of work. Defendant has also failed to pay Plaintiff and
19 the members of the Plaintiff Class one (1) hour of pay at the regular rate for each off-duty meal period
20 that they have been denied.

21 99. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews*
22 *Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 where the court unanimously held that employers must
23 pay premium payments to employees for missed meal, rest, and recovery breaks at the employee’s
24

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

1 “regular rate of pay” instead of their base hourly rate.

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

11 101. Plaintiff and members of the Classes are entitled to civil penalties, attorney’s fees, costs,
12 and interest thereon.

13 **FOURTH CAUSE OF ACTION**

14 **Non-Compliant Rest Breaks**

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

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

18 103. Labor Code sections 226.7, 516, and 1198, and the applicable IWC wage order
19 require employers to provide rest periods and to pay an employee one (1) additional hour of pay at
20 the employee’s regular rate for each work day that a meal or rest period is not provided. Labor
21 Code section 226.7 provides that no employer shall require an employee to work during any rest
22 period mandated by an applicable order of the IWC. The applicable IWC wage order provides that
23 “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as
24 practicable shall be in the middle of each work period” and that the “rest period time shall be based
25 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or
26 major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

27 104. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and Class
28 Members were entitled to a paid rest period of not less than ten (10) minutes without duty for each

1 and every four (4) hours or major fraction thereof worked during the workday.

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

8 106. Specifically, Plaintiff alleges that rest breaks were never provided.

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

13 108. Therefore, Plaintiff and members of the Plaintiff Class are entitled to compensation
14 for Defendant's failure to provide rest periods, plus interest, attorneys' fees, expenses, and costs of
15 suit pursuant to Labor Code section 226.7(b) and the applicable wage order.

16 **FIFTH CAUSE OF ACTION**

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

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

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

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

24 111. Labor Code section 226(e) provides that if an employer fails to comply with
25 providing an employee with properly itemized wage statements as set forth in section 226(a), then
26 the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period
27 in which a violation occurs and \$100 per employee for each violation in a subsequent pay period,
28 not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates

1 section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation
2 in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which
3 the employer fails to provide the employee a wage statement or fails to keep the required records
4 pursuant to section 226(a).

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

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

14 114. Plaintiff is informed and believes, and thereon alleges, that Defendant did not
15 maintain accurate business records pertaining to the total hours worked for Defendant by Plaintiff
16 and the members of the Classes as required under Labor Code section 1174.5. This is a result of
17 missing hours worked, and missed meal and rest break premiums, as illustrated above.

18 115. As a result of not having kept accurate records, Plaintiff and the Class Members
19 suffered injuries in the form of confusion over whether they received all wages owed to them, and
20 difficulty and expense in reconstructing pay records in addition to other injuries which may come
21 to light during the discovery process.

22 116. Labor Code section 1198 provides that the maximum hours of work and the
23 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
24 applicable IWC wage order. Section 1198 further provides that "[t]he employment of any
25 employees for longer hours than those fixed by the order or under conditions of labor prohibited by
26 the order is unlawful." Pursuant to the applicable IWC Wage order, employers are required to keep
27 accurate time records showing when the employee begins and ends each work period and meal
28 period.

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

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

SIXTH CAUSE OF ACTION

Failure to Provide Suitable Seating

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

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

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

121. “The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 8. “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Ibid.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 24. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” See *ibid.*

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

7 123. As a result of Defendant's company-wide policy and/or practice of prohibiting
8 employees from sitting during their shifts and company-wide failure to provide suitable seating,
9 Plaintiff and members of the Classes were forced to stand during shifts and denied seats when
10 working. Defendant's failure to provide suitable seating to Plaintiff and members of the Classes
11 violates Labor Code section 1198 and the applicable IWC wage order section 14(A).

12 124. Labor Code section 1198 makes it illegal to employ an employee under conditions
13 of labor that are prohibited by the applicable wage order. Labor Code section 1198 requires that
14 "the standard conditions of labor fixed by the commission shall be the ... standard conditions of
15 labor for employees. The employment of any employee ... under conditions of labor prohibited by
16 the order is unlawful." Code of Regulations, title 8, section 11070(14)(B) provides that "[w]hen
17 employees are not engaged in the active duties of their employment and the nature of the work
18 requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to
19 the work area and employees shall be permitted to use such seats when it does not interfere with
20 the performance of their duties."

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

28 126. Defendant did not provide Plaintiff and members of the Classes with seats or stools

1 in reasonable proximity to their work areas to allow them to use seats when it would not interfere
2 with the performance of their duties for times when they were not engaged in active duties that
3 require standing.

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

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

13 **SEVENTH CAUSE OF ACTION**

14 **Failure to Timely Pay Wages During Employment**

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

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

18 130. Labor Code section 204 requires that all wages earned by any person in any
19 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
20 wages due upon termination of an employee, are due and payable between the 16th and the 26th
21 day of the month during which the labor was performed, and that all wages earned by any person in
22 any employment between the 16th and the last day, inclusive, of any calendar month, other than
23 those wages due upon termination of an employee, are due and payable between the 1st and the
24 10th day of the following month.

25 131. Labor Code section 204 also requires that all wages earned for labor in excess of the
26 normal work period shall be paid no later than the payday for the next regular payroll period.
27 Alternatively, Labor Code section 204 provides that the requirements of this section are deemed
28 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are

1 paid not more than seven (7) calendar days following the close of the payroll period.

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

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

7 **EIGHTH CAUSE OF ACTION**

8 **Waiting Time Penalties**

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

10 134. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
11 forth herein.

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

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

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

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

27 139. Specifically, Defendant willfully failed to pay Plaintiff and members of the
28 Terminated Sub Class the earned and unpaid wages set forth above, including but not limited to,

overtime wages, minimum wages, and/or meal period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ.

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

NINTH CAUSE OF ACTION

Failure to Reimburse Business Expenses

(By Plaintiff and Members of the Putative Class Against All Defendants)

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

142. Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144.

143. The applicable IWC wage order provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

144. During the relevant time period, Defendant had a company-wide policy of their own uniform, including non-slip shoes, aprons, black shirt, black socks and servers were required to purchase their own note paper and pens. Moreover, management frequently texted Plaintiff regarding her shifts, yet did not provide a phone allowance.

145. Although Defendants required Plaintiff and members of the Classes to utilize their own phones to carry out their work-related duties, and required specific uniforms, Defendant failed to reimburse them for this cost. Instead, Defendant passed these operating costs off onto Plaintiff and members of the Classes.

146. Thus, Defendants had, and continues to have, a company-wide policy and/or

1 practice of not reimbursing employees for expenses necessarily incurred in violation of Labor Code
2 section 2802.

3 147. Plaintiff and members of the Classes are entitled to recover civil penalties,
4 attorney's fees, costs, and interest thereon.

5 **TENTH CAUSE OF ACTION**

6 **Violation of California**

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

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

9 148. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
10 forth herein.

11 149. Business and Professions Code section 17200 defines unfair competition to include,
12 "unlawful, unfair or fraudulent business practices."

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

16 151. Defendant has been committing, and continues to commit, acts of unfair
17 competition by engaging in the unlawful, unfair and fraudulent business practices and acts
18 described in this Complaint, including, but not limited to:

- 19 a) violations of Labor Code sections 510, 1198;
- 20 b) violations of Labor Code sections 221, 223, 1182.11-1182.12, 1194, 1194.2,
21 1197, 1198;
- 22 c) violations of Labor Code sections 226.7, 512, 516, and 1198;
- 23 d) violations of Labor Code sections 226, 1174;
- 24 e) violations of Labor Code sections 201 and 202;
- 25 f) violations of Labor Code section 204;
- 26 g) violations of Labor Code section 1198;
- 27 h) violations of Labor Code section 2802.

28 152. As a result of its unlawful, unfair, and/or fraudulent business acts and practices,

1 Defendant has reaped and continues to reap unfair benefits and illegal profits at the expense of
2 Plaintiff and proposed Class Members. Defendant's unlawful, unfair, and/or fraudulent conduct has
3 also enabled Defendant to gain an unfair competitive advantage over law-abiding employers and
4 competitors.

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

8 154. Plaintiff seeks a court order enjoining Defendant from the unlawful, unfair, and/or
9 fraudulent activity alleged herein.

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

12 156. Plaintiff further seeks an order requiring an audit and accounting of the payroll
13 records to determine the amount of restitution of all unpaid wages owed to herself and members of
14 the proposed Plaintiff Class, according to proof, as well as a determination of the amount of funds
15 to be paid to current and former employees that can be identified and located pursuant to a court
16 order and supervision.

17 157. Plaintiff seeks restitution for herself and all others similarly situated of these
18 amounts, including all earned and unpaid wages and attorneys' fees and costs pursuant to Code of
19 Civil Procedure section 1021.5.

20 **ELEVENTH CAUSE OF ACTION**

21 **Civil Penalties Pursuant to PAGA (Labor Code §§ 2698, et seq.)**

22 **(On Behalf of All Aggrieved Employees Against Defendants)**

23 158. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
24 forth herein.

25 159. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA,
26 California Labor Code §§ 2698-99) applied to Defendant's employment of Plaintiff and the
27 proposed Class Members.

28 160. At all times set forth herein, California Labor Code § 2699(a) has provided that any

1 provision of law under the California Labor Code that provides for a civil penalty to be assessed
2 and collected by the Labor and Workforce Development Agency (LWDA) for violations of the
3 California Labor Code may, as an alternative, be recovered through a civil action brought by an
4 aggrieved employee on behalf of herself and other current or former employees pursuant to
5 procedures outlined in California Labor Code § 2699.3.

6 161. At all times set forth herein, PAGA has also provided that for the violation of any
7 Labor Code provision that does not itself contain a civil penalty, there are established civil
8 penalties of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for
9 each aggrieved employee per pay period for each subsequent violation. Cal. Lab. C. § 2699(f).

10 162. A civil action under PAGA may be brought by an “aggrieved employee,” any
11 person that was employed by the alleged violator and against whom one or more of the alleged
12 violations was committed.

13 163. Defendants have been committing, and continue to commit, violations of the
14 California Labor Code, including, but not limited to:

- 15 a) violations of Labor Code sections 510, 1198;
- 16 b) violations of Labor Code sections 221, 223, 1182.11-1182.12, 1194, 1194.2,
17 1197, 1198;
- 18 c) violations of Labor Code sections 226.7, 512, 516, and 1198;
- 19 d) violations of Labor Code sections 226, 1174;
- 20 e) violations of Labor Code sections 201 and 202;
- 21 f) violations of Labor Code section 204;
- 22 g) violations of Labor Code section 1198;
- 23 h) violations of Labor Code section 2802;
- 24 i.) violations of Labor Code sections 2698, et seq.

25 164. Plaintiff was employed by Defendants and the alleged violations have been
26 committed against him during his time of employment and he is, therefore, an aggrieved employee.
27 Plaintiff and other employees are “aggrieved employees” as defined by California Labor Code
28 §2699(c) in that they are all current or former employees of Defendants, and one or more of the

1 alleged violations were committed against them.

2 165. Pursuant to California Labor Code § 2699.3, aggrieved employees, including
3 Plaintiff, may pursue a civil action arising under the PAGA after the following requirements have
4 been met:

5 166. The aggrieved employee shall give written notice (hereinafter “Employee’s Notice”)
6 to the LWDA and the employer of the specific provisions of the California Labor Code alleged to
7 have been violated, including the facts and theories to support the alleged violations;

8 167. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and
9 the aggrieved employee by certified mail that it does not intend to investigate the alleged violations
10 sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the
11 LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the
12 postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action
13 pursuant to California Labor Code §2699 to recover civil penalties in addition to any other
14 penalties to which the employee may be entitled.

15 168. On April 18, 2023, Plaintiff provided written notice to the LWDA and by certified
16 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
17 violated, including the facts and theories to support the alleged violations.

18 169. More than 65 calendar days have passed since the date notice was provided to the
19 LWDA and Defendants. Accordingly, Plaintiff has satisfied the administrative prerequisites under
20 California Labor Code Section 2699.3(a) to recover civil penalties against Defendants for
21 violations of California Labor Code identified in this Complaint.

22 **PRAYER FOR RELIEF**

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

- 24 1. For an order certifying the proposed Plaintiff and Terminated Sub-Class;
25 2. For an order that counsel for Plaintiff be appointed class counsel
26 3. Certification of this class action on behalf of the proposed Plaintiff and Terminated
27 Sub-Class;
28 4. Designation of Plaintiff as the class representative of the Plaintiff and Terminated

Sub Class;

5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class and disgorgement of all profits from the unlawful business practices of Defendant;
6. An order appointing Plaintiff's counsel as class counsel;
7. Prejudgment and post judgment interest on all sums awarded;
8. For compensatory damages;
9. For penalties pursuant to Labor Code sections 200, 226, 226.7, 226.3, 2699(a) and 2699(f)
10. For interest accrued to date;
11. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226, 1194, 2699(g)(1) ;
12. For reasonable attorneys' fees pursuant to Labor Code section 226, 218.5, 2699(g)(1); and Code of Civil Procedure section 1021.5, and/or other applicable law; and
13. A declaratory judgment that Defendant has knowingly and intentionally violated the following provisions of law;
 - a. Labor Code sections 510, 1198 for failing to pay overtime;
 - b. Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198, 221, 223, for failing to pay all wages;
 - c. Labor Code sections 226.7, 512, 516, and 1198 for failing to provide compliant meal breaks;
 - d. Labor Code sections 226.7, 512, 516, and 1198 for failing to provide compliant rest breaks;
 - e. Labor Code sections 226, 1174 for failing to provide compliant wage statements;
 - f. Labor Code sections 204 for failing to pay wages timely during employment;
 - g. Labor Code sections 201 and 202 for failing to pay wages at termination;

- 1 h. Labor Code section 1198 for failing to provide suitable seating;
2 i. Labor Code section 2802 for failing to reimburse business expenses;
3 j. Business & Professions Code sections 17200-08 for violating the provisions
4 set forth herein above.

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

6
7 DATED: September 18, 2023

BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC

8
9 By: _____


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

10
11
12
13
14 **DEMAND FOR JURY TRIAL**

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

17
18 DATED: September 18, 2023

BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC

19
20 By: _____


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

PROOF OF SERVICE

STATE OF CALIFORNIA COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address 31365 Oak Crest Drive, Suite 240, Westlake Village, CA 91361.

On September 18, 2023, I served the foregoing documents described as
FIRST AMENDED CLASS ACTION COMPLAINT

on all interested parties in this action as follows: **SEE ATTACHED SERVICE LIST**

☐ **(VIA US MAIL)** I caused such envelope(s) to be deposited in the mail at Westlake Village, California with postage thereon fully prepaid.
I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day

☒ **(BY ELECTRONIC MAIL)** On the above date, I served the aforementioned document(s) by electronic mail to the parties' email addresses as they are known to me on the attached Service List. My email address is sboucher@bradleygrombacher.com. I did not receive, under a reasonable period of time, any indication that the email did not go through.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed September 18, 2023, at Westlake Village, California.



Suzette Boucher

Puerto-Gonzalez v. Marie Callender's Inc.
Superior Court for the County of Riverside
Case No. CVRI2301958

Service List

Jenny S. Branch , Esq. Jenny Yu, Esq. LAGASSE BRANCH BELL + KINKEAD LLP 4365 Executive Dr Ste 950 San Diego, CA 92121-2156 Tel: 858-345-5073 Fax: 858-345-5074 jbranch@lbbklaw.com jyu@lbbklaw.com	Attorneys for Defendant MARIA CALLENDER'S INC.
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