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8 Attorneys for Plaintiff
9 ASHLEY WRAY

10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF PLACER**

12 ASHLEY WRAY, an individual)

13)
14 Plaintiff,)

15 v.)

16)
17 NBR TOMATINA LLC., a California)
18 limited liability company, and DOES 1 to)
19 20, inclusive,)

20 Defendants.)
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23)
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Case No. S-CV-0050771

COMPLAINT FOR DAMAGES:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Pay Reimbursements for Expenses;
4. Failure to Provide Accurate Wage Statements;
5. Failure to Keep Accurate Time Records;
6. Failure to Provide Rest Periods; and
7. Failure to Provide Meal Periods;

JURY TRIAL DEMANDED

ELECTRONICALLY FILED
Superior Court of California,
County of Placer
06/28/2023 at 01:28:54 PM

By: Robin Hall
Deputy Clerk

1 Plaintiff ASHLEY WRAY (“Plaintiff”) hereby files this Complaint against Defendants
2 NBR TOMATINA LLC, and DOES 1 to 20, inclusive, (“Defendants”). Plaintiff alleges the
3 following:

4 **PARTIES AND JURISDICTION**

5 1. Plaintiff ASHLEY WRAY is an individual over the age of eighteen (18) and is now
6 and/or at all times mentioned in this Complaint was a resident of the State of California.

7 2. Plaintiff was employed by Defendants as a Front of House Supervisor at its restaurant
8 in Roseville, California.

9 3. Plaintiff is informed and believes, and thereon alleges, Defendant NBR Tomatina
10 LLC is a California limited liability company, doing business in California as a restaurant.

11 4. Plaintiff is further informed and believes, and thereon alleges, that each of the
12 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or
13 joint venturer of the remaining defendants and was acting within the course and scope of that
14 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the
15 Defendants herein gave consent to, ratified, and authorized the acts alleged herein to each of the
16 remaining defendants. The true names and capacities of the defendants named herein Does 1 through
17 20, inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who
18 therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure §
19 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1 through
20 20, inclusive, when they have been determined.

21 5. The Placer County Superior Court has jurisdiction in this matter due to alleged
22 violations of the California Labor Code, and the applicable Industrial Welfare Commission (IWC)
23 Wage Orders.

24 6. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, Plaintiff was
25 employed in Placer County, and in that some of the wrongful acts and violations of law asserted
26 herein occurred within Placer County.

27 7. On May 25, 2023, Plaintiff filed her Labor Code § 2699.3 Private Attorney General Act
28 (“PAGA”) notice with the California Labor & Workforce Development Agency (“LWDA”).

1 Following 65 days of filing of the PAGA notice, if the LWDA does not investigate, Plaintiff will
2 have exhausted her administrative remedies. Plaintiff will amend this Complaint to include a PAGA
3 cause of action once her administrative remedies have been exhausted.

4 **FACTS**

5 8. Plaintiff worked for Defendants as a Front of House Supervisor at their Roseville,
6 California restaurant from approximately September 28, 2021 until the present. Plaintiff and
7 similarly situated employees worked for Defendants as non-exempt employees and were paid on an
8 hourly basis.

9 9. Plaintiff regularly worked over eight (8) hours a day and/or forty (40) hours a week.
10 Defendants did not pay Plaintiff and similarly situated employees all overtime and/or minimum
11 wages earned during her employment. Further, Plaintiff's supervisor adjusted Plaintiff's time records
12 by recording hours worked in excess of eight (8) hours a day on a different day so that Plaintiff
13 would not be paid at the appropriate overtime rate.

14 10. Defendants did not allow Plaintiff and similarly situated employees to take their
15 statutorily required meal periods. Defendants failed to provide Plaintiff and other similarly situated
16 employees a 30-minute, duty-free meal period before the end of the fifth hour of work as required
17 under the law. Plaintiff and similarly situated aggrieved employees were instructed to prioritize
18 customers and regularly missed their meal periods and/ or they were provided late due the necessity
19 of taking care of customers. Defendants also adjusted Plaintiff's and similarly situated employees'
20 timecards to reflect they were provided a 30-minute, duty-free meal period when no such break was
21 provided. When Plaintiff and similarly situated aggrieved employees were provided a meal break
22 before the fifth hour of work, those meal periods were regularly interrupted within 30 minutes of the
23 start of the meal period because the Plaintiff and similarly situated employees were required to assist
24 customers perform other duties during their meal breaks. Work performed during meal breaks was
25 also not compensated, resulting in unpaid off-the-clock work.

26 11. Defendants also failed to provide rest periods to Plaintiff and similarly situated
27 aggrieved employees for every 4 hours worked or major fraction thereof. Defendants' management
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1 was aware this was occurring, but failed to take any steps to ensure rest periods were provided to
2 Plaintiff and similarly situated employees.

3 12. Defendants required Plaintiff and similarly situated employees to incur business-
4 related expenses, but did not reimburse them. For example, Plaintiff and similarly situated
5 employees were required to use their personal cell phones for business purposes but were not
6 reimbursed by Defendants. Plaintiff was also required to use her personal vehicle for making
7 deliveries and dropping off deposits at the bank, but she was not reimbursed for the use of her
8 vehicle.

9 13. As a result of the violations listed above, Defendants did not provide Plaintiff and
10 similarly situated employees legally compliant wage statements noting, among other things, total
11 hours worked, gross wages earned, the amount of meal and rest period premium pay owed.

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13 **FIRST CAUSE OF ACTION**
FAILURE TO PAY MINIMUM WAGES
14 **(As to All Defendants)**

15 14. Plaintiff incorporates by reference and re-alleges the allegations in each paragraph
16 above as though fully set forth herein.

17 15. During the period Plaintiff was employed by Defendants she was entitled to be paid at
18 least the State's minimum wage rate for each hour she worked. See, e.g., IWC Wage Order MW-
19 2014, MW-2017; IWC Wage Order No. 5-2001, subsection (4); Cal. Lab. Code §§ 1194, 1197.1.

20 16. For the reasons stated above, Defendants did not pay Plaintiff at the least minimum
21 wage for all hours worked. Thus, Plaintiff and similarly situated employees were not paid at least the
22 applicable state minimum wage for all hours worked in violation of the Labor Code.

23 17. Defendants' conduct described herein violates California Labor Code §§ 1194 and
24 1197.1, and Wage Orders MW-2014, MW-2017, and No. 5-2001. As a proximate result of
25 Defendants' conduct, Plaintiff has been damaged and deprived of minimum wages, in an amount to
26 be established at trial. Plaintiff now seeks these wages, liquidated damages pursuant to California
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1 Labor Code § 1194.2, attorney's fees and costs, and interest pursuant to California Labor Code §§
2 1194 and 1197.1.

3 WHEREFORE, Plaintiff prays for relief as set forth below.

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5 **SECOND CAUSE OF ACTION**
6 **FAILURE TO PAY OVERTIME WAGES**
7 **(As to All Defendants)**

8 18. Plaintiff incorporates by reference and re-alleges the allegations in each paragraph
9 above as though fully set forth herein.

10 19. Labor Code sections 510 and 1194 require employers to pay employees overtime for
11 any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in
12 any one workweek. Employers must also pay overtime for the first eight (8) hours worked on the
13 seventh day of work in any one workweek. Finally, employers must pay double time for all hours
14 worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8)
15 hours on the seventh day of work in any one workweek.

16 20. As stated above, Plaintiff and similarly aggrieved employees regularly worked over
17 eight (8) hours per day and forty (40) hours per week and were not paid overtime wages. Plaintiff is
18 entitled to recover all unpaid overtime wages.

19 21. Plaintiff and similarly situated employees were not exempt from the State's Wage
20 Orders.

21 22. Defendants' conduct described herein violates California Labor Code §§ 510, 1194,
22 and the applicable Wage Orders. As a proximate result of Defendants' conduct, Plaintiff has been
23 damaged and deprived of overtime wages, in an amount to be established at trial. Plaintiff now
24 seeks these wages, attorney's fees and costs, and interest pursuant to California Labor Code §§ 1194.

25 WHEREFORE, Plaintiff prays for relief as set forth below.

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THIRD CAUSE OF ACTION
FAILURE TO PAY REIMBURSEMENTS FOR EXPENSES
(As to All Defendants)

23. Plaintiff incorporates by reference and re-alleges the allegations in each paragraph above as though fully set forth herein.

24. Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

25. For the reasons stated above, Defendants failed to pay required reimbursements to Plaintiff and similarly aggrieved employees for required business expenses in violation of the Labor Code.

26. Defendants’ conduct described herein violated California Labor Code § 2802. As a proximate result of Defendants’ conduct, Plaintiff has been damaged in an amount to be established at trial, and are entitled to recover these damages, as well as interest and reasonable attorney’s fees and costs, pursuant to statute.

WHEREFORE, Plaintiff prays for relief as set forth below.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS
(As to All Defendants)

27. Plaintiff incorporates by reference and re-alleges the allegations in each paragraph above as though fully set forth herein.

28. Labor Code § 226 requires employers to furnish employees with an accurate itemized statement in writing, semi-monthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

29. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a).

30. Additionally, Plaintiff alleges she suffered injury as a result of Defendants' failure to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of Labor Code § 226, subdivision (a), and Plaintiff cannot promptly and easily determine (*i.e.* a reasonable person in Plaintiff's position would not be able to readily ascertain the information without reference to other documents or information) the required information from the wage statements alone.

31. For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff in violation of the Labor Code. Plaintiff is entitled to, and hereby seeks, injunctive relief requiring Defendants to comply with Labor Code § 226, and all applicable damages and civil penalties. This includes and is not limited to the civil penalties specified in Labor Code § 226.3.

WHEREFORE, Plaintiff prays for relief as set forth below.

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FIFTH CAUSE OF ACTION
FAILURE TO KEEP ACCURATE TIME RECORDS
(As to All Defendants)

32. Plaintiff incorporates by reference and re-alleges the allegations in each paragraph above as though fully set forth herein.

40. Labor Code § 1174(d) requires employers to keep “payroll records showing the hours worked daily by and the wages paid to . . . employees . . . These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years.”

33. Defendants did not keep accurate information regarding all hours worked by Plaintiffs and similarly situated employees, largely by failing to accurately record all time worked on their time records. This violated the Labor Code.

WHEREFORE, Plaintiff prays for relief as set forth below.

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SIXTH CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS

34. Plaintiff incorporates by reference and re-alleges the allegations in each paragraph above as though fully set forth herein.

35. Labor Code § 226.7 and IWC Wage Order No. 5-2001, § 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked.

36. For the reasons stated above, Plaintiff and similarly situated employees were not authorized and permitted to take legally compliant rest periods pursuant to California law in violation of the Labor Code. Defendants also failed to pay rest period premiums for their failure to provide rest periods.

37. As a proximate cause of Defendants’ failure to provide meal and rest periods, Plaintiff is entitled to one (1) hour of pay at the regular rate of compensation for each rest period not

1 provided, as a wage, from three (3) years of the filing of this action, in an amount to be established at
2 trial. *See* Labor Code § 226.7 and Wage Order 5-2001 § 12(B).

3 WHEREFORE, Plaintiff prays for relief as set forth below.

4 **SEVENTH CAUSE OF ACTION**
5 **FAILURE TO PROVIDE MEAL PERIODS**

6 38. Plaintiff incorporates by reference and re-alleges the allegations in each paragraph
7 above as though fully set forth herein.

8 39. Labor Code § 226.7 and IWC Wage Order No. 5-2001, § 11(A) require employers to
9 provide employees meal periods of thirty (30) minutes per five (5) hours worked.

10 40. As set forth above, Plaintiff and similarly situated employees were not authorized and
11 permitted to take legally compliant meal periods pursuant to California law.

12 41. As a proximate cause of Defendants' failure to provide meal and rest periods,
13 Plaintiff is entitled to one (1) hour of pay at the regular rate of compensation for each meal period
14 not provided, as a wage, from three (3) years of the filing of this action, in an amount to be
15 established at trial. *See* Labor Code § 226.7 and Wage Order 5-2001 § 11(D).

16 WHEREFORE, Plaintiff prays for relief as set forth below.

17 **DAMAGES**

18 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

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- 20 1. A jury trial;
 - 21 2. For compensatory damages, including, but not limited to, unpaid wages, plus interest,
22 according to proof allowed by law;
 - 23 3. For civil and statutory penalties and liquidated damages under the California Labor
24 Code according to proof allowed by law;
 - 25 5. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's
26 fees;
 - 27 7. For an award of prejudgment and post-judgment interest; and
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1 8. For an award to Plaintiff of such other and further relief as the Court deems just and
2 proper.

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4 Dated: June 26, 2023

Castle Law: California Employment Counsel, PC

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6 By: 
Timothy B. Del Castillo
7 Lisa L. Bradner
8 Daniel Richardson
9 Attorneys for Plaintiff

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11 **JURY TRIAL DEMAND**

12 Plaintiff ASHLEY WRAY hereby demands a trial by jury.

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14 Dated: June 26, 2023

Castle Law: California Employment Counsel, PC

15
16 By: 
Timothy B. Del Castillo
17 Lisa L. Bradner
18 Daniel Richardson
19 Attorneys for Plaintiff