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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

VERONICA CHIANG, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

ZIPFIZZ CORPORATION; and DOES 1
through 100, inclusive,

Defendants.

Case No. 23STCV17431

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 204, 226.2, 558,
1182.12, 1194, 1194.2, 1197, 1198);**
- (2) **OVERTIME VIOLATIONS (LABOR
CODE §§ 204, 510, 558, 1194, 1198);**
- (3) **FAILURE TO TIMELY PAY WAGES
(LABOR CODE § 204);**
- (4) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 1198);**
- (5) **REST PERIOD VIOLATIONS (LABOR
CODE §§ 226.2, 226.7, 516, 1198);**
- (6) **SICK PAY VIOLATIONS (LABOR
CODE § 246);**
- (7) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (8) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (9) **FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR CODE
§§ 2802, 2804);**
- (10) **UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*).**
- (11) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

FILED

Superior Court of California
County of Los Angeles

03/28/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Sanchez Deputy

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Attorneys for Plaintiff Patrick Langston

1 Plaintiffs Veronica Chiang and Patrick Langston (“Plaintiffs”), on behalf of themselves
2 and all others similarly situated, hereby bring this Class and Representative Action Complaint
3 against Zipfizz Corporation and Does 1 through 100, inclusive (collectively, “Defendants”), and
4 on information and belief allege as follows:

5 **JURISDICTION**

6 1. Plaintiffs, on behalf of themselves and all others similarly situated, hereby bring
7 this class action for recovery of unpaid wages and penalties under California Business and
8 Professions Code section 17200, *et. seq.*; Labor Code sections 201-204, 226, 226.7, 246, 510,
9 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq.*; and Industrial
10 Welfare Commission Wage Order No. 1 (“Wage Order 1”), in addition to seeking declaratory
11 relief and restitution. This class action is brought pursuant to California Code of Civil Procedure
12 section 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code
13 because the amount in controversy exceeds this Court’s jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in Los Angeles County. Defendants own, maintain offices, transact business, have an
18 agent or agents within Los Angeles County, and/or otherwise are found within Los Angeles
19 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiffs are over the age of eighteen (18). At all relevant times, Plaintiffs were,
22 and are, California residents. Within the statute of limitations periods applicable to each cause of
23 action herein, Plaintiffs were employed by Defendants as non-exempt employees. Plaintiffs were,
24 and are, victims of Defendants’ policies and/or practices complained of herein, lost money and/or
25 property, and have been deprived of the rights guaranteed by Labor Code §§ 201-204, 226, 226.7,
26 246, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq.*; Business
27 & Professions Code § 17200, *et seq.* (Unfair Competition), and Wage Order 1, which sets
28 employment standards for the manufacturing industry.

1 4. Plaintiffs are informed and believe, and based thereon allege, that during the four
2 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
3 business as a beverage manufacturer, and that they employed Plaintiffs and other similarly
4 situated non-exempt employees within Los Angeles County and the state of California.

5 5. Plaintiffs do not know the true names or capacities, whether individual, partner, or
6 corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
7 defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
8 amend this Complaint when such true names and capacities are discovered. Plaintiffs are informed
9 and believe, and thereon allege, that each of said fictitious defendants, whether individual,
10 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
11 and proximately caused Plaintiffs and the Classes (as defined in Paragraph 24) to be subject to
12 the unlawful employment practices, wrongs, injuries, and damages complained of herein.

13 6. Plaintiffs are informed and believe, and based thereon allege, that at all times
14 mentioned herein, Defendants were and are the employers of Plaintiffs and all Class members.

15 7. At all times herein mentioned, each of said Defendants participated in the acts
16 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and
17 each of them, were the agents, servants, and employees of each of the other Defendants, as well
18 as the agents of all Defendants, and at all times herein mentioned were acting within the course
19 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
20 and/or otherwise ratified each of the acts or omissions alleged herein.

21 8. At all times mentioned herein, Defendants, and each of them, were members of
22 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
23 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
24 Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and all
25 Class Members (as defined in Paragraph 24).

26 **GENERAL FACTUAL ALLEGATIONS**

27 9. Plaintiff Chiang was employed by Defendants as a non-exempt employee. Her
28 employment with Defendants ended on or about August 29, 2022. Plaintiff Langston was

employed by Defendants as a non-exempt employee during the time period relevant to this action, with the title of “Demo Event Specialist.”

10. During Plaintiffs’ employment with Defendants, Plaintiffs and other non-exempt employees were paid an hourly rate less than the legal minimum wage, as a result of Defendants’ unlawful pay plan. For example, Defendants paid Plaintiff Chiang \$10 per hour, which at all relevant times was less than the legal minimum wage for work in California, and then used Plaintiff Chiang’s earned commissions to offset any minimum wage shortfall. In other words, Defendants promised to pay Plaintiff Chiang commissions in addition to hourly wages, and then “borrowed” from the commissions in order to meet Defendants’ minimum wage obligations, in violation of *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314 (2005) and *Oman v. Delta Air Lines, Inc.*, 9 Cal. 5th 762 (2020). In *Oman*, the California Supreme Court held that an employer is obligated to compensate any given hour worked at the legal minimum wage and that there may be “no borrowing” from other compensation to make up for a shortfall when the hourly wage is paid at less than the statutorily required minimum wage. Defendants violated this “no borrowing” rule by borrowing from commissions to make up for a minimum wage shortfall. For example, in the pay period of August 8-14, 2022, Plaintiff Chiang was paid for 8 hours of work at a rate of \$10.00 per hour, which was less than the \$15.00 per hour minimum wage in effect in 2022. In the same pay period, Plaintiff Chiang also earned a commission of \$72.00. Because Plaintiff Chiang’s \$10 hourly wage plus her \$72.00 in commissions, added together and divided by the 8 hours, equaled more than \$15 per hour, Defendants kept Plaintiff Chiang’s hourly wage at \$10 and used the commissions to make up the shortfall. In other words, rather than pay Plaintiff Chiang at least the minimum wage for all hours worked, Defendants *borrowed* from Plaintiff Chiang’s \$72.00 in commissions to meet Defendants’ minimum wage obligations. This payment scheme is unlawful because, as noted above, California law prohibits Defendants from “borrowing” from earnings promised as compensation for commission, in order to meet its minimum wage obligations.

11. On information and belief, Defendants have similarly paid its other non-exempt employees in the same manner, i.e., paying less than minimum wage for each hour worked, and borrowing from amounts paid as commission to make up for the minimum wage shortfall. As a

1 result of Defendants' failure to pay the legal minimum wage, Plaintiff Chiang and other non-
2 exempt employees have not been paid at least the minimum wage for all hours worked.

3 12. Moreover, to the extent Defendants allege that their pay plan was a lawful
4 commission pay plan, Defendants' commission pay plan failed to pay at least the minimum wage
5 for all rest period hours and nonproductive time, in violation of Labor Code § 226.2(a)(3) and
6 (a)(4), and *Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98 (2017). Specifically, Section
7 226.2 provides that employees paid on a piece-rate pay plan must be paid separately for rest and
8 recovery periods and "nonproductive time" at a rate of at least the minimum wage, and *Vaquero*
9 held that Section 226.2 applies equally to employees paid on commission. Defendants failed to
10 pay Plaintiff Chiang or other non-exempt employees separately for their rest periods or for their
11 nonproductive time, such as time spent setting up and breaking down tables, communicating with
12 management, and other tasks that did not generate commissions.

13 13. Defendants also unlawfully rounded Plaintiffs' and other non-exempt employees'
14 hours worked. Specifically, although Defendants required Plaintiffs and other non-exempt
15 employees to clock in and out using an app on their phones (discussed in more detail *infra*), and
16 on information and belief recorded their clock-in and clock-out times to the minute, Defendants
17 rounded Plaintiffs' and other non-exempt employees' time records in quarter-hour increments, to
18 the detriment of Plaintiffs and other non-exempt employees. As a result of this rounding
19 policy/practice, Plaintiffs and other non-exempt employees were not paid for all hours worked
20 and suffered unpaid wages, including unpaid minimum wages and overtime wages.

21 14. Furthermore, at all relevant times, Plaintiffs and other non-exempt employees
22 were not properly paid at the correct overtime rate for all hours worked in excess of eight (8)
23 hours per workday and/or forty (40) hours per workweek due to Defendants' uniform failure to
24 include all forms of compensation/renumeration, including, but not limited to, non-discretionary
25 bonuses, incentive, commissions, and other eligible remuneration (collectively, "Incentive Pay"),
26 when calculating the "regular rate of pay" used in overtime calculations. Next, at all relevant
27 times, Defendants failed in their obligation to pay Plaintiff Langston and other non-exempt
28 employees the legally required paid sick days at the legal "regular rate of pay" pursuant to Labor

Code § 246(a), (b). Instead, Defendants paid sick time at the base rate of pay, rather than the “regular rate of pay” as required by Labor Code §§ 246(l)(1-2).

15. Defendants also failed to reimburse Plaintiffs and other employees for expenses they incurred in the course of their employment. Specifically, Defendants required Plaintiffs and other employees to use their personal cellphones to clock in and out of their shifts as well as communicate with management. Indeed, Defendants’ written policy mandates that employees “Use Celayix Team Xpress [a mobile app] to clock into your shift” and further states if the app is unsuccessful, “A screenshot of error message must be immediately texted to your DM.” Plaintiffs and other employees were also required to send “Morning pictures to DM,” inclusive of pictures of table set-ups and selfies. Plaintiffs and other employees were also required to use their personal cell phones to receive and send work-related text messages and phone calls to and from management. Despite requiring Plaintiffs and other employees to use their personal cellular phones for work-related purposes, Defendants failed to reimburse Plaintiffs and other employees for any portion of their personal cellular phone bills. As a result of the foregoing, Plaintiffs and other employees are entitled to reimbursement pursuant to Labor Code § 2802 and *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (2014).

16. Defendants have also failed to provide Plaintiffs and other non-exempt employees with all statutorily mandated meal periods due to Defendants’ meal period policies/practices. Specifically, the workload imposed on Plaintiffs and other non-exempt employees made it impracticable for Plaintiffs and other non-exempt employees to take a 30-minute off-duty meal period prior to the end of the fifth hour of work, and/or a second 30-minute meal period on shifts over 10.0 hours. If Plaintiffs took a meal period, it was often interrupted by customers or by texts and/or calls from management. In those instances that Defendants failed to provide Plaintiffs and other non-exempt employees with a legally compliant meal period, Defendants failed to pay the meal period premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code or other mechanism for paying meal period premiums when Defendants failed to provide a legally compliant meal period.

1 17. Defendants have also failed to authorize and permit rest periods to Plaintiffs and
2 other non-exempt employees. Specifically, Defendants have failed to authorize and permit a 10-
3 minute net rest period for every 4 hours worked or major fraction thereof, as Plaintiffs and other
4 non-exempt employees were frequently unable to take the rest periods to which they were entitled
5 as a result of the workload imposed by Defendants, including but not limited to the frequent
6 interruptions mentioned above from customers and/or management. Moreover, as noted above,
7 Defendants failed to pay separately for rest periods, rendering them unpaid. In those instances
8 that Defendants failed to authorize and permit Plaintiffs and other non-exempt employees to take
9 a legally compliant rest period, Defendants failed to pay the rest period premiums required by
10 Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class
11 period, Defendants maintained no payroll code or other mechanism for paying rest period
12 premiums when Defendants failed to authorize and permit a legally compliant rest period.

13 18. As a result of Defendants' failure to pay all minimum wage, overtime wages, and
14 sick pay wages, as well as Defendants' failure to pay meal and rest period premium wages,
15 Defendants failed to pay all wages to Plaintiffs and other formerly employed non-exempt
16 employees at the separation of their employment.

17 19. As a further result of Defendants' failure to pay all minimum wages overtime
18 wages, and sick pay wages, as well as Defendants' failure to pay meal and rest period premium
19 wages, Defendants maintained inaccurate payroll records, and issued inaccurate wage statements
20 to Plaintiffs and other non-exempt employees.

21 20. In addition, Defendants have maintained payroll practices which have resulted in
22 Plaintiffs and other employees being paid late, in violation of Labor Code Section 204, which
23 requires all wages earned in the 1st through 15th day of the month to be paid between the 16th
24 and 26th day of the month, and any wages earned between the 16th and last day of the month to
25 be paid between the 1st and 10th day of the following month. Section 204 further provides that
26 an employer will be in compliance if it pays its employees no later than 7 days after the close of
27 each pay period. Here, Defendants maintain a payroll practice in which Plaintiffs and other
28 employees have been paid on a weekly basis, but are paid 9 days after the end of each weekly pay

1 period. This practice has resulted in employees being paid late under Labor Code § 204 in many
2 pay periods. For example, wages earned on August 15, 2022 were not paid until August 30, 2022,
3 which is 4 days late under Section 204.

4 21. Alternatively, Defendants’ payroll practice has resulted in many pay periods in
5 which Plaintiffs and other employees have been paid late under Labor Code Section 204b. Section
6 204b provides (emphasis added): “Section 204 shall be inapplicable to employees paid on a
7 weekly basis on a regular day designated by the employer in advance of the rendition of services
8 as the regular payday. **Labor performed by a weekly-paid employee during any calendar**
9 **week and prior to or on the regular payday shall be paid for not later than the regular**
10 **payday of the employer for such weekly-paid employee falling during the following calendar**
11 **week.** Labor performed by a weekly-paid employee during any calendar week and subsequent to
12 the regular payday shall be paid for not later than seven days after the regular payday of the
13 employer for such weekly-paid employee falling during the following calendar week.”

14 22. Defendants’ paydays are on Tuesdays. Thus, Section 204b requires that “any labor
15 performed...prior to or on [Tuesday]” must be “paid for not later than the [Tuesday]...falling
16 during the following week.” Defendants’ pay periods run from Monday through Sunday, and
17 there are 9 days between the close of each pay period and the pay date. For example, Defendants’
18 pay period of Monday, August 1 through Sunday, August 7, 2022, had a pay date of Tuesday,
19 August 16, 2022. Defendants’ pay practices have resulted in labor worked on Monday and
20 Tuesday of each calendar week (in this example, August 1 and 2, 2022), not being paid on the
21 Tuesday of the following week, but rather on the Tuesday of two calendar weeks later, in violation
22 of Labor Code Section 204b.

23 23. As another example, in the pay period of Monday, August 8 to Sunday, August
24 14, 2022, Defendants paid Plaintiffs on August 23, 2022, 9 days after the close of the pay period.
25 Pursuant to Labor Code Section 204b, wages from August 8 and 9 (Monday and Tuesday) should
26 have been paid no later than the regular payday falling during the following calendar week, i.e.,
27 by August 16, 2022. Thus, Defendants’ pay practices resulted in wages earned on August 8 and
28 9 (prior to and on that calendar week’s regular pay day) to be paid late.

1 **CLASS ACTION ALLEGATIONS**

2 24. Class Definitions: Plaintiffs bring this action on behalf of themselves and the
3 following Classes pursuant to Section 382 of the Code of Civil Procedure:

4 a. The Minimum Wage Class consists of all of the Defendants' current and former
5 non-exempt employees in California who (i) were subject to Defendants' commission pay
6 plan, and/or (ii) were subject to Defendants' time-rounding practice, at any time from four
7 years prior to the filing of this action through the present.

8 b. The Overtime Class consists of all of the Defendants' current and former non-
9 exempt employees in California who (i) were subject to Defendants' time-rounding
10 practice; and/or (ii) were paid Incentive Pay and overtime wages in a corresponding pay
11 period, at any time from four years prior to the filing of this action through the present.

12 c. The Meal Period Class consists of all of the Defendants' current and former non-
13 exempt employees in California who worked at least one shift in excess of 5.0 hours, at
14 any time from four years prior to the filing of this action through the present.

15 d. The Rest Period Class consists of all of the Defendants' current and former non-
16 exempt employees in California who worked at least one shift of 3.5 hours or more, at any
17 time from four years prior to the filing of this action through the present.

18 e. The Sick Pay Class consists of all of the Defendants' current and former non-
19 exempt employees in California who were paid Incentive Pay and sick pay in a
20 corresponding pay period, at any time from four years prior to the filing of this action to
21 the present.

22 f. The Wage Statement Class consists of all members of the Minimum Wage,
23 Overtime, Meal Period, Rest Period, and/or Sick Pay Class(es) who received a wage
24 statement at any time from one year prior to the filing of this action through the present.

25 g. The Waiting Time Class consists of all members of the Minimum Wage,
26 Overtime, Meal Period, Rest Period, and/or Sick Pay Class(es), who are no longer
27 employed by Defendants and whose employment with Defendants ended at any time from
28 three years prior to the filing of this action through the present.

h. The Expense Reimbursement Class consists of all of Defendants' non-exempt employees who were required to use their personal cellular phones for work-related purposes, at any time from four years prior to the filing of this action through the present.

25. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and impracticable. The size of the Classes is currently unknown to Plaintiffs; however, it is estimated that there are greater than fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via Defendants' records.

26. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants paid at least the minimum wage for all hours worked to members of the Minimum Wage Class;
- ii. Whether Defendants properly paid overtime and/or double-time compensation to all members of the Overtime Class;
- iii. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;
- iv. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class;
- v. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;
- vi. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment; and
- vii. Whether Defendants properly reimbursed expenses incurred by members of the Expense Reimbursement Class.

27. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies

and/or practices applicable to each individual class member, such as Defendants' timekeeping, pay plan, wage statement, meal period, rest period, expense reimbursement, and final wage policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

28. **Typicality:** Plaintiffs' claims are typical of the claims of the Classes because Plaintiffs were employed by Defendants as non-exempt employees in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiffs, like the members of the Classes, were deprived of all earned minimum wages and overtime wages, were subject to Defendants' meal and rest period policies/practices, were not properly paid sick pay wages, were furnished with inaccurate wage statements, were deprived of all final wages upon their separation of employment from Defendants, and were not reimbursed for all expenses they incurred in carrying out their job duties for Defendants.

29. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiffs' attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiffs. Plaintiffs' attorneys have prosecuted numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

30. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiffs and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able

1 to exploit and overwhelm the limited resources of each individual plaintiff with their vastly
2 superior financial and legal resources. Moreover, requiring each member of the Classes to pursue
3 an individual remedy would discourage the assertion of lawful claims by employees who would
4 be disinclined to file an action against their former and/or current employer for real and justifiable
5 fear of retaliation and permanent damages to their careers at subsequent employment. Further, the
6 prosecution of separate actions by individual class members would create a substantial risk of
7 inconsistent or varying verdicts or adjudications with respect to the individual class members
8 against Defendants herein; and which would establish potentially incompatible standards of
9 conduct for Defendants. Further, the claims of the individual members of the Classes are not
10 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant
11 costs and expenses attending thereto. As such, the Classes identified in Paragraph 24 are
12 maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

13 **FIRST CAUSE OF ACTION**

14 **MINIMUM WAGE VIOLATIONS**

15 **(AGAINST ALL DEFENDANTS)**

16 31. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

17 32. Wage Order 1, § 4 and Labor Code §§ 1197 and 1182.12 establish employees'
18 right to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§
19 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage
20 as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees,
21 costs of suit, liquidated damages in an amount equal to the unpaid wages, and interest.

22 33. At all relevant times, Defendants failed to conform their pay practices to the
23 requirements of the law by failing to pay Plaintiffs and the Minimum Wage Class for all hours
24 actually worked including, but not limited to, all hours they were subject to Defendants' control
25 and/or suffered or permitted to work under the Labor Code and Wage Order 1.

26 34. California Labor Code § 1198 makes unlawful the employment of an employee
27 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
28 that an employer who has failed to pay its employees the legal minimum wage is liable to pay

1 those employees the balance of the unpaid wages as well as liquidated damages in an amount
2 equal to the wages due and interest thereon.

3 35. As a direct and proximate result of Defendants' unlawful conduct as alleged
4 herein, Plaintiffs and the Minimum Wage Class have sustained economic damages, including but
5 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
6 entitled to recover economic and statutory damages and penalties and other appropriate relief as
7 a result of Defendants' violations of the California Labor Code and Wage Order 1.

8 36. Defendants' practice and uniform administration of corporate policy regarding
9 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiffs
10 and the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
11 liquidated damages, interest thereon, statutory penalties, and attorneys' fees and costs of suit, per
12 Labor Code §§ 204, 218.6, 558, 1194, 1194.2, 1197, 1198, and Code of Civil Procedure § 1021.5.

13 **SECOND CAUSE OF ACTION**

14 **OVERTIME VIOLATIONS**

15 **(AGAINST ALL DEFENDANTS)**

16 37. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

17 38. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
18 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
19 overtime hours worked and provide a private right of action for the failure to pay all overtime
20 compensation for overtime work performed.

21 39. At all times relevant herein, Defendants were required to properly compensate
22 Plaintiffs and members of the Overtime Class for all overtime hours worked pursuant to California
23 Labor Code §§ 510 and 1194 and Wage Order 1. Labor Code § 510(a) provides, "Any work in
24 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek
25 and the first eight hours worked on the seventh day of work in any one workweek shall be
26 compensated at the rate of no less than one and one-half times the regular rate of pay for an
27 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less
28 than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours

on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” As alleged herein, Defendants caused Plaintiffs and Overtime Class members to work overtime hours but did not compensate them at one and one-half times (or two times) their regular rate of pay for such hours.

40. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiffs and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, and attorneys’ fees and costs of suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES

(AGAINST ALL DEFENDANTS)

41. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

42. Labor Code §§ 204 and 204b require employers to pay their employees on specific timetables, and the Labor Code sets forth penalties for employees’ failure to pay their employees according to those timetables, including in Labor Code § 210.

43. As described herein, Defendants have failed to pay Plaintiffs and other employees pursuant to the timetables required under Labor Code §§ 204 and 204b, and therefore Defendants are liable for the penalties provided for in Labor Code § 210 and/or all other applicable remedies.

FOURTH CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

44. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

45. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed in their affirmative obligation to provide all their hourly non-exempt employees, including Plaintiffs and members of the Meal Period Class, with all required meal periods in accordance with the mandates of the California Labor Code and Wage Order 1, for the reasons set forth in this Complaint.

1 46. As a result, Defendants owe premium compensation for meal period violations,
2 including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 1, Labor
3 Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

4 **FIFTH CAUSE OF ACTION**

5 **REST PERIOD VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

7 47. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

8 48. Labor Code §§ 226.7 and 516, and Wage Order 1, § 12 establish the right of
9 employees to be authorized and permitted a rest period of at least ten (10) minutes for each four
10 (4) hour period worked, or major fraction thereof.

11 49. As alleged herein, Defendants failed to authorize and permit Plaintiffs and Rest
12 Period Class members to take their legally entitled rest periods. Defendants also failed to
13 compensate Plaintiffs and Rest Period Class members with a rest period premium for each rest
14 period to which they were entitled while working.

15 50. The foregoing violations create an entitlement to recovery by Plaintiffs and Rest
16 Period Class members in a civil action for the unpaid amount of rest period premiums owing,
17 including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor
18 Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, §
19 1 of the California Constitution.

20 **SIXTH CAUSE OF ACTION**

21 **SICK PAY VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

23 51. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

24 52. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2,
25 1197.1, 1198, and 1199 which provide that non-exempt employees are entitled to have their sick
26 time paid at the regular rate, including all forms of compensation/remuneration.

27 53. At all relevant times, Defendants were required to properly pay Plaintiffs and
28 members of the Sick Pay Class for all accrued sick leave taken, pursuant to Labor Code § 246.

1 54. Defendants failed to conform their pay practices to the requirements of the law.
2 This unlawful conduct includes but is not limited to Defendants' uniform and unlawful
3 policy/practice of failing to include all forms of compensation, including but not limited to
4 commissions, non-discretionary bonuses, and other forms of remuneration into the calculation of
5 the "regular rate," which resulted in the Sick Pay Class not being paid all sick time wages owed.

6 55. The foregoing policies and practices are unlawful and create entitlement to
7 recovery by Plaintiffs and the members of the Sick Pay Class in a civil action for the unpaid
8 amount of sick time wages, including interest thereon, statutory penalties, attorney's fees, and
9 costs of suit according to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, the applicable Wage
10 Orders, and Code of Civil Procedure § 1021.5.

11 **SEVENTH CAUSE OF ACTION**

12 **WAGE STATEMENT VIOLATIONS**

13 **(AGAINST ALL DEFENDANTS)**

14 56. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

15 57. Plaintiffs are informed and believe, and based thereon allege, that Defendants
16 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiffs
17 and the Wage Statement Class with accurate and complete itemized wage statements that
18 included, among other requirements, all wages earned, all meal and rest period premium wages
19 earned, and total hours worked, in violation of Labor Code § 226.

20 58. Defendants' failure to furnish Plaintiffs and members of the Wage Statement Class
21 with complete and accurate itemized wage statements resulted in injury, as said failures led to,
22 among other things, the non-payment of all their minimum and overtime wages and meal and rest
23 period premium wages, and deprived them of the information necessary to identify the
24 discrepancies in Defendants' reported data.

25 59. Defendants' failures create an entitlement to recovery by Plaintiffs and members
26 of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
27 Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs
28 of suit, pursuant to Labor Code §§ 226 and 226.3.

1 **EIGHTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

4 60. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

5 61. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
6 an employer to pay all wages immediately at the time of separation of employment in the event
7 the employer discharges the employee, or the employee provides at least 72 hours of notice of
8 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
9 to quit, said employee's wages become due and payable not later than 72 hours upon said
10 employee's last date of employment.

11 62. Plaintiffs are informed and believe, and based thereon allege, that Defendants
12 failed to timely pay Plaintiffs and members of the Waiting Time Class all final wages due to them
13 at their separation from employment, including (but not limited to) unpaid minimum wages,
14 unpaid overtime wages, and unpaid meal and rest period premium wages.

15 63. Further, Plaintiffs are informed and believe, and based thereon allege, that as a
16 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiffs and members
17 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
18 to the requirements of Labor Code §§ 201-203.

19 64. Defendants' failure to pay all final wages was willful within the meaning of Labor
20 Code § 203. Defendants' willful failure to timely pay Plaintiffs and the members of the Waiting
21 Time Class their earned wages upon separation from employment results in a continued payment
22 of daily wages up to thirty days from the time the wages were due. Plaintiffs and members of the
23 Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable
24 attorneys' fees and costs of suit.

25 **NINTH CAUSE OF ACTION**

26 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

27 **(AGAINST ALL DEFENDANTS)**

28 65. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

1 66. At all relevant times, Defendants were subject to Labor Code § 2802, which states
2 that “an employer shall indemnify his or her employees for all necessary expenditures or losses
3 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
4 her obedience to the directions of the employer.”

5 67. At all relevant times, Defendants were subject to Labor Code § 2804, which states,
6 “any contract or agreement, express or implied, made by any employee to waive the benefits of
7 this article or any part thereof, is null and void, and this article shall not deprive any employee or
8 his personal representative of any right or remedy to which he is entitled under the laws of this
9 State.”

10 68. Due to Defendants’ unlawful policy and practice of requiring employees to use
11 their personal cellular phones for work purposes, and their failure to reimburse Plaintiffs and
12 members of the Employee Expense Class, Defendants have violated Labor Code § 2802.

13 69. As a proximate result of Defendants’ policies and/or practices in violation of Labor
14 Code §§ 2802 and 2804, Plaintiffs and members of the Expense Reimbursement Class suffered
15 damages in sums, which will be shown according to proof.

16 70. Plaintiffs and members of the Expense Reimbursement Class are entitled to
17 attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

18 71. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
19 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
20 Plaintiffs and members of the Expense Reimbursement Class are entitled to interest, which shall
21 accrue from the date on which they incurred the initial necessary expenditure.

22 **TENTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION**

24 **(AGAINST ALL DEFENDANTS)**

25 72. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

26 73. Defendants have engaged, and continue to engage, in unfair and/or unlawful
27 business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay
28 Plaintiffs and the Classes all minimum wages and overtime wages due, failing to provide meal

1 periods or pay meal period premium wages, failure to authorize and permit rest periods or pay
2 rest period premium wages, failing to properly pay sick pay, failing to furnish accurate and
3 complete itemized wage statements, failing to reimburse business expenses, and failing to pay all
4 earned wages at separation of employment.

5 74. Defendants' utilization of these unfair and/or unlawful business practices has
6 deprived Plaintiffs and members of the Classes of compensation to which they are legally entitled,
7 constitutes unfair and/or unlawful competition, and provides an unfair advantage over
8 Defendants' competitors who have been and/or are currently employing workers and attempting
9 to do so in honest compliance with applicable wage and hour laws.

10 75. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct
11 alleged herein, Plaintiffs for themselves, and on behalf of the members of the Classes, seek full
12 restitution of monies as necessary and according to proof, to restore all monies withheld, acquired,
13 and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

14 76. The acts complained of herein occurred within the four years immediately
15 preceding the filing of this action.

16 77. Plaintiffs were compelled to retain the services of counsel to file this court action
17 to protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf
18 of Defendants' current non-exempt employees, and to enforce important rights affecting the
19 public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs,
20 which they are entitled to recover under Code of Civil Procedure § 1021.5.

21 **ELEVENTH CAUSE OF ACTION**

22 **PRIVATE ATTORNEYS GENERAL ACT**

23 **(AGAINST ALL DEFENDANTS)**

24 78. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

25 79. Defendants have committed several Labor Code violations against Plaintiffs and
26 other aggrieved employees. Plaintiffs are "aggrieved employees" within the meaning of Labor
27 Code § 2698 *et seq.* Plaintiffs, acting on behalf of themselves and other aggrieved employees,
28 bring this representative action against Defendants to recover the civil penalties due to Plaintiffs,

other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiffs and other aggrieved employees at least the minimum wage for all hours worked, in violation of Labor Code §§ 204, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay Plaintiffs and other aggrieved employees all overtime and/or double-time compensation earned, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiffs and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 512, 516, 558, and 1198;
- d. Failing to authorize and permit all legally required rest periods and failing to pay rest period premiums to Plaintiffs and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to furnish Plaintiffs and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198;

- 1 f. Failing to pay all wages owed to Plaintiffs and other aggrieved former employees
2 at their separation of employment, in violation of Labor Code §§ 201-203;
3 g. Failing to reimburse Plaintiffs and other aggrieved employees for all work-related
4 expenses, in violation of Labor Code §§ 2802, 2804, and 1198;
5 h. Failing to timely pay wages to Plaintiffs and other aggrieved employees during
6 their employment, in violation of Labor Code §§ 204 and 204b; and
7 i. Failing to properly pay sick pay to Plaintiffs and other aggrieved employees, in
8 violation of Labor Code § 246.

9 80. On or about June 16, 2023 and July 25, 2023, Plaintiffs notified Defendant Zipfizz
10 Corporation, via certified mail, and the California Labor and Workforce Development Agency
11 (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiffs’
12 intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect
13 to the violations of the California Labor Code identified in paragraph 79 (a)-(i) above. Now that
14 sixty-five days have passed from Plaintiffs’ notifying Defendants and the LWDA of these
15 violations, Plaintiffs have exhausted their administrative requirements for bringing a claim under
16 the Private Attorneys General Act with respect to these violations.

17 81. Based on the foregoing, Plaintiffs seek to represent themselves, the State of
18 California, and all aggrieved employees as defined by Labor Code § 2699(c), which includes all
19 current and former employees who worked for Defendants in California at any time from one
20 year prior to the submission of Plaintiffs’ initial PAGA notice to the present.

21 82. Plaintiffs were compelled to retain the services of counsel to file this court action
22 to protect their interests and the interests of other aggrieved employees, and to assess and collect
23 the civil penalties owed by Defendants. Plaintiffs have thereby incurred attorneys’ fees and costs,
24 which they are entitled to recover under California Labor Code § 2699(g).

25 **PRAYER**

26 WHEREFORE, Plaintiffs pray for judgment for themselves and for all others on whose
27 behalf this suit is brought against Defendants, as follows:

- 28 1. For an order certifying the proposed Classes;

2. For an order appointing Plaintiffs as representative of the Classes;
3. For an order appointing counsel for Plaintiffs as counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 204, and 210;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;
8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;
9. Upon the Sixth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, 1199;
10. Upon the Seventh Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;
11. Upon the Eighth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
12. Upon the Ninth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
13. Upon the Tenth Cause of Action, for restitution to Plaintiffs and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200, *et seq.*;
14. Upon the Eleventh Cause of Action, for civil penalties due to Plaintiffs, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §

2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to Labor Code § 2699(f);

15. Prejudgment interest on all due and unpaid wages and other damages pursuant to California Labor Code §§ 218.6, 1194(a), 1194.2(a), and 2802(b); Civil Code § 3287; and Art. XV, § 1 of the California Constitution;

16. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226(e), 1194 *et seq.*, 2802(c), 2699(g) and Code of Civil Procedure § 1021.5; and

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

Date: March 28, 2024

Respectfully submitted,
ABRAMSON LABOR GROUP

By: Neil Larsen
Neil M. Larsen
Attorneys for Plaintiff Chiang

Date: March 28, 2024

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

By: Mehrdad Bokhour
Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff Langston

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Date: March 28, 2024

ABRAMSON LABOR GROUP

Date: March 28, 2024

By: Mehrdad Bokhour
Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff Langston

PROOF OF SERVICE

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 1700 W. Burbank Blvd., Burbank, CA 91506. On the below date, I served a true copy of the foregoing documents described as:

**SECOND AMENDED CLASS AND REPRESENTATIVE ACTION
COMPLAINT**

on all interested parties in this action directed as follows:

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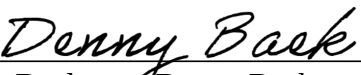
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/X / (BY ELECTRONIC SERVICE): BY ELECTRONIC TRANSMISSION) I served the foregoing by electronic transmission to the email addresses listed above, pursuant to Cal. Code Civ. Proc. § 1010.6 and Cal. Rules of Court Rule 2.251.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on March 28, 2024, at Burbank, CA.


Declarant Denny Baek