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 and on behalf of all employees similarly situated

FILED
 Superior Court of California
 County of Los Angeles

07/11/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

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

EFRAIN VIVEROS, as an individual and on
 behalf of all employees similarly situated,

Plaintiff,

v.

D AND T RESTAURANTS, INC., a
 California Corporation; MCSURF, INC., a
 California Corporation; BLADE
 ENTERPRISES III, Inc., a California
 Corporation; BLADE ENTERPRISES IV,
 Inc., a California Corporation; BLADE
 ENTERPRISES V, Inc., a California
 Corporation; BLADE ENTERPRISES VI,
 Inc., a California Corporation; BLADE
 ENTERPRISES VII, Inc., a California
 Corporation; BLADE ENTERPRISES VIII,
 Inc., a California Corporation; and DOES 1
 through 50, inclusive,

Defendants.

Case No. 23STCV10019

FIRST AMENDED COMPLAINT

1. Violation of Labor Code §§ 204, 510, 1194, 1198 (Failure to Pay All Wages);
2. Violation of Labor Code §§ 226.7, 512 (Failure to Provide Meal Periods);
3. Violation of Labor Code § 226.7 (Failure to Provide Rest Periods);
4. Violation of Labor Code § 226, (Failure to Keep Accurate Itemized Wage Statements);
5. Violation of Labor Code §§ 201-203 (Failure to Pay Wages Upon Termination of Employment);
6. Violation of Labor Code § 2802 (Failure to Reimburse For Necessary Expenditures);
7. Violation of Labor Code § 1198 and California Code of Regulations, Title 8, Section 11070 (14) (Failure to Provide Suitable Seating);
8. Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business Practices); and
9. Violation of the Private Attorneys General Act, Labor Code sections 2698, et seq.

DEMAND FOR JURY TRIAL

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

6 **INTRODUCTION**

7 1. This is a class action brought on behalf of Plaintiff and the class he seeks to
8 represent (“Class” or “Class Members”). Class Members consist of all non-exempt, hourly-paid
9 employees currently and/or formerly employed by D and T Restaurants, Inc., McSurf, Inc., Blade
10 Enterprises III, Inc., Blade Enterprises IV, Inc., Blade Enterprises V, Inc., Blade Enterprises VI,
11 Inc., Blade Enterprises VII, Inc., Blade Enterprises VIII, Inc. in the State of California during the
12 Class Period. The term “Class Period” is defined as four (4) years prior to the filing of this
13 Complaint through the date final judgment is entered. Plaintiff reserves the right to amend this
14 Complaint to reflect a different “Class Period” or “Class” as further discovery is conducted.

15 2. Plaintiff, individually and on behalf of the class he seeks to represent, seeks relief
16 against D and T Restaurants, Inc., McSurf, Inc., Blade Enterprises III, Inc., Blade Enterprises IV,
17 Inc., Blade Enterprises V, Inc., Blade Enterprises VI, Inc., Blade Enterprises VII, Inc., Blade
18 Enterprises VIII, Inc. (“Defendants”) for Defendants’ failure to pay all wages due in violation of
19 Labor Code sections 204, 510 and 1194, including both regular and overtime wages; failure to
20 provide meal periods or compensation in lieu thereof pursuant to Labor Code sections 226.7 and
21 512, the applicable Industrial Welfare Commission Wage Orders, and Code of Regulations, Title
22 8, section 11000 et seq.; failure to provide rest periods or compensation in lieu thereof pursuant
23 to Labor Code sections 226.7 and 512, the applicable Industrial Welfare Commission Wage
24 Orders, and Code of Regulations, Title 8, section 11000 et seq.; failure to provide accurate
25 itemized wage statements upon payment of wages pursuant to Labor Code sections 226,
26 subdivision (a), 1174, and 1175 a; failure to reimburse for necessary expenditures pursuant to
27 Labor Code Section 2802; failure to pay wages of terminated or resigned employees pursuant to
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1 Labor Code sections 201, 202, and 203; failure to provide suitable seats pursuant to Labor Code
2 § 1198 and California Code of Regulations, Title 8, Section 11070 (14).

3 3. Plaintiff also seeks equitable remedies in the form of declaratory relief and
4 injunctive relief, and relief under Business and Professions Code section 17200 et seq. for unfair
5 business practices.

6 4. At all relevant times herein, Defendants have consistently maintained and enforced
7 against Plaintiff and Class the following unlawful practices and policies:

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

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

26 6. At all relevant times, Defendants were and are legally responsible for all of the
27 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
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1 foregoing paragraphs as the employer of Plaintiff and Class. Further, Defendants are
2 responsible for each of the unlawful acts or omissions complained of herein under the doctrine
3 of “respondeat superior”.

4 7. Plaintiff further brings this action as a representative of the State of California and
5 the Labor and Workforce Development Agency (“LWDA”) to recover civil penalties pursuant to
6 the Private Attorneys General Act (“PAGA”), Labor Code sections 2698, *et seq.*, for violations
7 of numerous Labor Code provisions, including, but not limited to, sections 201-203, 204, 226,
8 226.7, 227.3, 510, 512, 1174, 1194, 1198 and 2802, as well as violations of the applicable Wage
9 Order.

10 **JURISDICTION AND VENUE**

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

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

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

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THE PARTIES

A. Plaintiff

11. Plaintiff, at all relevant times herein, was Defendants' employee and was entitled to compensation for all hours worked, including regular time and overtime compensation, and penalties from Defendants. Plaintiff was employed by Defendants as a non-exempt, hourly paid employee during the Class Period. Specifically, Plaintiff worked as a cashier and shift manager for Defendants from approximately August 21, 2018 to October 21, 2022 at Defendants' facility located at 1203 Artesia Boulevard, Manhattan Beach, California 90266. Each of the Class Members are identifiable, current and/or former similarly situated persons who were employed in non-exempt hourly positions in California by Defendants during the Class Period.

B. Defendants

12. Plaintiff is informed and believes, and based thereon alleges, that Defendants are corporations providing restaurant services. On information and belief, Defendants were and/or are the employer of Plaintiff and Class during the Class Period. Plaintiff also alleges that Defendants are conducting business in good standing in California.

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

14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants are legally attributable to the other Defendant. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and Class.

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

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

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

16 **ADMINISTRATIVE PREREQUISITE**

17 18. On May 4, 2023, prior to filing this complaint, Plaintiff gave written notice by
18 electronically filing the notice with the Labor Workforce Development Agency (“LWDA”)
19 (LWDA Case No. LWDA-952703-23), and by certified mail to Defendants of the specified
20 provisions alleged to have been violated, including the facts and theories to support the alleged
21 violations as required by Labor Code section 2699.3.

22 19. A true and correct copy of Plaintiff’s letter sent to the LWDA and Defendants
23 dated May 4, 2023, is attached hereto as “**Exhibit A**”. As of the filing of this complaint, LWDA
24 has not responded to the written notice.

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

1 passed without notice.

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

4 **GENERAL ALLEGATIONS**

5 22. Plaintiff worked as a cashier and shift manager for Defendants from approximately
6 August 21, 2018 to October 21, 2022.

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

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

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

10 26. California Code of Regulations, Title 8, section 11070(14)(B) provides that
11 “[w]hen employees are not engaged in the active duties of their employment and the nature of
12 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
13 proximity to the work area and employees shall be permitted to use such seats when it does not
14 interfere with the performance of their duties.”

15 27. Defendants violated California Labor Code section 1198 and California Code of
16 Regulations, Title 8, section 11070(14) because Plaintiff and Class Members were not permitted
17 to sit, even if they were not engaged in active duties. They were not permitted to sit, even when it
18 would not interfere with the performance of their duties, nor were they provided with suitable
19 seats.

20 28. Further, Business and Professions Code section 17203 provides that any person
21 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
22 Business and Professions Code section 17204 provides that any person who has suffered actual
23 injury and has lost money or property as a result of the unfair competition may bring an action in
24 a court of competent jurisdiction.

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

27 30. Plaintiff and Class Members were non-exempt employees covered under one or
28 more IWC Wage Order(s), and Labor Code section 510, and/or other applicable Wage Orders,

1 regulations and statutes, and each Class Member was not subject to an exemption for executive,
2 administrative or professional employees, which imposed obligations on the part of Defendants
3 to pay Plaintiff and Class Members lawful overtime compensation.

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

7 32. During the Class Period, Defendants were obligated to pay Plaintiff and Class
8 Members for all hours worked. However, Defendants failed to pay Plaintiff and Class
9 Members for all hours worked at the legally mandated wage rates, including minimum, regular
10 and overtime wages. Throughout Class Period, Defendants maintained a policy and practice of
11 requiring Plaintiff and Class Members to perform work “off-the-clock”. Defendants required
12 Plaintiff and Class Members to arrive earlier than their scheduled shifts in order to make sure
13 they clock in to work on time considering the wait time to stay in line with other employees to
14 use the fingerprint equipment to clock in to work. Starting from approximately March-April
15 2020, Plaintiff and Class Members were required to undergo COVID pre-screening by
16 checking their temperature and answering questions prior to clocking in to work. Defendants
17 failed to compensate for that time. Throughout Class Period, Defendants required Plaintiff and
18 Class Members to work through their meal periods requiring them to clock out for meal
19 periods but continue working since Defendants were short- staffed and Class Members had to
20 work through their meal periods to serve Defendants’ customers. Throughout Class Period,
21 Plaintiff and Class Members were required to use their personal cellular telephones for work
22 purposes at home after their scheduled work time to communicate with Defendants’
23 supervisors regarding their work schedules and work assignments. Plaintiff and Class Members
24 were also required to wash and maintain their heavily soiled uniforms off- the- clock without
25 compensation in order to comply with Defendants’ written policy to keep their uniforms in a
26 clean and wrinkle free condition. Defendants also failed to compensate Plaintiff and Class
27 Members for the time spent on making sure their hair and dressing was in compliance with
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Defendants' written policy requirements including for the time spent to return home to change in case they were considered improperly dressed or groomed. Sometimes Plaintiff and Class did not receive sufficient compensation to meet the minimum wage requirements, and the overtime requirements, leading to underpayment of wages to Plaintiff and Class. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and Class worked.

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

34. During the Class Period, Defendants were obligated to provide Plaintiff and Class with a work-free meal period within the first five (5) hours of a shift when the workday was longer than six (6) hours. Plaintiff and Class Members were entitled to a full, thirty (30) minute, off-duty meal period when they worked in excess of six (6) hours within the first five (5) hours of their shifts. However, Plaintiff and Class Members were routinely not provided with timely, 30-minute off-duty meal periods, and were not permitted and authorized to take uninterrupted rest periods. Moreover, Defendants did not have adequate written policies or practices providing meal periods for Plaintiff and Class, nor did Defendants have adequate policies or practices regarding the timing of meal periods. Plaintiff and Class would often times miss their meal periods, have interrupted or short meal periods. Defendants required Plaintiff and Class Members to work through their meal periods by requiring them to clock out for meal periods but continue working since Defendants were short- staffed and Class Members had to work through their meal periods to serve Defendants' customers. Plaintiff and Class Members were also not allowed to leave the work premises during their meal periods and were required to take their meal and rest periods in a designated crew room. Additionally, meal periods were cut short by the time taken

1 from Plaintiff and Class Members to make sure their hair are pinned back up or in a bun and/or
2 pulled in the hat in accordance with Defendants' written policies prior to clocking back to work
3 after meal periods. Defendants also failed to accurately record meal periods. Accordingly,
4 Defendant's policy and practice was to not provide meal periods to Plaintiff and Class in
5 compliance with California law.

6 35. Additionally, Defendants were obligated to provide Plaintiff and Class Members
7 with a ten (10) minute rest break for every four (4) hours, or major fraction thereof, worked each
8 day. Defendants prevented Plaintiff and Class Members from taking rest breaks throughout their
9 shifts. Plaintiff and Class Members were generally precluded from taking rest periods due to
10 Defendants' failure to maintain the rest break policy to provide relief and thereby allow Plaintiff
11 and Class Members the opportunity to take rest breaks. Moreover, Defendants did not have
12 adequate policies or practices permitting or authorizing rest periods for Plaintiff and Class, nor
13 did Defendants have adequate policies or practices regarding the timing of rest periods. Plaintiff
14 and Class Members would mostly miss their first, second or third rest periods or have interrupted
15 or short rest periods. Defendants also required Plaintiff and Class Members to work through their
16 rest periods since Defendants were short-staffed. Plaintiff and Class Members were also not
17 allowed to leave the work premises during their rest periods and were required to take their rest
18 periods in a designated crew room. Further, Defendants did not maintain accurate records of
19 employee work periods, and therefore Defendants cannot demonstrate that Plaintiff and Class
20 took rest periods during the middle of each work period. Accordingly, Defendant's policy and
21 practice was to not authorize and permit Plaintiff and the Class to take rest periods in compliance
22 with California law.

23 36. Further, due to the pressure from Defendants and failure to maintain an adequate
24 policy, and in violation of Labor Code and applicable IWC Wage Orders, Plaintiff was not
25 authorized and permitted to take a second rest period, on shifts exceeding six hours of work,
26 and/or third rest breaks, on shifts exceeding ten hours of work. *Brinker Restaurant Corp. v.*
27 *Superior Court*, 53 Cal.4th 1004, 1030 (2012). "Employees are entitled to 10 minutes rest for
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1 shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours
2 up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.”

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

7 38. Defendants also failed to indemnify Plaintiff and Class Members all necessary
8 expenditures incurred in direct discharge of their duties. During the course of employment,
9 Plaintiff and Class Members were required to incur various business expenses at their own cost.
10 Plaintiff and Class Members were required to wash and maintain their heavily soiled uniforms
11 but were not compensated for that. Further, Plaintiff and Class Members were required to use
12 their cellular telephones for work purposes to communicate with supervisors and coworkers
13 regarding their work schedules and work assignments but were not compensated for cell phone
14 usage. Plaintiff and Class Members incurred these substantial expenses as a direct result of
15 performing their job duties for Defendants, and Defendants have failed to indemnify Plaintiff and
16 Class Members for these employment-related expenses.

17 39. Defendants continue to employ non-exempt, hourly-paid employees within
18 California.

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

25 41. During the Class Period, Defendants required Plaintiff and Class Members to work
26 regular hours, off the clock hours, and overtime hours without lawful compensation in violation
27 of the applicable IWC Wage Order(s), regulations and statutes, and Defendants: (1) willfully
28 failed and refused, and continue to fail and refuse to pay compensation for all hours worked,

1 including lawful regular time and overtime compensation, to Class Members; and (2) willfully
2 failed and refused, and continue to fail and refuse to pay due and owing wages promptly upon
3 termination of employment to Plaintiff and affected Class Members.

4 42. Class Members who ended their employment with Defendants during the Class
5 Period but were not paid the above due compensation for all hours worked timely upon the
6 termination of their employment as required by Labor Code sections 201, 202, and 203 are
7 entitled to penalties as provided by Labor Code section 203.

8 43. During the Class Period, Defendants failed to furnish Plaintiff and Class with
9 accurate, itemized wage statements showing all applicable hourly rates, and all gross and net
10 wages earned (including correct hours worked, correct wages earned for hours worked, correct
11 overtime hours worked, correct wages for meal periods that were not provided in accordance
12 with California law, correct wages for rest periods that were not authorized and permitted to
13 take in accordance with California law, the employer entity correct address and names on the
14 wage statements and wrongfully listed sick pay in the total number of hours worked). As a
15 result of these violations of California Labor Code § 226(a), Plaintiff and Class suffered injury
16 because, among other things:

- 17 (a) the violations led them to believe that they were not entitled to be paid
18 minimum wages, overtime wages, meal period premium wages, and rest
19 period premium wages to which they were entitled, even though they were
20 entitled;
21
22 (b) the violations led them to believe that they had been paid the minimum,
23 overtime, meal period premium, and rest period premium wages, even
24 though they had not been;
25
26 (c) the violations led them to believe they were not entitled to be paid overtime,
27 meal period premium, and rest period premium wages at the correct
28 California rate even though they were;

- 1 (d) the violations led them to believe they had been paid overtime, meal period
2 premium, and rest period premium wages at the correct California rate even
3 though they had not been;
- 4 (e) the violations hindered them from determining the amounts of overtime,
5 meal period premium, and rest period premium owed to them;
- 6 (f) in connection with their employment before and during this action, and in
7 connection with prosecuting this action, the violations caused them to have
8 to perform mathematical computations to determine the amounts of wages
9 owed to them, computations they would not have to make if the wage
10 statements contained the required accurate information;
- 11 (g) by understating the wages truly due them, the violations caused them to lose
12 entitlement and/or accrual of the full amount of Social Security, disability,
13 unemployment, and other governmental benefits;
- 14 (h) the wage statements inaccurately understated the wages, hours, and wages
15 rates to which Plaintiff and Class were entitled, and Plaintiff and Class were
16 paid less than the wages and wage rates to which they were entitled.
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18 Thus, Plaintiff and Class are owed the amounts provided for in California Labor Code §
19 226(e), including actual damages.

20 44. Defendants knew or should have known that Plaintiff and Class members were
21 entitled to receive accurate wage statements, which would include meal break premiums, and/or
22 rest break premiums, as required by Labor Code 226.

23 45. Defendants knew or should have known that Plaintiff and Class Members were
24 entitled to timely payment of all wages earned upon termination. Plaintiff and Class Members did
25 not receive payment of all wages, including but not limited to, meal and rest break premiums, in
26 violation of the Labor Code.

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CLASS ALLEGATIONS

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

- (a) All persons who are employed or have been employed by Defendants in the State of California, and who, within the four (4) years of the filing of this Complaint to the present, have worked as non-exempt employees and were not paid all wages owed, including but not limited to the legally requisite regular time rate, overtime rate and/or double-time rate as specifically described herein;
- (b) All persons who are employed or have been employed by Defendants in the State of California, and who, within the four (4) years of the filing of this Complaint to the present, have worked as non-exempt employees and have not been provided a meal period for shifts in excess of five (5) hours within the first five (5) hours such shifts, and were not provided one (1) hour's pay for each day during which a lawful meal period was not provided;
- (c) All persons who are employed or have been employed by Defendants in the State of California, and who, within the four (4) years of the filing of this Complaint to the present, have worked as non-exempt employees and have not been provided a rest period for every four (4) hours, or major fraction thereof, worked per day, and were not provided compensation of one (1) hour's pay for each day on which such rest period(s) was not provided;
- (d) All persons who are employed or have been employed by Defendants in the State of California, and who, within the four (4) years of the filing of this Complaint to the present, have worked as non-exempt employees and have not been reimbursed expenditures in discharge of their duties;
- (e) All persons who are employed or have been employed by Defendants in the State of California, and who, within the four (4) years of the filing of this

Complaint to the present, have worked as non-exempt employees and have not been provided suitable seating;

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

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

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

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

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

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

- 1 (a) The questions of law and fact common to the Class predominate over any
2 question affecting only individual class members;
- 3 (b) A class action is superior to any other available method for the fair and
4 efficient adjudication of the claims of the Class members;
- 5 (c) Class is so numerous that it is impractical to bring all members of the
6 Class before the Court;
- 7 (d) Plaintiff and Class Members will not be able to obtain effective and
8 economic legal redress unless the action is maintained as a class action;
- 9 (e) There is a community of interest in obtaining appropriate legal and
10 equitable relief for the common law and statutory violations and other
11 improprieties and in obtaining adequate compensation for the damages
12 and injuries which Defendants' actions have inflicted upon Class;
- 13 (f) There is a community of interest in ensuring that the combined assets and
14 available insurance of the Defendants are sufficient to adequately
15 compensate Class Members for the injuries sustained;
- 16 (g) Without class certification, the prosecution of separate actions by
17 individual members of the Class would create a risk of:
- 18 (1) Inconsistent or varying adjudications with respect to individual
19 members of the Class which would establish an incompatible
20 standard of conduct for Defendants; and/or
- 21 (2) Adjudications with respect to the individual members which
22 would, as a practical matter, be dispositive of the interests of other
23 members not parties to the adjudications, or would substantially
24 impair or impede their ability to protect their interests, including
25 but not limited to the potential for exhausting the funds available
26 from those parties who are, or may be, responsible Defendants; and
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1 (h) Defendants have acted or refused to act on grounds generally applicable
2 to Class, thereby making final injunctive relief appropriate with respect to
3 Class as a whole.

4 50. There is a well-defined community of interest in the litigation and Class is
5 readily ascertainable:

- 6 (a) Numerosity: The members of Class (and each subclass, if any) are so
7 numerous that joinder of all members would be unfeasible and impractical.
8 The membership of the entire Class is unknown to Plaintiff at this time,
9 however, the Class is estimated to be greater than 150 individuals and the
10 identity of such membership is readily ascertainable by inspection of
11 Defendants' records.
- 12 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the
13 interests of each Class Member with whom there is a shared, well-defined
14 community of interest, and Plaintiff's claims (or defenses, if any) are typical
15 of all Class Members' claims as demonstrated herein.
- 16 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
17 the interests of each Class Member with whom there is a shared, well-
18 defined community of interest and typicality of claims, as demonstrated
19 herein. Plaintiff has no conflicts with or interests antagonistic to any Class
20 Member. Plaintiff's attorneys, the proposed class counsel, are versed in the
21 rules governing class action discovery, certification, and settlement.
22 Plaintiff has incurred, and throughout the duration of this action, will
23 continue to incur costs and attorneys' fees that have been, are, and will be
24 necessarily expended for the prosecution of this action for the substantial
25 benefit of each class member.
- 26 (d) Superiority: A Class Action is superior to other available methods for the
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1 fair and efficient adjudication of the controversy, including consideration of:

- 2 1. The interests of the members of the Class in individually
- 3 controlling the prosecution or defense of separate actions;
- 4 2. The extent and nature of any litigation concerning the
- 5 controversy already commenced by or against members of the
- 6 Class;
- 7 3. The desirability or undesirability of concentrating the
- 8 litigation of the claims in the particular forum; and
- 9 4. The difficulties likely to be encountered in the management of
- 10 a class action.

11 (e) Public Policy Considerations: The public policy of the State of California is
12 to resolve the California Labor Code claims of many employees through a
13 class action. Indeed, current employees are often afraid to assert their rights
14 out of fear of direct or indirect retaliation. Former employees are also
15 fearful of bringing actions because they believe their former employers
16 might damage their future endeavors through negative references and/or
17 other means. Class actions provide the class members who are not named in
18 the complaint with a type of anonymity that allows for the vindication of
19 their rights at the same time as their privacy is protected.
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21 51. Plaintiff contemplates the eventual issuance of notice to the proposed members of
22 the Class that would set forth the subject and nature of the instant action. The Defendants' own
23 business records may be utilized for assistance in the preparation and issuance of the
24 contemplated notices. To the extent that any further notices may be required, Plaintiff would
25 contemplate the use of additional techniques and forms commonly used in class actions, such as
26 published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by
27 other methods suitable to Class and deemed necessary and/or appropriate by the Court.

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1 **FIRST CAUSE OF ACTION**

2 **Failure to Pay All Wages for All Hours Worked**

3 **(Against Defendants, DOES 1 through 50, and each of them)**

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

6 53. Labor Code section 510, subdivision (a) states in pertinent part: "Any work in
7 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek...
8 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for
9 any employee."

10 54. Labor Code section 1194, subdivision (a) states: "Notwithstanding any agreement
11 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
12 overtime compensation applicable to the employee is entitled to recover in a civil action the
13 unpaid balance of the full amount of this minimum wage or overtime compensation, including
14 interest thereon, reasonable attorney's fees, and costs of suit."

15 55. Further, pursuant to Labor Code section 1197, payment of less than the minimum
16 wage fixed by the Labor Commission is unlawful.

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

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

24 58. During the Class Period, Defendants were obligated to pay Plaintiff and Class
25 Members for all hours worked. However, Defendants failed to pay Plaintiff and Class Members
26 for all hours worked at the legally mandated wage rates.
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1 59. Plaintiff and Class Members were required to work overtime in excess of eight (8)
2 hours per workday and in excess of forty (40) hours per workweek, but were not paid at the proper
3 overtime rate of pay.

4 60. Labor Code section 204 requires employers to provide employees with all wages
5 due and payable twice a month. Throughout the statute of limitations period applicable to this
6 cause of action, Plaintiff and Class were entitled to be paid twice a month at rates required by
7 law, including minimum wages. However, during all such times, Defendants systematically
8 failed and refused to pay Plaintiff and Class all such wages due and failed to pay those wages
9 twice a month.

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

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

20 63. That calculation of individual damages for Class Members may at some point be
21 required does not foreclose the possibility of taking common evidence on questions regarding
22 their entitlement to overtime compensation. *Collins v. Rocha* (1972) 7 Cal.3d 232; *Hypolite v.*
23 *Carleson* (1975) 52 Cal.App.3d 566; *Employment Development Dept. v. Superior Court* (1981)
24 30 Cal.3d 256).

25 64. Pursuant to Labor Code sections 218.6 and 1194(a) and Civil Code section 3287,
26 Class Members seek recovery of pre-judgment interest on all amounts recovered herein.

27 65. Pursuant to Labor Code sections 218.5 and/or 1194, Class Members request that
28 the Court award reasonable attorneys' fees and costs incurred by them in this action.

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(Against Defendants, DOES 1 through 50, and each of them)

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

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

69. Defendants failed to schedule Plaintiff and Class Members in a manner as to reasonably ensure that Plaintiff and Class Members could take such meal periods within the statutory timeframe. As a result, Plaintiff and Class were often forced to forego their meal periods, work during their meal periods and/or take meal periods after the fifth (5th) hour of their shifts. In so doing, Defendants have intentionally and improperly denied meal periods to Plaintiff and Class Members in violation of Labor Code sections 226.7 and 512, and other regulations and statutes.

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

71. At all times relevant hereto, Defendants failed to schedule Plaintiff and Class Members in a manner so as to reasonably provide work-free meal periods in accordance with Labor Code sections 226.7 and 512.

72. By virtue of Defendants' failure to schedule Plaintiff and Class Members in such a way as to provide a timely and/or work free meal period to Plaintiff and Class Members, Plaintiff

1 and Class Members have suffered, and will continue to suffer, damages in an amount which is
2 presently unknown, but which exceed the jurisdictional limits of this Court and which will be
3 ascertained according to proof at trial.

4 73. Plaintiff, individually and on behalf of Class Members, requests recovery of meal
5 period compensation pursuant to Labor Code section 226.7 for the four (4) years prior to filing
6 this complaint, as well as the assessment of any statutory penalties against Defendants in a sum
7 as provided by the Labor Code and/or other statutes.

8 **THIRD CAUSE OF ACTION**

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

10 **(Against Defendants, DOES 1 through 50, and each of them)**

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

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

16 76. Labor Code section 226.7, subdivision (b) provides that if an employer fails to
17 provide an employee rest period in accordance with this section, the employer shall pay the
18 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
19 that the rest period is not provided.

20 77. During the Class Period, Defendants did not provide Plaintiff and Class Members
21 with a ten-minute rest period for every four (4) work hours or major fraction thereof. Therefore,
22 Plaintiff and Class Members were not provided lawful rest periods.

23 78. Defendants failed and/or refused to implement a policy by which Plaintiff and
24 Class Members could receive rest periods and/or work free rest periods. By and through its
25 actions, Defendants intentionally and improperly denied rest periods to Plaintiff and Class
26 Members in violation of Labor Code sections 226.7 and 512.

27 79. At all times relevant hereto, Plaintiff and Class have worked more than four (4)
28 hours in a workday.

1 80. By virtue of the Defendants' unlawful failure to provide rest periods to Plaintiff
2 and Class Members, Plaintiff and Class Members have suffered, and will continue to suffer,
3 damages, in amounts which are presently unknown, but which exceed the jurisdictional limits of
4 this Court and which will be ascertained according to proof at trial.

5 81. Plaintiff, individually and on behalf of employees similarly situated, requests
6 recovery of rest period compensation pursuant to Labor Code section 226.7 for the four (4) years
7 prior to filing this Complaint, as well as the assessment of any statutory penalties against
8 Defendants, and each of them, in a sum as provided by the Labor Code and/or any other statute.

9 **FOURTH CAUSE OF ACTION**

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

11 **(Against Defendants, DOES 1 through 50, and each of them)**

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

14 83. Labor Code section 1174, subdivision (d) requires an employer to keep at a central
15 location in California, or at the plant or establishment at which the employee is employed, payroll
16 records showing the hours worked daily by, and the wages paid to, each employee.

17 84. Labor Code section 226, subdivision (a) requires an employer to provide
18 employees—either as a detachable part of the check, draft, or voucher paying the employee's
19 wages, or separately when wages are paid by personal check or cash—an accurate itemized wage
20 statement in writing showing

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

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

5 86. Plaintiff is informed and believes that Defendants willfully and intentionally
6 failed to make and/or keep records which accurately reflect the hours worked by Plaintiff and
7 Class. Specifically, Plaintiff believes that Defendants' records do not accurately reflect when
8 Plaintiff and Class worked during their meal and rest periods and/or took untimely meal periods,
9 or worked for hours not paid. Defendants also failed to provide the employer entity correct
10 address and names on the wage statements and wrongfully listed sick pay in the total number of
11 hours worked.

12 87. Labor Code section 226, subdivision (e) provides that if an employer knowingly
13 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,
14 the total hours worked by the employee and the applicable hourly overtime rates, causing the
15 employee injury, then the employee is entitled to recover the greater of all actual damages or
16 fifty dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each
17 subsequent violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes
18 that Defendants willfully failed to make or keep accurate records for Plaintiff and Class.

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

25 89. Plaintiff is informed and believes that Defendants' failure to keep and maintain
26 accurate records and information, as described above, was willful, and Plaintiff and Class are
27 entitled to statutory penalties pursuant to Labor Code section 1174.5.

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1 **FIFTH CAUSE OF ACTION**

2 **Failure to Pay Wages upon Termination of Employment**

3 **(Against Defendants, DOES 1 through 50, and each of them)**

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

6 91. Plaintiff's employment with Defendants ended on or about October 21, 2022.
7 Plaintiff and certain Class who ended their employment with Defendants during the Class Period,
8 were entitled to be promptly paid for all hours worked, including lawful regular time
9 compensation, overtime compensation, double-time compensation, and other premiums, as
10 required by Labor Code sections 201 through 203. Plaintiff is also entitled to meal period and
11 rest period premium pay in accordance with Labor Code sections 226 and 226.7.

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

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

18 94. Plaintiff and the affected Class Members seek the payment of penalties pursuant
19 to Labor Code section 203, according to proof.

20 95. Plaintiff is also entitled to attorneys' fees and costs, pursuant to Labor Code section
21 1194, and prejudgment interest.

22 **SIXTH CAUSE OF ACTION**

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

24 **(Against Defendants, DOES 1 through 50, and each of them)**

25 96. Plaintiff and Class re-allege and incorporate by reference all the above paragraphs
26 of this complaint as if fully alleged herein.

27 97. California Labor Code §2802, states "An employer shall indemnify his or her
28 employee for all necessary expenditures or losses incurred by the employee in direct consequence

of the discharge of his or her duties."

98. Plaintiff and Class were not reimbursed by Defendants for necessary expenditures as a direct consequence of the discharge of their duties.

99. Defendants knowingly, willingly and intentionally attempted to offset the cost of doing business on the Plaintiff and Class.

100. Defendants had a corporate practice and policy of requiring Plaintiff and Class to shoulder the burden of Defendants' cost of doing business by failing to reimburse Plaintiff and Class for necessary expenditures, specifically requiring Plaintiff and Class to use their personal cell phones.

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

SEVENTH CAUSE OF ACTION

Failure to Provide Suitable Seating

(Against Defendants, DOES 1 through 50, and each of them)

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

103. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California 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. California 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."

104. California Code of Regulations, Title 8, section 11070(14)(B) provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not

interfere with the performance of their duties."

105. Defendants violated Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14) because Plaintiff and Class Members were not permitted to sit, even if they were not engaged in active duties. They were not permitted to sit, even when it would not interfere with the performance of their duties, nor were they provided with suitable seats.

106. Plaintiff and Class are entitled to recover all remedies available for violations of Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14).

107. Plaintiff and Class are entitled to recover civil penalties of one hundred dollars (\$100) for each Class Member per pay period for the initial violation and two hundred dollars (\$200) for each Class Member per pay period for each subsequent violation pursuant to Labor Code sections 2699 (f) and (g), plus costs and attorneys' fees for violation of California Labor Code section 1198.

EIGHTH CAUSE OF ACTION

Unfair Business Practices

(Against Defendants, DOES 1 through 50, and each of them)

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

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

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

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

1 112. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4)
2 years prior to the filing of this lawsuit, Defendants have committed acts of unfair competition as
3 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent
4 business practices and acts described in this Complaint including but not limited to violations of
5 Labor Code sections 201-204, 226, 226.7, 246, 510, 512, 1174, 1197, 1198 and 2802 as well as
6 other statutes.

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

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

16 115. As a result of Defendants' acts, Plaintiff and Class Members have suffered injury
17 in fact in being denied their statutorily entitled meal and rest periods and full compensation for
18 hours worked.

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

21 117. Business and Professions Code section 17203 provides that a court may make such
22 orders or judgments as may be necessary to prevent the use or employment by any person of any
23 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
24 prevent Defendants from repeating its unlawful, unfair and fraudulent business acts and business
25 practices alleged above.

26 118. Business and Professions Code section 17203 provides that the Court may restore
27 to any person in interest any money or property that may have been acquired by means of such
28 unfair competition. Plaintiff and Class are entitled to restitution pursuant to Business and

1 Professions Code section 17203 for all wages and payments unlawfully withheld from employees,
2 including the fair value of the meal and rest periods taken away from them during the four-year
3 period prior to the filing of this Complaint, as well as for all expenses or losses incurred by
4 Plaintiff and Class in direct consequence of the discharge of his or her duties, or of his or her
5 obedience to the directions of the employer.

6 119. Business and Professions Code section 17202 provides, “Notwithstanding section
7 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
8 forfeiture, or penal law in a case of unfair competition.” Plaintiff and Class are entitled to enforce
9 all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code
10 section 17202.

11 120. Plaintiff’s success in this action will enforce important rights affecting public
12 interest, and in that regard, Plaintiff sues on behalf of the general public, as well as himself and
13 other similarly situated employees. Plaintiff and Class seek and are entitled to restitution, civil
14 penalties, declaratory and injunctive relief, and all other equitable remedies owing them.

15 121. Plaintiff herein takes upon himself enforcement of these laws and lawful claims.
16 There is a financial burden involved in pursuing this action. The action is seeking to vindicate a
17 public right, and it would be against the interests of justice to penalize Plaintiff by forcing him to
18 pay attorneys’ fees from the recovery in this action. Attorneys’ fees are appropriate pursuant to
19 Code of Civil Procedure section 1021.5 and otherwise.

20 **NINTH CAUSE OF ACTION**

21 **Violation of California Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.***

22 **(Against Defendants, DOES 1 through 50, and each of them)**

23 122. Plaintiff re-alleges and incorporates by reference all preceding paragraphs herein,
24 as if fully alleged herein.

25 123. Plaintiff seeks recovery of penalties under the Labor Code Private Attorney
26 General Act of 2004 (“PAGA.”) (Labor Code sections 2698 *et seq.*)

27 124. PAGA permits an “aggrieved employee” to recover penalties on behalf of
28 himself/herself and other employees subject to violations of the Labor Code, including violations

1 of sections 201-204, 226, 226.7, 227.3, 510, 512, 1174, 1194, 1198 and 2802, as well as the
2 applicable Wage Order.

3 125. Plaintiff is informed and believes Defendants at all relevant times employed one
4 or more employees.

5 126. For those code sections that provide for the recovery of civil penalties, Plaintiff
6 will seek on behalf of all aggrieved employees those penalties. For those sections of the Labor
7 Code that do not specifically provide for civil penalties, Plaintiff will seek civil penalties of one
8 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
9 and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
10 subsequent violation pursuant to Labor Code section 2699, subdivision (f).

11 127. Section 2699, subdivision (a) provides that civil penalties may be “recovered
12 through a civil action brought by an aggrieved employee on behalf of himself or herself and other
13 current or former employees.” (Code Civ. Proc., § 2699, subd. (a).) Section 2699, subdivision (g),
14 provides that an employee who prevails in a civil action under section 2699 shall be entitled to an
15 award of reasonable attorneys’ fees and costs.

16 128. The State of California, Plaintiff and aggrieved employees are, therefore, entitled
17 to civil penalties, attorneys’ fees and costs, according to proof.

18
19 **PRAYER FOR RELIEF**

20 Plaintiff, individually, and on behalf of all others similarly situated only with respect to
21 the class claims, prays for relief and judgment against Defendants, jointly and severally, as
22 follows:

23 **Class Certification**

- 24 1. That this action be certified as a class action with respect to the First, Second,
25 Third, Fourth, Fifth, Sixth and Seventh Causes of Action;
26 2. That Plaintiff be appointed as the representative of the Class; and
27 3. That counsel for Plaintiff be appointed as Class Counsel.
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5. For general unpaid wages as may be appropriate;
6. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
7. For liquidated damages;
8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and,
9. For such other and further relief as the Court may deem equitable and appropriate.

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;
11. For unpaid meal period premium wages as may be appropriate;
12. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
13. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and
14. For such other and further relief as the Court may deem equitable and appropriate.

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

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

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

3 18. For reasonable attorneys' fees under California Code of Civil Procedure §
4 1021.5, and for costs of suit incurred herein; and

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

7 As to the Fourth Cause of Action

8 20. That the Court declare, adjudge and decree that Defendants violated the record
9 keeping provisions of California Labor Code § 226(a). Labor Code § 246 (i) and applicable
10 IWC Wage Orders, and willfully failed to provide accurate itemized wage statements
11 thereto;

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

13 22. For injunctive relief to ensure compliance with this section, pursuant to
14 California Labor Code § 226(h);

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

16 24. For such other and further relief as the Court may deem equitable and
17 appropriate.
18

19 As to the Fifth Cause of Action

20 25. That the Court declare, adjudge and decree that Defendants violated Labor Code
21 § 2802 and the IWC Wage Orders;

22 26. For general unpaid wages and reimbursement of business expenses as may be
23 appropriate;

24 27. For pre-judgment interest on any unpaid compensation commencing from the
25 date such amounts were due;

26 28. For reasonable attorneys' fees and for costs of suit incurred herein; and
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1 29. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 As to the Sixth Cause of Action

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

7 31. For statutory wage penalties pursuant to California Labor Code § 203 for former
8 employees who have left Defendants' employ;

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

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

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

15 As to the Seventh Cause of Action

16 35. That the Court declare, adjudge and decree that Defendants violated California
17 Labor Code §§ 1198, the IWC orders and California Code of Regulations, Title 8, section
18 11070(14) by willfully failing to provide suitable seating;

19 36. For all civil penalties pursuant to California Labor Code § 2699, et seq., and all
20 other applicable Labor Code provisions;

21 37. For reasonable attorneys' fees and for costs of suit incurred herein; and

22 38. For such other and further relief as the Court may deem equitable and
23 appropriate.
24

25 As to the Eighth Cause of Action

26 39. That the Court declare, adjudge and decree that Defendants violated California
27 Business & Professions Code §§ 17200, et seq. by failing to pay wages for all hours worked
28 (including minimum and overtime wages), failing to provide meal periods, failing to

1 maintain accurate records of meal periods, failing to authorize and permit rest periods, and
2 failing to maintain accurate records of all hours worked and meal periods, failing to furnish
3 accurate wage statements, and failing to indemnify necessary business expenses;

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

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

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

12 43. For injunctive relief to ensure compliance with this section, pursuant to
13 California Business & Professions Code §§ 17200, *et seq.*; and,

14 44. For such other and further relief as the Court may deem equitable and
15 appropriate.
16

17 As to the Ninth Cause of Action

18 45. That the Court declare, adjudge and decree that Defendants violated the
19 California Labor Code 201-204, 226, 226.7, 227.3, 510, 512, 1174, 1194, 1198 and 2802,
20 as well as the applicable Wage Order;

21 46. For all civil penalties pursuant to California Labor Code § 2699, *et seq.*, and all
22 other applicable Labor Code provisions;

23 47. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
24 California Labor Code § 2699;

25 48. For such other and further relief as the Court may deem equitable and
26 appropriate.
27
28

As to all Causes of Action

49. For any additional relief that the Court deems just and proper.

Dated: July 11, 2023

TUNYAN LAW, APC



Lilit Tunyan

Attorneys for Plaintiff EFRAIN VIVEROS,
individually and on behalf of all others
similarly situated

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Dated: July 11, 2023

Thurs

Attorneys for Plaintiff EFRAIN VIVEROS,
individually and on behalf of all others similarly
situated

Exhibit “A”



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

May 4, 2023

VIA ONLINE SUBMISSION

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

VIA CERTIFIED MAIL
Return Receipt Requested

D and T Restaurants, Inc.
McSurf, Inc.
Blade Enterprises III, Inc.
Blade Enterprises IV, Inc.
Blade Enterprises V, Inc.
Blade Enterprises VI, Inc.
Blade Enterprises VII, Inc.
Blade Enterprises VIII, Inc.
904 Silver Spur Road, #428
Rolling Hills Estates, CA 90274

VIA CERTIFIED MAIL
Return Receipt Requested

Tawnie Blade Norman
Agent for Service of Process for
Blade Enterprises III, Inc.,
Blade Enterprises IV, Inc.,
Blade Enterprises V, Inc.,
Blade Enterprises VI, Inc.,
Blade Enterprises VII, Inc.,
Blade Enterprises VIII, Inc.
904 Silver Spur Road, #428
Rolling Hills Estates, CA 90274

VIA CERTIFIED MAIL
Return Receipt Requested

Spierer, Woodward, Corbailis & Goldberg, APC
Agent for Service of Process for
D and T Restaurants, Inc.
McSurf, Inc.
707 Torrance Blvd., Suite 200
Redondo Beach, California 90277

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

Re: *Efrain Viveros v. D and T Restaurants, Inc., et al.*

To Whom It May Concern:

Please be advised that my office has been retained by Efrain Viveros (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§

2699, *et seq.*) against his former employers D and T Restaurants, Inc., McSurf, Inc., Blade Enterprises III, Inc., Blade Enterprises IV, Inc., Blade Enterprises V, Inc., Blade Enterprises VI, Inc., Blade Enterprises VII, Inc., Blade Enterprises VIII, Inc. (“Defendants”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendants engaged in with respect to Plaintiff and all of Defendants’ aggrieved employees.

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

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

Factual Background Regarding Plaintiff’s Employment with Defendants

Defendants own and operate an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendants are subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendants as a cashier and shift manager from approximately August 21, 2018 to October 21, 2022, primarily in Los Angeles County. Defendants classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendants, Plaintiff typically worked 4-5 days per week, and between 8 to 10 hours each workday.

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

Failure to Pay for All Hours Worked, Including Overtime

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

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

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

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

Throughout the time period involved in this case, Defendants maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked including minimum wages, straight time wages and overtime wages. Throughout the statutory period, Defendants maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work “off-the-clock”. Defendants required Plaintiff and the Aggrieved Employees to arrive earlier than their scheduled shifts in order to make sure they clock in to work on time considering the wait time to stay in line with other employees to use the fingerprint equipment to clock in to work. Starting from approximately March-April 2020, Plaintiff and the Aggrieved Employees were required to undergo COVID pre-screening by checking their temperature and answering questions prior to clocking in to work. Defendants failed to compensate for that time.

Throughout the statutory period, Defendants required Plaintiff and the Aggrieved Employees to work through their meal periods requiring them to clock out for meal periods but continue working since Defendants were short-staffed and the Aggrieved Employees had to work through their meal periods to serve Defendants’ customers. Throughout statutory period, Plaintiff and the Aggrieved Employees were required to use their personal cellular telephones for work purposes at home after their scheduled work time to communicate with Defendants’ supervisors regarding their work schedules and work assignments. Plaintiff and the Aggrieved Employees were also required to wash and maintain their heavily soiled uniforms off-the-clock without compensation in order to comply with Defendants’ written policy to keep their uniforms in a clean and wrinkle free condition. Defendant also failed to compensate Plaintiff and the Aggrieved Employees for the time spent on making sure their hair and dressing was in compliance with Defendants’ written policy requirements including for the time spent to return home to change in case they were considered improperly dressed or groomed. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

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

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendants wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendants did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendants did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees. Plaintiff and the Aggrieved Employees would often times miss their meal periods, have interrupted, late or short meal periods. Defendants required Plaintiff and the Aggrieved Employees to work through their meal periods by requiring them to clock out for meal periods but continue working since Defendants were short-staffed and the Aggrieved Employees had to work through their meal periods to serve Defendants' customers. Plaintiff and the Aggrieved Employees were also not allowed to leave the work premises during their meal periods and were required to take their meal and rest periods in a designated crew room. Additionally, meal periods were cut short by the time taken from Plaintiff and the Aggrieved Employees to make sure their hair are pinned back up or in a bun and/or pulled in the hat in accordance with Defendants' written policies prior to clocking back to work after meal periods. Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

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

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

Failure to Authorize and Permit Rest Periods

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

Defendants, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants

authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendants did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendants did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the timing of rest periods. Plaintiff and the Aggrieved Employees would mostly miss their first, second or third rest periods or have interrupted or short rest periods. Defendants also required Plaintiff and the Aggrieved Employees to work through their rest periods since Defendants were short-staffed. Plaintiff and the Aggrieved Employees were also not allowed to leave the work premises during their rest periods and were required to take their rest periods in a designated crew room. Accordingly, Defendants' policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

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

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

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

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

Defendants, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendants' failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have

suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendants' knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

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

Failure to Reimburse and Indemnify Expenses

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

Throughout the statutory period, Defendants wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants without reimbursement. Plaintiff and the Aggrieved Employees were required to wash and maintain their heavily soiled uniforms but were not compensated for that. Further, Plaintiff and the Aggrieved Employees were required to use their cellular telephones for work purposes to communicate with supervisors and coworkers regarding their work schedules and work assignments but were not compensated for cell phone usage. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendants, and Defendants have failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

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

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants failed, and continue to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-

two (72) hours of their leaving Defendants' employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

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

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

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

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Lab. Code § 226(e)(2)(B)(iii).

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." Lab. Code § 226(e)(1).

Defendants intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, the failure to list the true net wages earned, wages for rest periods that were not authorized and permitted to take in accordance with

California law, and correct wages earned for all hours worked. Additionally, Defendants failed to provide the employer entity correct address and names on the wage statements and wrongfully listed sick pay in the total number of hours worked.

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

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

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

Failure to Pay All Earned Wages Twice Per Month

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

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Here, Defendants have not designated regular pay dates and often times issued wages after the 26th day of the month for the labor performed between the 1st and 15th days and after the 10th day of the following month for the labor performed between the 16th and the last day of the month as well as more than seven calendar days following the close of the payroll period.

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

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

Failure to Provide Suitable Seats

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

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

Action for Civil Penalties Under PAGA

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

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code § 227.3 by failing to pay all vacation wages at termination;
7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
8. Labor Code § 226 by failing to provide accurate itemized wage statements; and
9. Labor Code § 204 by failing to pay all earned wages two times per month.
10. Applicable IWC Section 14(A) for failure to provide suitable seating.

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

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

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

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

Sincerely,



Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC



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101 N VERDUGO RD
GLENDALE, CA 91206-9998
(800)275-8777

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D and T Restaurants, Inc., McSurf, Inc.,
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Blade Enterprises VII, Inc., Blade Enterprises VIII, Inc.,
904 Silver Spur Road, #428
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Tawnee Blade Norman
Agent for Service of Process for
Blade Enterprises III, Inc., Blade Enterprises IV, Inc.,
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Spiroer, Woodward, Corbailis & Goldberg, APC
Agent for Service of Process for
D and T Restaurants, Inc.,
McSurf, Inc.,
707 Torrance Blvd., Suite 200
Redondo Beach, California 90277

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☒ <i>Joyce Maxwell</i> ☐ Agent ☐ Addressee	
1. Spierer, Woodward, Corbailis & Goldberg, APC Agent for Service of Process for D and T Restaurants, Inc. McSurf, Inc. 707 Torrance Blvd., Suite 200 Redondo Beach, California 90277		B. Received by (Printed Name) <i>Joyce Maxwell</i> C. Date of Delivery <i>5/8/23</i>	
2. Article Number (Transfer from service label) 9589 0710 5270 0112 6451 34		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
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From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: ltunyan@tunyanlaw.com
Subject: Thank you for submission of your PAGA Case.
Date: Thursday, May 4, 2023 9:38:29 AM

5/4/2023

LWDA Case No. LWDA-CM-952703-23
Law Firm : Tunyan Law, APC
Plaintiff Name : Efrain Viveros
Employer: D and T Restaurants, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1336 Rossmoyne Avenue Glendale, California 91207.

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

Beth Ann Kahn
bkahn@clarkhill.com
Keith Ryan Rossman
krossman@clarkhill.com
CLARK HILL LLP
555 South Flower Street, 24th Floor
Los Angeles, CA 90071
Phone: 213-891-9100
Facsimile: 213-488-1178

Attorneys for Defendants D AND T RESTAURANTS, INC. MCSURF, INC., BLADE ENTERPRISES III, Inc.; BLADE ENTERPRISES IV; BLADE ENTERPRISES V, Inc.; BLADE ENTERPRISES VI, Inc.; BLADE ENTERPRISES VII, Inc.; BLADE ENTERPRISES VIII

[✓] **BY E-MAIL:** I hereby certify that this document was served from Glendale, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 11, 2023, at Glendale, California.

Lilit Tunyan

Name



Signature