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DOWNTOWN COURTHOUSE
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

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Individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

Paloma Scalise, Individually and on behalf of
all others similarly situated,

Plaintiff,

v.

Chipotle Services LLC, DBA Chipotle
Mexican Grill, Inc.; and Does 1 through 20,
inclusive,

Defendants.

Case No.: 23CV006629

Hon. Richard K. Sueyoshi - Dept. 53

**[Filed as a matter of right pursuant to
Labor Code § 2699.3(a)(2)(C)]**

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

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Provide Accurate, Itemized Wage Statements;
6. Failure to Reimburse for Business Expenses;
7. Failure to Pay Reporting Time Pay;
8. Failure to Pay All Final Wages;
9. Violation of Business and Professions Code §§ 17200, *et seq.*; and
10. Enforcement of Labor Code § 2698 Et. Seq. ("PAGA").

Jury Trial Demanded

1 Plaintiff Paloma Scalise, individually and on behalf of all others similarly situated,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Paloma Scalise (“Plaintiff”) brings this putative class action against
5 Defendants Chipotle Services LLC, DBA Chipotle Mexican Grill, Inc. (“Defendant”) and
6 Does 1 through 20, inclusive (collectively, “Defendants”), on behalf of herself individually
7 and a putative class of non-exempt employees employed by Defendants throughout
8 California.

9 2. Defendant is a Delaware corporation and a national restaurant brand which
10 provides employment to employees in California.

11 3. Through this action, Plaintiff alleges that Defendants have engaged in a
12 systematic pattern of wage and hour violations under the California Labor Code and Industrial
13 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
14 unfair competition.

15 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
16 increased their profits by violating state wage and hour laws by, among other things:

- 17 (a) Failing to pay all wages for all hours worked, including minimum and
18 overtime wages;
- 19 (b) Failing to provide meal periods or compensation in lieu thereof;
- 20 (c) Failing to authorize or permit rest breaks or provide compensation in lieu
21 thereof;
- 22 (d) Failing to provide accurate, itemized wage statements;
- 23 (e) Failing to reimburse all reasonable and necessary business expenses;
- 24 (f) Failing to pay all reporting time pay; and
- 25 (g) Failing to pay all final wages.

26 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on
27 behalf of herself and all others similarly situated in California to recover, among other things,
28 unpaid wages and benefits, interest, attorneys’ fees, costs and expenses, and penalties

1 pursuant to Cal. Labor Code §§ 210, 226.7, 510, 511, 512, 1182.12, 1194, 1194.2, 1197, 1198,
2 2800, and 2802.

3 **JURISDICTION AND VENUE**

4 6. This is a class action, pursuant to California Code of Civil Procedure § 382.
5 The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional
6 limits of the Superior Court and will be established according to proof at trial.

7 7. This Court has jurisdiction over this action pursuant to the California
8 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all
9 causes except those given by statutes to other courts. The statutes under which this action is
10 brought do not specify any other basis for jurisdiction.

11 8. This Court has jurisdiction over all Defendants because, upon information and
12 belief, they are citizens of California, have sufficient minimum contacts in California or
13 otherwise intentionally avail themselves of the California market so as to render the exercise
14 of jurisdiction over them by the California courts consistent with traditional notions of fair
15 play and substantial justice.

16 9. Venue is proper in this Court because, upon information and belief, Defendants
17 reside, transact business or have offices in this county and the acts and omissions alleged
18 herein took place in this county.

19 **THE PARTIES**

20 10. Plaintiff is a citizen of California. Plaintiff was employed by Defendants
21 during the Class Period in California.

22 11. Plaintiff is informed and believes, and thereon alleges, that Defendants at all
23 times hereinafter mentioned, were and are employers as defined in and subject to the Labor
24 Code and IWC Wage Orders, whose employees were and are engaged throughout this county
25 and the State of California.

26 12. Plaintiff is unaware of the true names or capacities of the Defendants sued
27 herein under the fictitious names DOES 1 through 20 but will seek leave of this Court to
28 amend this Complaint and serve such fictitiously named Defendants once their names and

1 capacities become known.

2 13. Plaintiff is informed and believes, and thereon alleges, that each Defendants
3 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
4 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
5 Defendants are legally attributable to the other Defendants. Furthermore, defendants in all
6 respects acted as the employer and/or joint employer of Plaintiff and the class members.

7 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the
8 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
9 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act
10 on the other's behalf. The acts of any and all Defendants were in accordance with, and
11 represent, the official policy of Defendants.

12 15. At all relevant times, Defendants, and each of them, acted within the scope of
13 such agency or employment, or ratified each and every act or omission complained of herein.
14 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions
15 of each and all the other Defendants in proximately causing the damages herein alleged.

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

19 **CLASS ACTION ALLEGATIONS**

20 17. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
21 herself and all others similarly situated who were affected by Defendants' Labor Code,
22 Business and Professions Code §§ 17200 and IWC Wage Order violations.

23 18. All claims alleged herein arise under California law for which Plaintiff seeks
24 relief authorized by California law.

25 19. Plaintiff's proposed class consists of and is defined as follows:

26 **California Labor Class**

27 All current or former non-exempt California employees of Defendants from
28 four years preceding the filing of this Complaint plus 178 days before the filing

1 of this complaint to the date of trial.¹.

2 Plaintiff also seeks to certify the following Subclass of employees:

3 Waiting Time Subclass

4 All members of the Class who separated their employment from Defendants
5 from three years plus 178 days before the filing of this complaint to the date
6 of trial.

7 20. Members of the Class and Subclass described above will be collectively
8 referred to as “class members.” Plaintiff reserves the right to establish other or additional
9 subclasses, or modify any Class or Subclass definition, as appropriate based on investigation,
10 discovery, and specific theories of liability.

11 21. This action has been brought and may properly be maintained as a class action
12 under the California Code of Civil Procedure § 382 because there are common questions of
13 law and fact as to the Class that predominate over questions affecting only individual members
14 including, but not limited to:

- 15 (a) Whether Defendants failed to compensate Plaintiff and Labor Class Members
16 to work off-the-clock, resulting in a failure to pay all minimum wages and
17 overtime wages;
- 18 (b) Whether Defendants deprived Plaintiff and Labor Class Members of compliant
19 meal periods or required Plaintiff and Labor Class Members to work through
20 meal periods without compensation;
- 21 (c) Whether Defendants deprived Plaintiff and Labor Class Members of compliant
22 rest breaks;
- 23 (d) Whether Defendants deprived Plaintiff and Labor Class Members of accurate,
24 itemized wage statements;
- 25 (e) Whether Defendants required Plaintiff and Labor Class Members to use their
26 personal cellular phones to for work-related purposes and then failed to
27 reimburse Plaintiff and Labor Class Members for a reasonable percentage of

28 ¹ The statute of limitations for this matter was tolled from April 6, 2020 to October 1, 2020
pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

1 these costs, resulting in failure to reimburse Plaintiff and Labor Class Members
2 for all business expenses necessarily incurred in their duties;

3 (f) Whether Defendants failed to pay Plaintiff and Labor Class Members all
4 reporting time pay owed;

5 (g) Whether Defendants failed to pay Plaintiff and Labor Class Members all final
6 wages due upon termination or separation of employment; and

7 (h) Whether Defendants engaged in unfair business practices in violation of
8 Business & Professions Code §§ 17200, *et seq.*

9 22. There is a well-defined community of interest in this litigation and the
10 California Labor Class is readily ascertainable:

11 (a) Numerosity: The members of the California Labor Class are so
12 numerous that joinder of all members is impractical. Although the
13 members of the California Labor Class are unknown to Plaintiff at this
14 time, on information and belief, the total number of individuals who
15 make up the California Labor Class are estimated to be greater than
16 100 individuals. The identities of the California Labor Class are
17 readily ascertainable by inspection of Defendants' employment and
18 payroll records.

19 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of
20 the claims (or defenses, if any) of the California Labor Class because
21 Defendants' failure to comply with the provisions of California wage
22 and hour laws entitled each class member to similar pay, benefits and
23 other relief. The injuries sustained by Plaintiff are also typical of the
24 injuries sustained by the California Labor Class because they arise out
25 of and are caused by Defendants' common course of conduct as alleged
26 herein.

27 (c) Adequacy: Plaintiff is qualified to and will fairly and adequately
28 represent and protect the interests of all members of the California

1 Labor Class because it is in her best interest to prosecute the claims
2 alleged herein to obtain full compensation and penalties due to her and
3 the California Labor Class. Plaintiff's attorneys, as proposed class
4 counsel, are competent and experienced in litigating large employment
5 class actions and are versed in the rules governing class action
6 discovery, certification and settlement. Plaintiff has incurred and,
7 throughout the duration of this action, will continue to incur attorneys'
8 fees and costs that have been and will be necessarily expended for the
9 prosecution of this action for the substantial benefit of each class
10 member.

11 (d) Superiority: The nature of this action makes the use of class action
12 adjudication superior to other methods. A class action will achieve
13 economies of time, effort and expense as compared with separate
14 lawsuits, and will avoid inconsistent outcomes because the same issues
15 can be adjudicated in the same manner and at the same time for each
16 Class. If appropriate this Court can, and is empowered to, fashion
17 methods to efficiently manage this case as a class action.

18 (e) Public Policy Considerations: Employers in the State of California and
19 other states violate employment, labor, and consumer protection laws
20 every day. Current employees are often afraid to assert their rights out
21 of fear of direct or indirect retaliation. Former employees are fearful
22 of bringing actions because they believe their former employers might
23 damage their future endeavors through negative references and/or other
24 means. Class actions provide the class members who are not named in
25 the complaint with a type of anonymity that allows for the vindication
26 of their rights at the same time as affording them privacy protections.

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23. At all relevant times mentioned herein, Defendants employed Plaintiff and Labor Class Members as non-exempt employees.

24. Plaintiff was employed in a non-exempt position by Defendants.

25. Defendants continue to employ non-exempt employees throughout California.

26. Plaintiff is informed and believes, and thereon alleges, that at all times herein stated, Defendants were advised by skilled lawyers, employees and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices and the requirements of California law.

27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Labor Class Members were entitled to receive wages for all hours worked and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Labor Class Members were not paid wages (including minimum wages and overtime wages) for all hours worked when Defendants required Plaintiff and Labor Class Members to work off-the-clock, such as, for example, to re-fill stations after clocking out of their shifts.

28. Plaintiff is informed and believes, and thereon alleges, that Defendants failed to provide Plaintiff and Labor Class Members timely, uninterrupted, off-duty meal periods of at least thirty minutes for each period of five hours worked. Plaintiff and Labor Class Members would also often be required to work through meal periods or would be otherwise interrupted during their meal period.

29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Labor Class Members were entitled to receive all timely meal periods or payment of one (1) additional hour of pay at Plaintiff and Labor Class Members' regular rate of pay when they did not receive a timely meal period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Labor Class Members did not receive all timely meal periods or payment of one (1) additional hour of pay at Plaintiff and Labor Class Members' regular rate of pay when they did not receive a timely,

1 uninterrupted meal period.

2 30. Upon information and belief, Defendants failed to provide Plaintiff and Labor
3 Class Members timely, uninterrupted, on-the-clock rest period of no less than ten minutes for
4 every four hours worked, or every major fraction thereof. Defendants also routinely failed to
5 provide Plaintiff and Labor Class Members with a second rest period for shifts lasting longer
6 than six hours, or a third rest period for shifts lasting longer than ten hours. These policies,
7 among others, have resulted in a denial of these employees' rights to a ten-minute rest period
8 in violation of California law.

9 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
10 or should have known that Plaintiff and Labor Class Members were entitled to receive all rest
11 breaks or payment of one (1) additional hour of pay at Plaintiff and Labor Class Members'
12 regular rate of pay when a rest break was missed. In violation of the Labor Code and IWC
13 Wage Orders, Plaintiff and Labor Class Members did not receive all rest breaks or payment
14 of one (1) additional hour of pay at Plaintiff and Labor Class Members' regular rate of pay
15 when a rest break was missed.

16 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
17 or should have known that Plaintiff and Labor Class Members were entitled to receive
18 itemized wage statements that accurately showed their gross and net wages earned, inclusive
19 dates of pay periods, total hours worked, and all applicable hourly rates in effect and the
20 number of hours worked at each hourly rate in accordance with California law. In violation
21 of the Labor Code, Plaintiff and Labor Class Members were not provided with accurate
22 itemized wage statements.

23 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
24 or should have known that they had a duty to indemnify Plaintiff and Labor Class Members
25 for all necessary expenditures or losses incurred in the discharge of their duties, including, for
26 example, Plaintiff and Labor Class Members cellular phone expenses as it related to their
27 employment. In violation of the Labor Code, Defendants did not indemnify Plaintiff and
28 Labor Class Members for the necessary expenses they incurred in the discharge of their duties.

1 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
2 or should have known that Defendants were required to pay Plaintiff and Labor Class
3 Members all required reporting time pay including, for example, when Plaintiff and Labor
4 Class Members were required to sign various documents while off-the-clock and were not
5 compensated for at least two hours of work and/or half of their usually scheduled hours at
6 their regular rate of pay. In violation of the Labor Code, Defendants did not compensate
7 Plaintiff and the Labor Class Members with all required reporting time pay.

8 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
9 or should have known that Defendants were required to pay all wages to Plaintiff and Labor
10 Class Members at the separation of their employment but, in violation of the Labor Code,
11 failed to do so.

12 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
13 or should have known they had a duty to compensate Plaintiff and Labor Class Members, and
14 Defendants had the financial ability to pay such compensation but willfully, knowingly and
15 intentionally failed to do so all in order to increase Defendants' profits.

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY MINIMUM WAGES**

18 **(Violation of Cal. Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage**
19 **Order)**

20 37. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above
21 as though fully set forth herein.

22 38. Cal. Labor Code Sections 1194 and 1197 provide that the minimum wage for
23 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment
24 of a lesser wage than the minimum so fixed is unlawful.

25 39. During the relevant time period, Defendants paid Plaintiff and Labor Class
26 Members less than minimum wages when Defendants required Plaintiff and Labor Class
27 Members to work off-the-clock.
28

40. During the relevant time period, Defendants regularly failed to pay at least minimum wages to Plaintiff and Labor Class Members for all hours worked pursuant to Cal. Labor Code Sections 1194 and 1197.

41. Defendants' failure to pay Plaintiff and Labor Class Members the required minimum wages violate Labor Code 1194 and 1197. Pursuant to these sections, Plaintiff and Labor Class Members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs and attorneys' fees.

42. Pursuant to Labor Code Section 1194.2, Plaintiff and Labor Class Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(Violation of Cal. Labor Code §§ 510, 1194 and 1198; Violation of IWC Wage Order)

43. Cal. Labor Code Section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either one and one-half or two times the person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

44. Pursuant to Cal. Labor Code Sections 510 and 1194, during the relevant time period, Defendants were required to compensate Plaintiff and Labor Class Members for all overtime hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8) hours of the seventh consecutive work day, with double time after eight (8) hours on the seventh day of any work week, or after twelve (12) hours in any work day.

45. Plaintiff and Labor Class Members were non-exempt employees entitled to the protections of Cal. Labor Code Section 510 and 1194.

46. During the relevant time period, Defendants failed to pay Plaintiff and Labor Class Members overtime and doubletime wages when Defendants required Plaintiff and Labor Class Members to work off-the-clock, for example, to re-fill stations after clocking out.

1 As Plaintiff and Labor Class Members worked shifts of eight hours or more, this unpaid time
2 qualified for overtime premium payment.

3 47. In violation of state law, Defendants have knowingly and willfully refused to
4 perform their obligations and compensate Plaintiff and Labor Class Members for all wages
5 earned as alleged above.

6 48. Defendants' failure to pay Plaintiff and Labor Class Members the unpaid
7 balance of overtime compensation, as required by California law, violates the provisions of
8 Cal. Labor Code Sections 510 and 1198, and is therefore unlawful.

9 49. Pursuant to Labor Code Section 1194, Plaintiff and Labor Class Members are
10 entitled to recover their unpaid overtime compensation as well as interest, costs and attorneys'
11 fees.

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL PERIODS**

14 **(Violation of Cal. Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

15 50. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above
16 as though fully set forth herein.

17 51. Cal. Labor Code Section 226.7 provides that no employer shall require an
18 employee to work during any meal period mandated by the IWC Wage Orders.

19 52. Section 11 of the applicable IWC Wage Order states, "no employer shall
20 employ any person for a work period of more than five (5) hours without a meal period of not
21 less than 30 minutes, except that when a work period of not more than six (6) hours will
22 complete the day's work the meal period may be waived by mutual consent of the employer
23 and the employee."

24 53. Cal. Labor Code Section 512(a) provides that an employer may not require,
25 cause or permit an employee to work for a period of more than five (5) hours per day without
26 providing the employee with an uninterrupted meal period of not less than thirty (30) minutes,
27 except that if the total work period per day of the employee is not more than six (6) hours, the
28 meal period may be waived by mutual consent of both the employer and the employee.

54. Labor Code Section 512(a) also provides that an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

55. During the relevant time period, Plaintiff and Labor Class Members did not receive compliant meal periods for each five hours worked per day.

56. Cal. Labor Code Section 226.7(b) and section 11 of the applicable IWC Wage Order require an employer to pay an employee one additional hour of pay for each workday that a meal period is not provided.

57. At all relevant times, Defendants often failed to pay Plaintiff and Labor Class Members meal period premiums for meal period violations, at the regular rate of pay including all non-discretionary bonuses, pursuant to Labor Code Section 226.7(b) and section 11 of the applicable IWC Wage Order.

58. As a result of Defendants' failure to pay Plaintiff and Labor Class Members an additional hour of pay for each day a meal period was not provided, Plaintiff and Labor Class Members suffered and continue to suffer a loss of wages and compensation.

FOURTH CAUSE OF ACTION

FAILURE TO PERMIT REST BREAKS

(Violation of Cal. Labor Code §§ 226.7; Violation of IWC Wage Order)

59. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

60. Cal. Labor Code Section 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by the IWC Wage Orders.

61. Section 12 of the applicable IWC Wage Order states “every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and the “authorized rest period time shall be based on the

total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

62. During the relevant time period, Plaintiff and Labor Class Members did not receive a ten (10) minute rest period for every four (4) hours or major fraction thereof worked. Defendants routinely failed to provide Plaintiff and Labor Class Members with a second rest period for shifts lasting eight hours or longer, or a third rest period for shifts lasting twelve hours or longer. Moreover, due to work demands imposed by Defendants, Plaintiff and Labor Class Members were regularly prevented from being relieved of all work duties during required rest periods.

63. Labor Code Section 226.7(b) and section 12 of the applicable IWC Wage Order requires an employer to pay an employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

64. At all relevant times, Defendants failed to pay Plaintiff and Labor Class Members all rest period premiums at their regular rate of compensation, including all non-discretionary bonuses, due for rest period violations pursuant to Labor Code Section 226.7(b) and section 12 of the applicable IWC Wage Order. Moreover, upon information and belief, during a least a portion of the relevant time period, Defendants maintained no payroll code or other mechanism for the payment of rest period premiums as required by Labor Code Section 226.7 in the event a legally compliant rest period was not provided to their non-exempt employees.

65. As a result of Defendants’ failure to pay Plaintiff and Labor Class Members an additional hour of pay for each day a rest period was not provided, Plaintiff and Labor Class Members suffered and continue to suffer a loss of wages and compensation.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Cal. Labor Code § 226; Violation of IWC Wage Order)

66. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

1 67. Cal. Labor Code Section 226(a) requires Defendants to provide each
2 employee with an accurate wage statement in writing showing nine pieces of information,
3 including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number
4 of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
5 rate basis, (4) all deductions, provided that all deductions made on written orders of the
6 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
7 dates of the period for which the employee is paid, (7) the name of the employee and the
8 last four digits of his or her social security number or an employee identification number
9 other than a social security number, (8) the name and address of the legal entity that is the
10 employer, and (9) all applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked at each hourly rate by the employee.

12 68. During the relevant time period, Defendants have knowingly and
13 intentionally failed to comply with Cal. Labor Code Section 226(a) on wage statements that
14 were provided to Plaintiff and Labor Class Members. The deficiencies include, among
15 other things, the failure to correctly state the gross and net wages earned, all applicable
16 hourly rates in effect, and the correct number of hours worked at each hourly rate by Plaintiff
17 and Labor Class Members.

18 69. As a result of Defendants' violation of Cal. Labor Code Section 226(a),
19 Plaintiff and Labor Class Members have suffered injury and damage to their statutorily
20 protected rights. Specifically, Plaintiff and Labor Class Members have been injured by
21 Defendants' intentional violation of California Labor Code Section 226(a) because they
22 were denied both their legal right to receive, and their protected interest in receiving,
23 accurate itemized wage statements under California Labor Code Section 226(a). Plaintiff
24 has had to file this lawsuit in order to determine the extent of the underpayment of wages,
25 thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to
26 engage in these efforts and incur these costs had Defendants provided the accurate wages
27 earned. This has also delayed Plaintiff's ability to demand and recover the underpayment
28 of wages from Defendants.

70. California Labor Code Section 226(a) requires an employer to pay the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's fees and costs, to each employee who was injured by the employer's failure to comply with California Labor Code Section 226(a).

71. Defendants' violations of California Labor Code Section 226(a) prevented Plaintiff and Labor Class Members from knowing, understanding and disputing the wages paid to them, and resulted in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and intentional failure to comply with California Labor Code Section 226(a), Plaintiff and Labor Class Members have suffered an injury, and the exact amount of damages and/or penalties is all in an amount to be shown according to proof at trial.

72. Plaintiff and Labor Class Members are also entitled to injunctive relief under California Labor Code Section 226(h), compelling Defendants to comply with California Labor Code Section 226 and seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE ALL BUSINESS EXPENSES

(Violation of Cal. Labor Code §§ 2800, 2802; Violation of IWC Wage Order)

73. Plaintiff hereby re-alleges and incorporate by reference all paragraphs above as though fully set forth herein.

74. Cal. Labor Code Section 2800 provides, in pertinent part, “[a]n employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.”

75. Cal. Labor Code Section 2802 provides, in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties...”

76. Further, Labor Code Section 2802 additionally provides, in pertinent part:

1 “(c)...the term ‘necessary expenditures or losses’ shall include all reasonable costs, including
2 but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by
3 this section.”

4 77. During the relevant time period, Defendants required Plaintiff and Labor Class
5 Members to use their own cellular phones in the discharge of their duties but were not
6 reasonably compensated for these expenses.

7 78. During the relevant time period, Defendants were required to indemnify and
8 reimburse Plaintiff and Labor Class Members for all expenditures or losses caused by the
9 employer’s want of ordinary care and/or incurred in direct consequent of the discharge of their
10 duties but failed to indemnify and reimburse Plaintiff and Labor Class Members in violation
11 of Labor Codes Sections 2800 and 2802.

12 79. As a direct and proximate result, Plaintiff and Labor Class Members have
13 suffered, and continue to suffer, substantial losses, related to the use and enjoyment of such
14 monies to be reimbursed, lost interest on such monies, and expenses and attorney’s fees in
15 seeking to compel Defendants to fully perform their obligations under California law, all to
16 their damage in amounts according to proof at the time of trial.

17 **SEVENTH CAUSE OF ACTION**

18 **FAILURE TO PAY ALL REPORTING TIME PAY**

19 **(Violation of Cal. Lab. Code §§ 1198 and 1199; Violation of IWC Wage Order)**

20 80. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above
21 as though fully set forth herein.

22 81. Cal. Labor Code Section 1198 prohibits employers from violating the IWC
23 Wage Orders.

24 82. Section 5 of the applicable IWC Wage Order required that on each workday
25 an employee reports for work as scheduled, but is not put to work or is furnished with less
26 than half of the employee’s usual or scheduled day’s work, the employee shall be paid for half
27 the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than
28 four (4) hours at the employer’s regular rate of pay, which shall not be less than the minimum

1 wage. Section 5 of the applicable Wage Order denominates this as “Reporting Time Pay.”

2 83. During the relevant time period, Plaintiff and Labor Class Members were
3 required to report to work but were not put to work and would be sent home early.

4 84. Accordingly, for those times that Plaintiff and Labor Class Members were
5 required to report to work but were not put to work or were furnished with less than half of
6 their usual scheduled day’s work, Plaintiff and Labor Class Members are entitled to recover
7 from Defendants compensation for half a day’s work, plus interest thereon, together with their
8 reasonable attorneys’ fees and costs.

9 **EIGHTH CAUSE OF ACTION**

10 **FAILURE TO PAY ALL FINAL WAGES**

11 **(Violation of Cal. Lab. Code §§ 201-203; Violation of IWC Wage Order)**

12 85. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above
13 as though fully set forth herein.

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

20 87. During the relevant time period, Defendants willfully failed to pay Plaintiff
21 and Labor Class Members all their earned wages upon termination including, but not limited
22 to, proper minimum wages, Reporting Time Pay, and overtime and doubletime compensation,
23 either at the time of discharge or within seventy-two (72) hours of their leaving Defendants’
24 employ. Further, Defendants failed to timely pay all wages due upon termination of
25 employment and Plaintiff has yet to receive her final wages.

26 88. Defendants’ failure to pay Plaintiff and Labor Class Members all their earned
27 wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants’
28 employ is in violation of Labor Code §§ 201 and 202.

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

NINTH CAUSE OF ACTION
(VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200,
ET SEQ.)

90. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

91. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful and harmful to Plaintiff and Labor Class Members. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

92. Defendants' activities, as alleged herein, violates California law and constitutes unlawful business acts or practices in violation of California Business and Professions Code Sections 17200, *et seq.*

93. A violation of Cal. Business and Professions Code §§ 17200, *et seq.* may be predicated on the violation of any state or federal law.

94. Defendants' policies and practices have violated state law in at least the following respects:

- (a) Failing to pay all minimum wages to Plaintiff and Labor Class Members in violation of Labor Code §§ 1194, 1194.2, and 1197;
- (b) Failing to pay all overtime wages to Plaintiff and Labor Class Members in violation of Labor Code §§ 510, 1194 and 1198;
- (c) Failing to provide timely meal periods without paying Plaintiff and Labor Class Members premium wages for every day said meal periods were not provided in violation of Labor Code §§ 226.7 and 512;

1 (d) Failing to authorize or permit rest breaks without paying Plaintiff and Labor
2 Class Members premium wages for every day said rest breaks were not
3 authorized or permitted in violation of Labor Code § 226.7;

4 (e) Failing to provide accurate, itemized wage statements in violation of Labor
5 Code § 226;

6 (f) Failing to reimburse Plaintiff and Labor Class Members for all business
7 expenses incurred in violation of Labor Code §§ 2800 and 2802;

8 (g) Failing to pay Plaintiff and Labor Class Members all reporting time pay in
9 violation of Labor Code §§ 1198 and 1199; and

10 (h) Failing to pay Plaintiff and Labor Class Members all final wages in violation
11 of Labor Code §§ 201-203.

12 95. Defendants intentionally avoided paying Plaintiff and Labor Class Members'
13 wages and monies, thereby creating for Defendants an artificially lower cost of doing business
14 in order to undercut their competitors and establish and gain a greater foothold in the
15 marketplace.

16 96. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and
17 Labor Class Members are entitled to restitution of the wages unlawfully withheld and retained
18 by Defendants during a period that commences four years prior to the filing of the Complaint;
19 an award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable
20 laws; and an award of costs.

21 **TENTH CAUSE OF ACTION**

22 **ENFORCEMENT OF LABOR CODE § 2698 ET. SEQ. ("PAGA")**

23 97. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above
24 as though fully set forth herein.

25 98. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that
26 provides for a civil penalty to be assessed and collected by the Labor and Workforce
27 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
28 agencies or employees for violation of the code may, as an alternative, be recovered through

1 a civil action brought by an aggrieved employee on behalf of himself and other current or
2 former employees pursuant to the procedures specified in Labor Code § 2699.3.

3 99. Defendants' conduct violates numerous Labor Code sections including, but
4 not limited to, the following:

5 (a) Violation of Labor Code §§ 210, 226.7, 510, 511, 512, 1182.12, 1194, 1197,
6 1198, 2800, and 2802 for failure to timely pay all earned wages (including minimum wages,
7 regular, and overtime wages) owed to Plaintiff and other aggrieved employees during
8 employment and upon separation of employment as herein alleged;

9 (b) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods
10 to Plaintiff and other aggrieved employees and failure to pay premium wages for missed
11 meal periods as herein alleged;

12 (c) Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff
13 and other aggrieved employees and failure to pay premium wages for missed rest periods as
14 herein alleged;

15 (d) Violation of Labor Code §§ 2800 and 2802 for failure to reimburse reasonable
16 and necessary business expenses of Plaintiff and other aggrieved employees as herein
17 alleged;

18 (e) Violation of Labor Code § 226 for failure to provide accurate, itemized wage
19 statements; and

20 (f) Violation of Cal. Lab. Code §§ 1198 and 1199 for failure to pay all reporting
21 time pay.

22 100. Plaintiff is an "aggrieved employee" because she was employed by the
23 alleged violator and had one or more of the alleged violations committed against them, and
24 therefore is properly suited to represent the interests of all other aggrieved employees.

25 101. On August 10, 2023, Plaintiff submitted notice of her claims to the Labor and
26 Workforce Development Agency ("LWDA"). At the time of this filing, Plaintiff has not
27 received any notice that the LWDA seeks to investigate these claims. As such, Plaintiff has
28 exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is

1 therefore able to pursue a claim for penalties on behalf of herself and all other aggrieved
2 employees under PAGA.

3 102. PAGA generally imposes a penalty of one hundred dollars (\$100.00) for each
4 aggrieved employee per pay period for the initial violation and two hundred dollars
5 (\$200.00) for each aggrieved employee per pay period for each subsequent violation.

6 103. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled
7 to recover civil penalties, in addition to other remedies, for violations of the Labor Code
8 sections cited above.

9 104. For bringing this action, Plaintiff is entitled to attorney's fees and costs
10 incurred herein.

11 **PRAYER FOR RELIEF**

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

14 1. For certification of this action as a class action, including certifying the
15 California Labor Class alleged by Plaintiff;

16 2. For appointment of Paloma Scalise as the class representative;

17 3. For appointment of Lebe Law, APLC as class counsel for all purposes;

18 4. For compensatory damages in an amount according to proof with interest
19 thereon;

20 5. For civil penalties against Defendants pursuant to PAGA;

21 6. For economic and/or special damages in an amount according to proof with
22 interest thereon;

23 7. For reasonable attorneys' fees, costs of suit and interest to the extent permitted
24 by law, including pursuant to California Code of Civil Procedure § 1021.5 and California
25 Labor Code §§ 1194 and 2699(g);

26 8. For statutory penalties to the extent permitted by law, including those pursuant
27 to the Labor Code and IWC Wage Orders;

28 9. For restitution as provided by Business and Professions Code §§ 17200, *et*

1 *seq.*;

2 10. For an order requiring Defendants to restore and disgorge all funds to each
3 employee acquired by means of any act or practice declared by this Court to be unlawful,
4 unfair or fraudulent and, therefore, constituting unfair competition under California Business
5 and Professions Code §§ 17200, *et seq.*;

6 11. For an award of damages in the amount of unpaid compensation including, but
7 not limited to, unpaid wages, benefits and penalties, including interest thereon;

8 12. For injunctive relief;

9 13. For pre-judgment interest; and

10 14. For such other relief as the Court deems just and proper.

11
12 DATED: October 16, 2023

Lebe Law, APLC

13
14 By: 
15 Jonathan M. Lebe
Zachary T. Gershman

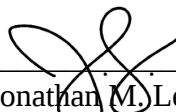
16 Attorney for Plaintiff Paloma Scalise,
17 Individually and on behalf of all others
18 similarly situated

19
20 **DEMAND FOR JURY TRIAL**

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

22 DATED: October 16, 2023

Lebe Law, APLC

23
24 By: 
25 Jonathan M. Lebe
26 Zachary T. Gershman

27 Attorney for Plaintiff Paloma Scalise,
28 Individually and on behalf of all others
similarly situated

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California, I am over the
3 age of eighteen years and not a party to the within entitled action; my business address
4 is 777 S. Alameda Street, Los Angeles, CA 90021.

5 On October 16, 2023, I served the **"FIRST AMENDED CLASS AND
6 REPRESENTATIVE ACTION COMPLAINT"** on the interested parties, by placing a
7 true copy thereof, by the method of service specified below:

8 Steve L. Hernández, Esq.
9 steve.hernandez@us.dlapiper.com
10 Jose Pomposo Barajas, Esq.
11 jose.pomposo@us.dlapiper.com

12 **DLA PIPER LLP (US)**
13 2000 Avenue of the Stars
14 Suite 400, North Tower
15 Los Angeles, California 90067
16 Tel: (310) 595-3000
17 Fax: (310) 595-3300

18 *Attorneys for Defendant CHIPOTLE SERVICES, LLC*

19 ☒ (VIA ELECTRONIC SERVICE) Based on a court order or an agreement of the
20 parties to accept service by electronic transmission, I caused the documents to be sent to
21 the persons at the electronic notification addresses listed above. I did not receive,
22 within a reasonable time after the transmission, any electronic message or other
23 indication that the transmission was unsuccessful.

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

26 Dated: October 16, 2023

27 *Diana Lopez*
28 Diana Lopez