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

MICHAEL LORENZO PORTER, individually
and on behalf of others similarly situated,

Plaintiff,

vs.

SPIRITED VENTURES, 11, INC. d/b/a COLE'S
FRENCH DIP, a California Corporation;
POURING WITH HEART, LLC; and DOES 1
through 25, inclusive,

Defendants.

Case No.: **23STCV11877**

**CLASS ACTION COMPLAINT FOR
DAMAGES**

- (1) Violation of Cal. Labor Code §§ 1194, 1197 and 1197.1 (Unpaid Minimum Wages)**
- (2) Violation of Cal. Labor Code §§ 510 and 1198 (Unpaid Overtime)**
- (3) Violation of Cal. Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums)**
- (4) Violation of Cal. Labor Code § 226.7 (Unpaid Rest Period Premiums)**
- (5) Violation of Cal. Labor Code §§ 204 and 210 (Wages Not Timely Paid During Employment)**
- (6) Conversion**
- (7) Violation of Cal. Labor Code § 226(a) (Failure to Provide Accurate Wage Statements)**

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- (8) Violation of Cal. Labor Code §§ 201, 202 and 203 (Final Wages Not Timely Paid)
- (9) Violation of Cal. Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses)
- (10) Violation of Cal. Business & Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff MICHAEL LORENZO PORTER (“Plaintiff”), individually and on behalf of all members of the general public similarly situated, and alleges as follows against Defendants SPIRITED VENTURES, 11, INC. d/b/a COLE’S FRENCH DIP; POURING WITH HEART, LLC; and DOES 1 through 25, inclusive (“Defendants”):

JURISDICTION AND VENUE

1. This is a class action brought pursuant to California Code of Civil Procedure section 382.

2. The monetary damages, restitution, statutory penalties, and other applicable legal and equitable relief sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

3. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction.

4. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. Further, no federal question is at issue because the claims asserted herein are based solely on California law.

5. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, employ individuals, and/or transact business in the State of California, County of Los Angeles. The majority of the acts, events, and violations alleged herein relating to Plaintiff occurred throughout the state of California, including in the County of Los Angeles.

THE PARTIES

6. At all times herein mentioned, Plaintiff MICHAEL LORENZO PORTER was a resident in the State of California.

7. At all times herein mentioned, Defendant SPIRITED VENTURES, 11, INC. d/b/a COLE’S FRENCH DIP was and is a California employer who does business throughout the state of

California, with locations throughout the state of California, and whose employees are engaged throughout this county and the State of California, including in the County of Los Angeles at 515 W 7th Street, 3rd Floor, Los Angeles, California, 90014.

8. At all times herein mentioned, Defendant POURING WITH HEART, LLC was and is an employer who does business throughout the state of California, with locations throughout the state of California, and whose employees are engaged throughout this county and the State of California, including in the County of Los Angeles at 515 W 7th Street, 3rd Floor, Los Angeles, CA 90014.

9. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 25 but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

10. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to SPIRITED VENTURES, 11, INC. d/b/a COLE'S FRENCH DIP, POURING WITH HEART, LLC, and/or DOES 1 through 25, each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants represent and were in accordance with Defendants' official policy.

11. At all relevant times, Defendants were the employers of Plaintiff within the meaning of all applicable state laws and statutes. Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff so as to make each of said Defendants employers and employers liable under the statutory provisions set forth herein.

12. Defendants had the authority to hire and terminate Plaintiff and the other class members, to set work rules and conditions governing Plaintiff and the other class members' employment, and to supervise their daily employment activities.

13. Defendants exercised sufficient authority over the terms and conditions of Plaintiff and the other class members' employment for them to be joint employers of Plaintiff and the other class members.

14. Defendants directly hired and paid wages and benefits to Plaintiff and the other class

1 members.

2 15. Defendants continue to employ hourly paid and/or non-exempt employees within the
3 State of California.

4 16. At all relevant times, Defendants, and each of them, ratified each and every act or
5 omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted
6 the acts and omissions of each and all the other Defendants in proximately causing the damages herein
7 alleged.

8 17. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is
9 in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
10 occurrences, and transactions alleged herein.

11 **GENERAL ALLEGATIONS**

12 18. From June/early July of 2022 until around the end of December 2022, Defendants
13 employed Plaintiff as a non-exempt, hourly paid employee in Los Angeles, California. Plaintiff
14 typically worked in the kitchen performing various duties such as preparing food but is trained as a
15 bartender and barback for assistance in these areas. Defendants have numerous bars and restaurants
16 and employed Plaintiff and class members throughout California.

17 19. Plaintiff is informed and believes, and thereon alleges that Defendants engaged in a
18 pattern and practice of wage abuse against their hourly-paid or non-exempt employees. As set forth in
19 more detail below, this pattern and practice of wage abuse involved, *inter alia*, requiring Plaintiff and
20 the class members to work off-the-clock; failing to properly pay overtime wages and minimum wages
21 for all hours worked; failing to provide all meal and rest breaks to which they were entitled; failing to
22 provide all tips/gratuities accrued by Plaintiff and the class members; failing to timely pay wages
23 during employment and upon termination of employment; failing to provide accurate wage statements;
24 failing to reimburse necessary business-related expenses; and failing to adhere to other related
25 protections afforded by the California Labor Code and applicable Industrial Welfare Commission
26 Wage Order.

27 20. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
28 should have known that pursuant to California Labor Code sections 1194, 1197, 1197.1, and the

1 applicable IWC Wage Order, that Plaintiff and the other class members were entitled to receive at
2 least minimum wages for all hours worked and that they were not receiving minimum wages for all
3 hours worked.

4 21. Defendants also implemented policies that prohibited Plaintiff and the class members
5 from accurately recording the actual time worked, resulting in a failure to pay Plaintiff and the other
6 class members all wages owed.

7 22. Plaintiff and the other class members worked over eight (8) hours in a day, and/or
8 forty (40) hours in a week during their employment with Defendants.

9 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
10 should have known that pursuant to California Labor Code sections 510 and 1198, and the applicable
11 IWC Wage Order, Plaintiff and the other class members were entitled to receive certain wages for
12 overtime compensation and that they were not receiving certain wages for overtime compensation.

13 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
14 should have known that pursuant to California Labor Code sections 226.7 and 512, and the applicable
15 IWC Wage Order, Plaintiff and the other class members were entitled to receive a meal period or
16 payment of one (1) additional hour of pay at their regular rate of compensation when they were not
17 provided with an uninterrupted meal period of no less than thirty (30) minutes for a work period of
18 more than five hours per day and that Plaintiff and the other class members were entitled to receive a
19 second meal period or payment of one (1) additional hour of pay at their regular rate of compensation
20 when they were not provided with an uninterrupted second meal period of no less than thirty (30)
21 minutes for a work period of more than ten (10) hours per day. However, Plaintiff and the other class
22 members did not receive all meal periods or payment of one (1) additional hour of pay at their regular
23 rate of compensation when a meal period was missed, shortened, taken late, and/or interrupted.

24 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
25 should have known that pursuant to California Labor Code section 226.7 and the applicable IWC
26 Wage Order, Plaintiff and the other class members were entitled to receive all rest periods or payment
27 of one (1) additional hour of pay at their regular rate of compensation when they were not provided
28 with an uninterrupted rest period of no less than ten (10) minutes for every four hours, or major fraction

1 thereof, worked. However, Plaintiff and the other class members did not receive all rest periods or
2 payment of one (1) additional hour of pay at their regular rate of compensation when a rest period was
3 missed, shortened, taken late, and/or interrupted.

4 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
5 should have known that they were required to timely pay all wages owed to Plaintiff and the other
6 class members at the correct rate of pay.

7 27. Throughout the time period involved in this case, Defendants regularly failed to pay
8 Plaintiff and the class members all wages within any time permissible under California law, including,
9 *inter alia*, California Labor Code section 204. Defendants knew or should have known that Plaintiff
10 and the class members were entitled to receive all wages owed to them during their employment.
11 Plaintiff and the class members did not receive payment of all wages, including overtime
12 compensation, minimum wages, meal and rest period premiums, and all gratuities accrued.

13 28. Throughout the time period involved in this case, Defendants regularly failed to pay
14 Plaintiff and the class members all gratuities accrued by Plaintiff and the class members as required
15 by Cal. Lab. Codes sections 350 *et. seq.* Defendants continued to pay Plaintiff and class members who
16 were entitled to all gratuities earned less than all of the gratuities to which they were entitled, affecting
17 Plaintiff and other class members during their employment, and class members at separation of
18 employment.

19 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
20 or should have known that they were required to provide Plaintiff and the other class members with
21 complete and accurate itemized wage statements pursuant to California Labor Code section 226(a)
22 but failed to do so.

23 30. Throughout the time period involved in this case, Defendants regularly failed to keep
24 complete or accurate payroll records for Plaintiff and the class members. Defendants knew or should
25 have known that Defendants were required to keep complete and accurate payroll records for Plaintiff
26 and the class members in accordance with California law, but, in fact, did not keep complete and
27 accurate payroll records.

28 31. Throughout the time period involved in this case, Defendants regularly failed to

maintain accurate records relating to Plaintiff's and the class members' work periods, meal periods, total daily hours, hours per pay period, and applicable pay rates.

32. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive all wages upon termination of employment, including, without limitation, overtime wages, minimum wages, meal period premium wages, rest period premium wages, and all gratuities accrued, and that they did not receive payment of all wages upon termination of employment in violation of California Labor Code sections 201 and 202.

33. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known pursuant to California Labor Code sections 2800 and 2802 that Plaintiff and the other class members were entitled to reimbursement for necessary business-related expenses, but, in fact, did not reimburse them for necessary business-related expenses.

34. Throughout the time period involved in this case, Defendants knew or should have known that they had a duty to compensate Plaintiff and the class pursuant to California law. Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, in order to increase Defendant's profits.

CLASS ACTION ALLEGATIONS

35. Plaintiff brings this lawsuit as a class action on behalf of himself and all others similarly situated, as members of a proposed class pursuant to California Code of Civil Procedure section 382. The class satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements under California Code of Civil Procedure section 382.

36. The proposed class is defined as follows:

All current and former hourly-paid and/or non-exempt employees who worked for Defendants in the State of California at any time during the period from four years prior to the date of the filing of this Complaint until final judgment.

37. Plaintiff reserves the right to establish additional subclasses as appropriate.

38. There is a well-defined community of interest in the litigation and the Class is easily

ascertainable.

39. The Class is so numerous that the individual joinder of all its members is impracticable. While the exact number and identities of class members are unknown to Plaintiff at this time, the exact numbers of class members and their identities can be ascertained through appropriate discovery from records maintained by Defendants and their agents.

40. Common questions of fact and law exist as to all class members, which predominate over any questions affecting only individual members of the Class. The common legal and factual questions which do not vary from class member to class member, and which may be determined without reference to the individual circumstances of any class member include, but are not limited to, the following:

- i. Whether Defendants had a policy and practice of failing to pay minimum wages to Plaintiff and the other class members for all hours worked;
- ii. Whether Defendants had a policy and practice of failing to pay overtime wages to Plaintiff and the other class members for all overtime hours worked;
- iii. Whether Defendants had a policy and practice of failing to provide meal periods to Plaintiff and the other class members;
- iv. Whether Defendants had a policy and practice of failing to provide rest periods to Plaintiff and the other class members;
- v. Whether Defendants failed to pay their hourly-paid and/or non-exempt employees in the State of California for all hours worked, and for all missed, short, late, and/or interrupted meal periods and rest breaks;
- vi. Whether Defendants engaged in conversion by failing to pay their hourly-paid and non-exempt employees and/or all other employees otherwise entitled for all accrued gratuities per Cal. Lab. Codes sections 350 *et seq.*;
- vii. Whether Defendants failed to pay their hourly-paid and/or non-exempt employees in the State of California for all hours worked at the rate at which said employees were hired;
- viii. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class

members during their employment;

ix. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;

x. Whether Defendants failed to pay all wages due to Plaintiff and the other class members within the required time upon their discharge or resignation;

xi. Whether Defendants failed to comply with wage reporting as required by the California Labor Code; including, *inter alia*, section 226;

xii. Whether Defendants failed to reimburse Plaintiff and the other class members for necessary business-related expenses and costs;

xiii. Whether Defendants' conduct was willful or reckless;

xiv. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, *et seq.*;

xv. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and

xvi. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

41. Plaintiff's claims are typical of the claims of the Class, and Plaintiff's interests are coincident with and not antagonistic to those of the other class members Plaintiff seeks to represent. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained attorneys experienced in the prosecution of class actions and Plaintiff intends to prosecute this action vigorously.

42. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual litigation of the claims of all class members is impracticable. Even if every class member could afford individual litigation, the court system could not. It would be unduly burdensome on the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of

1 this action as a class action, with respect to some or all of the issues presented in this Complaint,
2 presents fewer management difficulties, conserves the resources of the parties and of the court system,
3 and protects the rights of each class member.

4 43. Certification of this lawsuit as a class action will advance public policy
5 objectives. Employers of this great state violate employment and labor laws every day. Current
6 employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However,
7 class actions provide the class members who are not named in the complaint anonymity that allows
8 for the vindication of their rights.

9 **FIRST CAUSE OF ACTION**

10 **VIOLATION OF LABOR CODE SECTIONS 1194, 1197, AND 1197.1**

11 **Failure to Pay Minimum Wages**

12 **(Against All Defendants and DOES 1 – 25)**

13 44. Plaintiff incorporates herein by specific reference, as though fully set forth, the
14 allegations in all preceding paragraphs.

15 45. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide
16 that the minimum wage for employees fixed by the Industrial Welfare Commission is the minimum
17 wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
18 Plaintiff and the other class members were not paid the appropriate minimum wage for all of the hours
19 they worked. Plaintiff and the other class members were not paid the minimum wage for work
20 performed beyond their scheduled shifts, and the wages paid to them were not sufficient to compensate
21 them for all hours they worked at a minimum wage rate on a cumulative basis.

22 46. Throughout the relevant time period, Defendants regularly required Plaintiff and the
23 class members to perform off-the-clock including, but not limited to, requiring Plaintiff and other class
24 members to work through or during meal periods while clocked out, or else performing limited menial
25 tasks before clock in, or just after clock out, or by responding to work-related communications between
26 shifts. Defendants' practice ensured that Plaintiff and class members would not be properly paid at
27 the minimum wage rate for all time worked, and resulted in the systematic underpayment of wages to
28 Plaintiff and class members who were denied wages for all of the time they worked.

1 47. Accordingly, Defendants regularly failed to pay at least minimum wages to Plaintiff
2 and the other class members for all hours they worked in violation of California Labor Code sections
3 1194, 1197, and 1197.1.

4 48. Defendants' failure to pay Plaintiff and the other class members the minimum wage as
5 required violates California Labor Code sections 1194, 1197 and 1197.1. Pursuant to those sections,
6 Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage
7 compensation, as well as interest, costs, and attorney's fees.

8 49. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class
9 members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid
10 and interest thereon.

11 **SECOND CAUSE OF ACTION**

12 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

13 **Unpaid Overtime**

14 **(Against All Defendants and DOES 1 – 25)**

15 50. Plaintiff incorporates herein by specific reference, as though fully set forth, the
16 allegations in all preceding paragraphs.

17 51. California Labor Code section 1198 and the applicable Industrial Welfare Commission
18 ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them at a
19 rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the
20 number of hours worked by the person on a daily or weekly basis.

21 52. Specifically, the applicable IWC Wage Order provides that Defendants were required
22 to pay Plaintiff and the other class members at the rate of time-and-one-half for all hours worked in
23 excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

24 53. The applicable IWC Wage Order further provides that Defendants were required to pay
25 Plaintiff and the other class members overtime compensation at a rate of two (2) times their regular
26 rate of pay for all hours worked in excess of twelve (12) hours in a day.

27 54. California Labor Code section 510 codifies the right to overtime compensation at one-
28 and-one half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or

forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

55. Throughout the relevant time period, Defendants regularly required Plaintiff and the class members to perform off-the-clock including, but not limited to, requiring Plaintiff and other class members to work through or during meal periods while clocked out, or else performing limited menial tasks before clock in, or just after clock out, or by responding to work-related communications between shifts. Defendants' practice ensured that Plaintiff and class members would not be properly paid at the minimum wage rate for all time worked, and resulted in the systematic underpayment of wages to Plaintiff and class members who were denied wages for all of the time they worked. Moreover, the uncompensated work was often, if not always, performed when Plaintiff and class members had already worked eight (8) hours in a day and/or forty (40) hours in a week resulting in a failure to pay overtime compensation.

56. Defendants' failure to pay Plaintiff and the other class members as outlined above violates California Labor Code sections 510 and 1198 and is therefore unlawful.

57. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTIONS 226.7 AND 512

Failure to Provide Meal Periods

(Against All Defendants and DOES 1 – 25)

58. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

59. At all relevant times herein set forth, the applicable IWC Wage Order(s) and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff and the other class members' employment by Defendants.

60. At all relevant times herein set forth, California Labor Code section 226.7 provides that

no employer shall require an employee to work during any meal period mandated by an applicable IWC Order.

61. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

62. At all relevant times, California Labor Code section 512(a) further provides that an employer may not require, cause, or permit an employee to work a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

63. During the relevant time period, Plaintiff and the other class members were not provided with thirty-minute meal periods. Plaintiff and class members were required by Defendants to work more than five (5) hours per day but were not provided with uninterrupted 30-minute meal periods. Further, Plaintiff and class members were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Defendants regularly required Plaintiff and class members to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. Meal periods, when provided, were oftentimes interrupted, or cut short.

64. During the relevant time period, Defendants intentionally and willfully required Plaintiff and the other class members to work during meal periods and failed to compensate Plaintiff and the other class members for work performed during meal periods. As a result, Plaintiff worked through meal periods, took late meal periods, took interrupted meal periods, or took short meal periods, if at all. Defendants failed to provide proper meal periods, and any meal periods provided were late, short, interrupted, took place in settings wherein Defendants did not allow Plaintiff or class members to leave Defendants' premises, or the meal periods were otherwise non-compliant with California law.

1 65. During the relevant time period, Defendants failed to pay Plaintiff and the other class
2 members all meal period premiums due pursuant to California Labor Code section 226.7 and
3 512. Defendants' conduct violates applicable IWC Wage Order(s), and California Labor Code
4 sections 226.7 and 512(a).

5 66. Pursuant to the applicable IWC Wage Order and California Labor Code section
6 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional
7 hour of pay at their regular rate of compensation for each workday that a meal period was not
8 provided.

9 **FOURTH CAUSE OF ACTION**

10 **VIOLATION OF LABOR CODE SECTION 226.7**

11 **Failure to Provide Rest Periods**

12 **(Against All Defendants and DOES 1 – 25)**

13 67. Plaintiff incorporates herein by specific reference, as though fully set forth, the
14 allegations in all preceding paragraphs.

15 68. At all relevant times herein set forth, the applicable IWC Wage Order and California
16 Labor Code section 226.7 were applicable to Plaintiff and the other class members' employment by
17 Defendants.

18 69. At all relevant times, California Labor Code section 226.7 provides that no employer
19 shall require an employee to work during any rest period mandated by an applicable order of the
20 California IWC.

21 70. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer
22 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in
23 the middle of each work period" and that the "rest period time shall be based on the total hours worked
24 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless
25 the total daily work time is less than three and one-half (3½) hours.

26 71. Pursuant to the applicable IWC Wage Order and California Labor Code section
27 226.7(b), Plaintiff and the other class members were entitled to recover from Defendants one (1)
28 additional hour of pay at their regular hourly rate of compensation for each workday that the rest period

1 was not provided.

2 72. During the relevant time period, Defendants required Plaintiff and the other class
3 members to work three and one-half (3 ½) or more hours without authorizing or permitting a ten (10)
4 minute rest period per each four (4) hour period, or major fraction thereof, worked. Defendants failed
5 to authorize and permit Plaintiff and class members' third legally-complaint 10-minute rest period on
6 days where Plaintiff and other class members worked more than ten (10) hours in a day.

7 73. During the relevant time period, Defendants willfully required Plaintiff and the other
8 class members to work during rest periods. Defendants failed to relieve Plaintiff and the other class
9 members of all duties such that they could take compliant rest breaks. As a result, Plaintiff worked
10 through rest periods, took late rest periods, took interrupted rest periods, or took short rest periods, if
11 at all. Defendants failed to provide proper rest periods, and any rest periods provided were late, short,
12 interrupted, took place in settings wherein Defendants did not allow Plaintiff or class members to leave
13 Defendants' premises, or the rest periods were otherwise non-compliant with California law.

14 74. Defendants also had no policy and/or practice to pay a premium when rest periods were
15 missed, short, late, and/or interrupted, or otherwise failed to comply with California law, and thus
16 failed to pay Plaintiff and the other class members the full rest period premium due in violation of
17 California Labor Code section 226.7.

18 75. Defendants' conduct violates the applicable IWC Wage Orders and California Labor
19 Code section 226.7.

20 76. Pursuant to the applicable IWC Wage Orders and California Labor Code section
21 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one additional
22 hour of pay at their regular rate of compensation for each workday that a rest period was not provided.

23 **FIFTH CAUSE OF ACTION**

24 **VIOLATION OF CALIFORNIA LABOR CODE §§ 204 AND 210**

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

26 **(Against All Defendants and DOES 1 – 25)**

27 77. Plaintiff incorporates herein by specific reference, as though fully set forth, the
28 allegations in all preceding paragraphs.

78. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and 26th day of the month during which the labor was performed.

79. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

80. At all times herein set forth, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

81. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and other class members all wages due to them, within any time period permissible under California Labor Code section 204, including wages for the minimum wage rate, wages to be paid at the appropriate overtime or double time rate, wages in the form of premiums for missed meal and rest periods, and any other applicable bonuses, commissions, appropriate tips, accrued gratuities, etc.

82. Regarding tips, Plaintiff and class members were denied tips that they earned, including both cash and credit card tips, which were withheld from Plaintiff and class members.

83. Plaintiff and other class members are entitled to recover all available remedies for Defendant's violations of California Labor Code section 204, including statutory penalties pursuant to Labor Code section 210(b).

SIXTH CAUSE OF ACTION

CONVERSION

(Against All Defendants and DOES 1 – 25)

84. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

85. At all times herein set forth, California Labor Code sections 350 *et seq.* regulate the circumstances under which employees including Plaintiff and the class members are entitled to

1 portions of gratuities left by patrons of Defendants. Cal. Lab. Code section 351 states in part: “Every
2 gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid,
3 given, or left for.” Various courts and the California Labor Commissioner have considered the issue
4 of distribution of tips in a tipping pool, and while they have found that a tipping pool must be “fair
5 and reasonable” (*see generally, e.g., Leighton v. Old Heidelberg, Ltd.* (1990) 219 Cal. App. 3d 1062,
6 no court has interpreted Cal. Lab Code section 351 to allow for a tipping pool with distribution above
7 15% of the direct recipient’s gratuities into a tip pool). *See, e.g., Avidor v. Sutters Place, Inc.* (2013)
8 212 Cal.App.4th 1439, 1454-1454.

9 86. Defendants wrongfully exercised dominion over gratuities through their practices of
10 withholding gratuities and putting an improperly large portion of them in tipping pools. Moreover,
11 Defendants withheld either credit card or cash tips from Plaintiff and class members at times. As a
12 result of the practices described herein, Defendants have converted gratuities that belonged to Plaintiff
13 and the class members.

14 87. Plaintiff and the class members had a right to possess monies earned and paid to them
15 by Defendants following each paycheck imbued on them pursuant to Cal. Lab. Codes section 350 *et*
16 *seq.*

17 88. Defendants substantially interfered with their property by knowingly and/or
18 intentionally taking possession of the funds in putting an improperly large portion of them in tipping
19 pools, or else by withholding credit card and cash tips from Plaintiff and class members altogether at
20 times.

21 89. Plaintiff and the class members did not consent to the aforementioned conduct by
22 Defendants.

23 90. Plaintiff and the class members were harmed by the aforementioned conduct.

24 91. Defendants’ conduct was a substantial factor in causing harm to Plaintiff and the class
25 members.

26 92. As a result of Defendants’ conversion, Plaintiff and the class members have suffered
27 injury and damage.

28 93. Specifically, Plaintiff and the class members have been injured by Defendants’

1 intentional conversion because Defendants have deducted thousands of dollars in accrued gratuities
2 back from Plaintiff and class members or by, at times, not giving cash or credit card tips to Plaintiff
3 and the class members in the first place.

4 94. Plaintiff and the class members are entitled to restitution of all monies to be disgorged
5 from Defendants in an amount according to proof at the time of trial.

6 95. Plaintiffs are also entitled to attorneys' fees under Labor Code section 218.5.

7 **SEVENTH CAUSE OF ACTION**

8 **VIOLATION OF LABOR CODE SECTION 226(a)**

9 **Failure to Provide Accurate Wage Statements**

10 **(Against All Defendants and DOES 1 – 25)**

11 96. Plaintiff incorporates herein by specific reference, as though fully set forth, the
12 allegations in all preceding paragraphs.

13 97. At all material times set forth herein, California Labor Code section 226(a) provides
14 that every employer shall furnish each of its employees an accurate itemized wage statement in writing,
15 including, but not limited to, the name and address of the legal entity that is the employer, total hours
16 worked, and all applicable hourly rates.

17 98. Defendants have intentionally and willfully failed to provide Plaintiff and the other
18 class members with complete and accurate wage statements. The deficiencies include, among other
19 things, the failure to state all hours worked, the failure to state the actual gross wages earned, and the
20 correct rates of pay. Accordingly, Defendants violated California Labor Code 226(a).

21 99. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff
22 and the other class members have suffered injury and damage to their statutorily protected rights.

23 100. Specifically, Plaintiff and the other class members have been injured by Defendants'
24 intentional violation of California Labor Code section 226(a) because they were denied both their legal
25 right to receive, and their protected interest in receiving, accurate, itemized wage statements under
26 California Labor Code section 226(a). In addition, because Defendants failed to provide the accurate
27 number of total hours worked on wage statements, Plaintiff and the other class members been
28 prevented by Defendants from determining if all hours worked were paid and the extent of the

1 underpayment. Plaintiff had to file this lawsuit, and will further have to conduct discovery, reconstruct
2 time records, and perform computations in order to analyze whether in fact Plaintiff and the other class
3 members were paid correctly and the extent of the underpayment, thereby causing Plaintiff to incur
4 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these costs
5 had Defendants provided the accurate number of total hours worked. This has also delayed Plaintiff's
6 ability to demand and recover the underpayment of wages from Defendants.

7 101. Plaintiff and the other class members are entitled to recover from Defendants the
8 greater of their actual damages caused by Defendants' failure to comply with California Labor Code
9 section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000).

10 **EIGHTH CAUSE OF ACTION**

11 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

12 **Final Wages Not Timely Paid**

13 **(Against All Defendants and DOES 1 – 25)**

14 102. Plaintiff incorporates herein by specific reference, as though fully set forth, the
15 allegations in all preceding paragraphs.

16 103. Pursuant to California Labor Code sections 201, 202, and 203, Defendants are required
17 to pay all earned and unpaid wages to an employee who is discharged. California Labor Code section
18 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid
19 at the time of discharge are due and payable immediately. California Labor Code section 202
20 mandates that if an employee quits, his or her wages shall become due and payable not later than
21 seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of
22 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
23 quitting.

24 104. California Labor Code section 203 provides that if an employer willfully fails to pay,
25 in accordance with California Labor Code sections 201 and 202, any wages of an employee who is
26 discharged or who quits, the wages of the employee shall continue as a penalty from the due date
27 thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not
28 continue for more than thirty (30) days.

105. At the time that Plaintiff and the other class members' employment with Defendants ended, Defendants knowingly and willfully failed to pay Plaintiff and the other class members all wages owed to them pursuant to California Labor Code sections 201 and 202, including, without limitation, overtime wages, minimum wages, meal period premium wages, and rest period premium wages, and all wages due to Plaintiff and class members as they became due, as required per California Labor Code sections 204.

106. As a result, Plaintiff and the other class members are entitled to all available statutory penalties, including the waiting time penalties provided in California Labor Code section 203, together with interest thereon, as well as other available remedies.

NINTH CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTIONS 2800 AND 2802

Failure to Reimburse Necessary Business Expenses

(Against All Defendants and DOES 1 – 25)

107. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

108. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

109. Plaintiff and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including, but not limited to Plaintiff and class members having to use their own cell phones, cell service, or internet, for Defendants' purposes, without proper reimbursement.

110. Defendants intentionally and willfully failed to reimburse Plaintiff and the other class members for all necessary business-related expenses and costs. Plaintiff and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which Plaintiff and the other class members incurred the necessary expenditures at the same rate as judgments in civil actions

1 in the State of California.

2 **TENTH CAUSE OF ACTION**

3 **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 *ET. SEQ.***

4 **Unfair and Unlawful Business Practices**

5 **(Against All Defendants and DOES 1 – 25)**

6 111. Plaintiff incorporates herein by specific reference, as though fully set forth, the
7 allegations in all preceding paragraphs.

8 112. Each and every one of Defendants' acts and omissions in violation of the California
9 Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to
10 Defendant's failure and refusal to pay overtime compensation, Defendant's failure and refusal to pay
11 minimum wages, Defendants' failure and refusal to provide required meal periods, Defendants' failure
12 and refusal to provide required rest periods, Defendants' conversion of wages such as accrued
13 gratuities, Defendants' failure to timely pay wages at the correct rate during employment, Defendants'
14 failure and refusal to furnish accurate itemized wage statements, Defendants' failure and refusal to
15 reimburse business-related expenses, and Defendants' failure to timely pay wages upon termination
16 constitutes an unfair and unlawful business practice under California Business and Professions Code
17 § 17200 *et seq.*

18 113. Defendants' violations of California wage and hour laws constitute an unfair and
19 unlawful business practice because Defendants' aforementioned acts and omissions were done
20 repeatedly over a significant period of time, and in a systematic manner, to the detriment of Plaintiff
21 and the other class members.

22 114. Defendants have avoided payment of overtime wages, minimum wages, meal period
23 premiums, rest period premiums, timely wages at the correct rate of pay, and other benefits as required
24 by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage
25 Order, as well as converting accrued gratuities in violation of the Cal. Lab. Codes and other California
26 law. Further, Defendants have failed to record, report, and pay the correct sums of assessment to the
27 state authorities under the California Labor Code and other applicable regulations.

28 115. As a result of Defendants' unfair and unlawful business practices, Defendants have

1 reaped unfair and illegal profits during Plaintiff and the other class members' tenure at the expense of
2 Plaintiff, the other class members, and members of the public. Defendants should be made to disgorge
3 its ill-gotten gains and to restore them to Plaintiff and the other class members.

4 116. Defendants' unfair and unlawful business practices entitle Plaintiff and the other class
5 members to seek preliminary and permanent injunctive relief, including but not limited to orders that
6 Defendants account for, disgorge, and restore to Plaintiff and the other class members the wages and
7 other compensation unlawfully withheld from them. Plaintiff and the other class members are entitled
8 to restitution of all monies to be disgorged from Defendants in an amount according to proof at the
9 time of trial.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

12 **PRAYER FOR RELIEF**

13 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against
14 Defendants, jointly and severally, as follows:

15 **Class Certification**

- 16 1. That this action be certified as a class action;
17 2. That Plaintiff be appointed as the representative of the Class;
18 3. That counsel for Plaintiff be appointed as Class Counsel; and
19 4. That Defendants provide to Class Counsel immediately the names and most current/last
20 known contact information (address, e-mail and telephone numbers) of all class members.

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

22 5. That the Court declare, adjudge and decree that Defendants violated California Labor
23 Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the
24 other class members;

- 25 6. For general unpaid wages and such general and special damages as may be appropriate;
26 7. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
27 Plaintiff and the other class members in the amount as may be established according to proof at trial;
28 8. For pre-judgment interest on any unpaid compensation from the date such amounts

1 were due;

2 9. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
3 Labor Code section 1194(a);

4 10. For liquidated damages pursuant to California Labor Code section 1194.2;

5 11. For such other and further relief as the Court may deem just and proper.

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

7 12. That the Court declare, adjudge and decree that Defendants violated California Labor
8 Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime
9 wages due to Plaintiff and the other class members;

10 13. For general unpaid wages at overtime wage rates and such general and special
11 damages as may be appropriate;

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

14 15. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
15 Labor Code section 1194;

16 16. For such other and further relief as the Court may deem just and proper.

17 **As to the Third Cause of Action**

18 17. That the Court declare, adjudge and decree that Defendants violated California Labor
19 Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal
20 periods, (including second meal periods) to Plaintiff and the other class members;

21 18. That the Court make an award to Plaintiff and the other class members of one (1) hour
22 of pay at each employee's regular rate of compensation for each workday that a meal period was not
23 provided;

24 19. For all actual, consequential, and incidental losses and damages, according to proof;

25 20. For premium wages pursuant to California Labor Code section 226.7(c);

26 21. For pre-judgment interest on any unpaid wages from the date such amounts were due;

27 22. For reasonable attorneys' fees and costs of suit incurred herein;

28 23. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause Action

24. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

25. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

26. For all actual, consequential, and incidental losses and damages, according to proof;

27. For premium wages pursuant to California Labor Code section 226.7(c);

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

29. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the Class;

31. For statutory penalties pursuant to California Labor Code section 210;

32. For such other and further relief as the Court deems just and proper.

As to the Sixth Cause of Action

33. That the Court declare, adjudge and decree that Defendants took possession of earned wages previously paid to Plaintiff and the class members by Defendants as wages, namely, accrued gratuities;

34. For restitution of collected wages to Plaintiff and the class members and all pre-judgment interest from the day such amounts were due and payable;

35. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, *et seq.*;

36. For recovery of their attorneys' fees and costs as authorized by the California Labor Code sections 210, 218.5; and

1 37. For injunctive relief to ensure compliance with this section, pursuant to California
2 Business and Professions Code sections 17200, *et seq.*

3 **As to the Seventh Cause of Action**

4 38. That the Court declare, adjudge and decree that Defendants violated the record
5 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to
6 Plaintiff and the other class members, and willfully failed to provide accurate itemized wage
7 statements thereto;

8 39. For actual, consequential and incidental losses and damages, according to proof;

9 40. For statutory penalties pursuant to California Labor Code section 226(e);

10 41. For injunctive relief to ensure compliance with this section, pursuant to California
11 Labor Code section 226(g);

12 42. For such other and further relief as the Court may deem just and proper.

13 **As to the Eighth Cause of Action**

14 43. That the Court declare, adjudge and decree that Defendants violated California Labor
15 Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
16 termination of the employment of Plaintiff and the other class members no longer employed by
17 Defendants;

18 44. For all actual, consequential, and incidental losses and damages, according to proof;

19 45. For statutory wage penalties pursuant to California Labor Code section 203 for
20 Plaintiff and the other class members who have left Defendants' employ;

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

23 47. For such other and further relief as the Court may deem just and proper.

24 **As to the Ninth Cause of Action**

25 48. That the Court declare, adjudge, and decree that Defendants violated California Labor
26 Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class members
27 for all necessary business-related expenses as required by California Labor Code sections 2800 and
28 2802;

49. For actual, consequential and incidental losses and damages, according to proof;
50. For the imposition of civil penalties and/or statutory penalties;
51. For punitive damages and/or exemplary damages according to proof at trial;
52. For reasonable attorneys' fees and costs of suit incurred herein; and
53. For such other and further relief as the Court may deem just and proper.

As to the Tenth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code sections as to Plaintiff and the other class members: 510 and 1198 (by failing to pay overtime wages); 1194, 1197, and 1197.1 (by failing to pay minimum wages); 226.7 and 512(a) (by failing to provide meal and rest periods or compensation in lieu thereof); 204 (by failing to timely pay wages during employment); 350 et seq. (by failing to provide all gratuities accrued); 226(a) (by failing to provide accurate wage statements); and 201, 202, and 203 (by failing to pay all wages owed upon termination); and 2800 and 2802 (by failing to reimburse business-related expenses);

55. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-judgment interest from the day such amounts were due and payable;

56. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, *et seq.*;

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1 57. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
2 Code of Civil Procedure section 1021.5; and

3 58. For injunctive relief to ensure compliance with this section, pursuant to California
4 Business and Professions Code sections 17200, *et seq.*

5
6 DATED: May 25, 2023

BLACKSTONE LAW, APC

7
8 By: 

9 Jonathan M. Genish
10 Barbara DuVan-Clarke
11 Alexander K. Spellman
12 Patricia J. Van Ert

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