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 10 ZACHARIAH KRASOWSKI and JACOB SMITH

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF LOS ANGELES

13 UNLIMITED JURISDICTION

14 ZACHARIAH KRASOWSKI, and JACOB
 SMITH, on behalf of themselves and all others
 15 similarly situated, and the general public,

16 *Plaintiffs,*

17 v.

18 SAGAR DINER, INC., a California
 corporation; DEV SAGAR, an individual, and
 19 DOES 1 through 50, inclusive,

20 *Defendants.*

Case No. 23STCV22879

CLASS ACTION

FIRST AMENDED COMPLAINT

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly and Overtime Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Pay Vacation Wages (Lab. Code § 227.3);
5. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
6. Failure to Indemnify (Lab. Code § 2802)
7. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
8. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
9. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

Plaintiffs ZACHARIAH KRASOWSKI and JACOB SMITH (“Plaintiffs”), on behalf of themselves and all others similarly situated, and the general public, complain and allege as follows:

INTRODUCTION

1. Plaintiffs brings this representative action against defendant Sagar Diner, Inc., a California corporation; Dev Sagar, an individual; and DOES 1 through 50, inclusive, (collectively referred to as “Defendants”) for California Labor Code violations. As set forth below, Plaintiffs allege that Defendants have

- (1) failed to provide Plaintiffs and all other similarly situated individuals with meal periods;
- (2) failed to provide them with rest periods;
- (3) failed to pay them premium wages for missed meal and/or rest periods;
- (4) failed to pay them premium wages for missed meal and/or rest periods at the regular rate of pay;
- (5) failed to pay them at least minimum wage for all hours worked;
- (6) failed to pay them overtime wages at the correct rate;
- (7) failed to pay them double time wages at the correct rate;
- (8) failed to pay them overtime and/or double time wages by failing to include all applicable remuneration in calculating the regular rate of pay;
- (9) failed to pay them for all vested vacation pay;
- (10) failed to reimburse them for all necessary business expenses;
- (11) failed to provide them with accurate written wage statements; and
- (12) failed to pay them all of their final wages following separation of employment.

Based on these alleged violations, Plaintiffs now bring this representative action to recover unpaid wages, restitution, civil and statutory penalties, and related relief on behalf of themselves and all others similarly situated.

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1 **JURISDICTION AND VENUE**

2 2. This Court has subject matter jurisdiction to hear this case because the penalties sought
3 by Plaintiffs from Defendants exceeds the minimal jurisdictional limits of the Superior Court of the
4 State of California.

5 3. Venue is proper in Los Angeles County pursuant to Code of Civil Procedure §§
6 393(a), 395(a) and 395.5 in that liability arose there, because at least some of the transactions that are
7 the subject matter of this Complaint occurred therein and/or each defendant is found, maintains
8 offices, transacts business, and/or has an agent therein.

9 **PARTIES**

10 4. Plaintiff Zacharia Krasowski is and was, and at all relevant times mentioned herein,
11 an individual residing in the State of California.

12 5. Plaintiff Jacob Smith is and was, and at all relevant times mentioned herein, an
13 individual residing in the State of California.

14 6. Plaintiffs are informed and believe, and thereupon allege, that SAGAR DINER,
15 INC. is, and at all relevant times mentioned herein, a California doing business in the State of
16 California.

17 7. Plaintiffs are informed and believe, and thereupon allege, that DEV SAGAR is, and
18 at all relevant times mentioned herein, one of the owners of Sagar Diner, Inc., and an individual
19 residing in California.

20 8. Plaintiffs are ignorant of the true names and capacities of the defendants sued herein
21 as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
22 Plaintiffs will amend this Complaint to allege the true names and capacities of the DOE defendants
23 when ascertained. Plaintiffs are informed and believe, and thereupon allege, that each of the
24 fictitiously named defendants are responsible in some manner for the occurrences, acts and
25 omissions alleged herein and that Plaintiffs' alleged damages were proximately caused by these
26 defendants, and each of them. Plaintiffs will amend this complaint to allege both the true names
27 and capacities of the DOE defendants when ascertained.

28 9. Plaintiffs are informed and believe, and thereupon allege that, at all relevant times

1 mentioned herein, some or all of the defendants were the representatives, agents, employees,
2 partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some
3 or all of the other defendants, and, in doing the things alleged herein, were acting within the course
4 and scope of such relationship and with the full knowledge, consent, and ratification by such other
5 defendants.

6 **JOINT LIABILITY ALLEGATIONS**

7 10. Plaintiffs are informed and believe and based thereon allege that all the times
8 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
9 representative, joint venture or co-conspirator of each of the other defendants, either actually or
10 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
11 employment, joint venture, and conspiracy.

12 11. Plaintiffs are informed and believe and based thereon allege that all the times
13 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
14 representative, joint venture or co-conspirator of each of the other defendants, either actually or
15 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
16 employment, joint venture, and conspiracy.

17 12. Plaintiffs are further informed and believe and based thereon allege that DEV
18 SAGAR violated, or caused to be violated, the above-referenced and below-referenced Labor Code
19 provisions in violation of Labor Code section 558.1.

20 13. As a result of the aforementioned facts, Plaintiffs are informed and believe, and
21 based thereon allege that Defendants, and each of them, are joint employers.
22

23 **FACTUAL ALLEGATIONS**

24 14. For at least four (4) years prior to the filing of this action and continuing to the
25 present, Defendants have, at times, failed to pay overtime wages to Plaintiffs and Class Members, or
26 some of them, in violation of California state wage and hour laws as a result of, without limitation,
27 Plaintiffs and Class Members working over eight (8) hours per day, forty (40) hours per week, and
28 seven consecutive work days in a work week without being properly compensated for hours worked

1 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
2 worked on the seventh consecutive work day in a work week by, among other things, failing to
3 accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay to the
4 detriment of Plaintiffs and Class Members. In addition, Defendants would also be liable for civil
5 penalties pursuant to Labor Code sections 558 and 2699.

6 15. For at least four (4) years prior to the filing of this Action and continuing to the
7 present, Defendants have, at times, failed to pay minimum wages to Plaintiffs and Class Members,
8 or some of them, in violation of California state wage and hour laws as a result of, among other
9 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
10 rate of pay that is above the minimum wage to the detriment of Plaintiffs and Class Members.
11 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1,
12 and 2699.

13 16. For at least four (4) years prior to the filing of this Action and continuing to the
14 present, Defendants have, at times, failed to provide Plaintiffs and Class Members, or some of them,
15 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than
16 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
17 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
18 for such unprovided meal periods as required by California wage and hour laws. Defendants would
19 also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

20 17. For at least four (4) years prior to the filing of this action and continuing to the
21 present, Defendants have, at times, failed to authorize and permit Plaintiffs and Class Members, or
22 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
23 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
24 California wage and hour laws. Defendants would also be liable for civil penalties pursuant to
25 Labor Code sections 558 and 2699.

26 18. For at least three (3) years prior to the filing of this action and continuing to the
27 present, Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the
28 full amount of their wages owed to them upon termination and/or resignation as required by Labor

Code sections 201 and 202, including for, without limitation, failing to pay overtime wages, minimum wages and premium wages. Defendants would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

19. For at least one (1) year prior to the filing of this Action and continuing to the present, Defendants have, at times, failed to furnish Plaintiffs and Class Members, or some of them, with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and other such information as required by Labor Code section 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with an accurate calculation of gross and gross wages earned, as well as gross and net wages paid. Defendants would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558 and 2699.

20. Plaintiffs, on their own behalf and on behalf of Class Members, brings this action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 226, 226.7, 510, 512, 558.1, 1194, 1194.2, 1197, 1197.1., 2802, and California Code of Regulations, Title 8, section 11050, seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest periods, waiting time penalties, wage statement penalties, failure to indemnify work-related expenses, other such provisions of California law, and reasonable attorneys' fees and costs.

21. Plaintiffs, on their own behalf and on behalf of Class Members, pursuant to Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as all monies owed but withheld and retained by Defendants to which Plaintiffs and Class Members are entitled, as well as restitution of amounts owed.

CLASS ALLEGATIONS

22. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure § 382, because there is a well-defined community of interest among the

persons who comprise the readily ascertainable classes defined below and because Plaintiffs are unaware of any difficulties likely to be encountered in managing this case as a class action.

23. **Relevant Time Period:** The relevant time period is defined as the time period beginning four years prior to the filing of this action until judgment is entered.

Hourly Employee Class: All persons employed by Defendants and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions in California during the **Relevant Time Period**.

Meal Period Sub-Class: All **Hourly Employee Class** members who worked in a shift in excess of five hours during the **Relevant Time Period**.

Rest Period Sub-Class: All **Hourly Employee Class** members who worked a shift of at least three and one-half (3.5) hours during the **Relevant Time Period**.

Wage Statement Penalties Sub-Class: All **Hourly Employee Class** members employed by Defendants in California during the period beginning one year before the filing of this action and ending when final judgment is entered.

Waiting Time Penalties Sub-Class: All **Hourly Employee Class** members who separated from their employment with Defendants during the period beginning three years before the filing of this action and ending when final judgment is entered.

UCL Class: All **Hourly Employee Class** members employed by Defendants in California during the **Relevant Time Period**.

Expense Reimbursement Class: All persons employed by Defendants in California who incurred business expenses during the **Relevant Time Period**.

24. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiffs reserves the right to amend or modify the class definitions with greater specificity by further division into sub-classes and/or by limitation to particular issues.

25. **Numerosity:** The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiffs do not currently know the exact number of class members, Plaintiffs are informed and believe, and thereupon allege, that the actual number exceeds the minimum required for numerosity under California law.

26. **Commonality and Predominance:** Common questions of law and fact exist as to all class members and predominate over any questions that affect only individual class members. These common questions include, but are not limited to:

- i. Whether Defendants maintained a policy or practice of failing to provide employees with their meal periods;
- ii. Whether Defendants maintained a policy or practice of failing to provide employees with their rest periods;
- iii. Whether Defendants failed to pay premium wages to class members when they have not been provided with required meal and/or rest periods;
- iv. Whether Defendants failed to pay minimum and/or overtime wages to class members as a result of policies that fail to provide meal periods in accordance with California law;
- v. Whether Defendants failed to pay minimum and/or overtime wages to class members for all time worked;
- vi. Whether Defendants used payroll formulas that systematically fail to account for non-discretionary bonuses and/or other applicable remuneration when calculating regular rates of pay for class members;
- vii. Whether Defendants failed to pay overtime wages to class members as a result of incorrectly calculating their regular rates of pay;
- viii. Whether Defendants failed to pay premium wages to class members based on their respective “regular rates of compensation” by not including commissions and/or other applicable remuneration in calculating the rates at which those wages are paid;
- ix. Whether Defendants failed to provide proportionate accruals for vested vacation time for class members as required by California law;
- x. Whether Defendants subjected the vacation time and/or floating holidays they offer to class members to forfeiture;
- xi. Whether Defendants failed to provide class members with accurate written wage statements as a result of providing them with written wage statements with inaccurate entries for, among other things, amounts of gross and net wages, and total hours worked;
- xii. Whether Defendants failed to reimburse class members for all necessary business

- 1 expenses incurred during the discharge of their duties;
- 2 xiii. Whether Defendants applied policies or practices that result in late and/or incomplete
- 3 final wage payments;
- 4 xiv. Whether Defendants are liable to class members for waiting time penalties under
- 5 Labor Code section 203;
- 6 xv. Whether class members are entitled to restitution of money or property that
- 7 Defendants may have acquired from them through unfair competition;
- 8 xvi. Whether Defendants' conduct was with malice, fraud, or oppression;
- 9 xvii. Whether Defendants' conduct was willful or reckless;
- 10 27. **Typicality**: Plaintiffs' claims are typical of the other class members' claims.

11 Plaintiffs are informed and believe, and thereupon allege, that Defendants have a policy or practice

12 of failing to comply with the Labor Code and Business and Professions Code as alleged in this

13 Complaint.

14 28. **Adequacy of Class Representative**: Plaintiffs are adequate class representatives in

15 that they have no interests that are adverse to or otherwise conflict with the interests of each other

16 and absent class members and are dedicated to vigorously prosecuting this action on their behalf.

17 Plaintiffs will fairly and adequately represent and protect the interests of the other class members.

18 29. **Adequacy of Class Counsel**: Plaintiffs' counsel are adequate class counsel in that

19 they have no known conflicts of interest with Plaintiffs or absent class members, are experienced in

20 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on

21 behalf of Plaintiffs and absent class members.

22 30. **Superiority**: A class action is vastly superior to other available means for fair and

23 efficient adjudication of the class members' claims and would be beneficial to the parties and the

24 Court. Class action treatment will allow a number of similarly situated persons to prosecute their

25 common claims simultaneously and efficiently in a single forum without the unnecessary

26 duplication of effort and expense that numerous individual actions would entail. In addition, the

27 monetary amounts due to many individual class members are likely to be relatively small and would

28 thus make it difficult, if not impossible, for individual class members to both seek and obtain relief.

Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

31. Plaintiff Zachariah Krasowski worked for Defendants as a Cook in an hourly, non-exempt employee from approximately June 1, 2022, through July 21, 2023.

32. Plaintiff Jacob Smith worked for Defendants as a Cook in an hourly, non-exempt employee from approximately November 9, 2015, through July 11, 2023.

Off-the-Clock

33. Throughout the time period involved in this case, Defendants regularly required Plaintiffs and the putative class to perform work off the clock or failed to pay them for all hours worked, including overtime.

34. Plaintiffs and the putative class regularly performed work before their scheduled work hours and were not paid for this time. Plaintiffs and the putative class were instructed to perform duties such as clean tables and clean the kitchen before they had clocked in and after they clocked out, and were not paid for the time spent performing these additional duties.

35. Defendants were aware of this practice and directed, permitted, or otherwise encouraged Plaintiffs and the putative class to perform off-the-clock work.

36. As a result of Defendants' policies and practices, Plaintiffs and the putative class were not paid for all hours worked.

Improper Rounding Practices

37. Defendants utilizes and utilized, at all relevant times herein, a rounding practice that is not and was not "fair and neutral" and that results and resulted in a failure to pay employees over a period of time.

38. Plaintiffs are informed and believe, and thereupon allege, that Defendants have not, did not, and do not keep records of actual hours worked by Plaintiffs and the putative class. In the absence of records showing actual hours worked, Plaintiffs and the putative class are unable to ascertain whether (1) Defendants' rounding practices comply with California law; (2) whether

1 Defendants' rounding practices resulted over a period of time, in failure to compensate Plaintiffs
2 and the putative class properly for all the time they actually worked; and (3) whether Plaintiffs and
3 the putative class were properly paid for all hours worked.

4 **Missed Meal Periods**

5 39. Throughout the time period involved in this case, Defendants implemented policies
6 and/or practices which failed to provide Plaintiffs and the putative class with timely and duty-free
7 meal periods. Defendants routinely failed to relieve Plaintiffs and the putative class of all duties
8 during their meal periods, regularly failed to relinquish control over Plaintiffs and the putative
9 class during their meal periods, regularly failed to permit Plaintiffs and the putative class a
10 reasonable opportunity to take their meal periods, and regularly impeded or discouraged Plaintiffs
11 and the putative class from taking thirty (30) minute uninterrupted meal breaks no later than the
12 end of their fifth hour of work and/or from taking a second thirty (30) minute uninterrupted meal
13 break no later than their tenth hour of work for shifts lasting more than ten (10) hours. Defendant
14 also failed to maintain accurate records of meal periods taken by Plaintiffs, the putative class, and
15 the Aggrieved Employees.

16 40. Throughout the time period involved in this case, Defendants did not adequately
17 inform Plaintiffs and the putative class of their right to take meal periods under California law.
18 Moreover, Defendants systematically disregarded their own written policies regarding the
19 provision and timing of meal periods for Plaintiffs and the putative class. Instead, Defendants'
20 actual policy and practice was to schedule Plaintiffs and the putative class in a way that prohibited
21 them from taking timely and duty-free meal periods, and to require Plaintiffs and the putative class
22 to work through their meal periods, for which they were not compensated.

23 41. Throughout the time period involved in this case, Defendants failed to pay Plaintiffs
24 and the putative class premium wages for meal periods that were missed, late, interrupted, or
25 shortened in violation of California law. Defendants knew or should have known that Plaintiffs and
26 the putative class were entitled to receive all meal periods or payment of one additional hour of pay
27 at their regular rate of pay when a meal period was missed, short, late, and/or interrupted.
28 Notwithstanding this knowledge, Defendants routinely failed to provide legally compliant meal

1 periods to Plaintiffs and the putative class, and routinely failed to pay one additional hour of pay to
2 Plaintiffs and the putative class at their regular rate of pay when a meal period was missed, short,
3 late, and/or interrupted.

4 **Missed Rest Periods**

5 42. Throughout the time period involved in this case, Defendants have implemented
6 policies and practices which prohibited Plaintiffs and the putative class from taking timely and
7 duty-free rest periods. Defendants regularly failed to provide, authorize, and permit Plaintiffs and
8 the putative class to take full, uninterrupted, off-duty rest periods for every shift lasting three and
9 one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest periods for every shift
10 lasting six (6) to ten (10) hours, and failed to make a good faith effort to authorize, permit, and
11 provide such rest breaks in the middle of each work period.

12 43. Throughout the time period involved in this case, Defendants did not adequately
13 inform Plaintiffs and the putative class of their right to take rest periods under California law.
14 Moreover, Defendants systematically disregarded their own written policies regarding the
15 provision and timing of rest periods for Plaintiffs and the putative class. Instead, Defendants'
16 actual policy and practice was to schedule Plaintiffs and the putative class in a way that regularly
17 prohibited them from taking timely and duty-free rest periods, and to regularly require Plaintiffs
18 and the putative class to work through their rest periods.

19 44. Throughout the time period involved in this case, Defendants failed to pay Plaintiffs
20 and the putative class premium wages for rest periods that were missed, late, interrupted, or
21 shortened in violation of California law. Defendants knew or should have known that Plaintiffs and
22 the putative class were entitled to receive all rest periods or payment of one additional hour of pay
23 at their regular rate of pay when a rest period was missed, short, late, and/or interrupted.
24 Notwithstanding this knowledge, Defendants routinely failed to authorize and permit Plaintiffs and
25 the putative class to take duty-free rest periods, and failed to pay one additional hour of pay to
26 Plaintiffs and the putative class at their regular rate of pay when a rest period was missed, short,
27 late and/or interrupted.

28 45. Throughout the time period involved in this case, Defendants regularly required
Plaintiffs and the putative class to perform work off the clock or failed to pay them for all hours

1 worked, including overtime.

2 46. Throughout the time period involved in this case, Defendants implemented policies
3 that prohibited Plaintiffs and the putative class from accurately recording the actual time worked,
4 resulting in a failure to pay Plaintiffs and the putative class all wages owed.

5 **Vacation Pay**

6 47. Plaintiffs and the putative class accrued vacation wages during their employment
7 with Defendants.

8 48. Vacation wages are considered a form of wages under Labor Code § 200. Vested
9 vacation pay and other similar forms of paid time off earned based on labor performed are
10 considered wages that cannot be subject to forfeiture without compensation for forfeited days at the
11 applicable rates required by law.

12 49. At all relevant times, Defendants maintained policies that provide for the unlawful
13 forfeiture of vested vacation pay in violation of Labor Code § 227.3 and *Suastez v. Plastic Dress-*
14 *Up Co.*, (1982) 31 Cal. 3d 774.

15 50. Plaintiffs and the putative class are entitled to vacation accrued during their
16 employment with Defendants. Upon termination, Plaintiffs and the putative class were not paid all
17 accrued vacation pay.

18 **Overtime and Regular Rate of Pay**

19 51. The regular rate of pay under California law includes all remuneration for
20 employment paid, on behalf of the employer, to the employee. This requirement includes, but is
21 not limited, to, commissions and non-discretionary bonuses.

22 52. Throughout the time period involved in this case, Plaintiffs and the putative class
23 worked more than eight (8) hours in a day, and/or forty (40) hours in a week.

24 53. Throughout the time period involved in this case, Defendants regularly failed to pay
25 all overtime compensation owed to Plaintiffs and the putative class when they worked in excess of
26 eight (8) hours in a single workday and/or forty (40) hours in a single work week, or in excess of
27 twelve (12) hours in a single workday and/or eighty (80) hours in a single work week. Defendants
28 knew or should have known that Plaintiffs and the putative class were entitled to receive certain

1 wages for overtime compensation and that they were not receiving wages for overtime
2 compensation.

3 54. Throughout the time period involved in this case, Defendants failed to pay overtime
4 to Plaintiffs and the putative class for all overtime hours worked based on regular rates of pay
5 correctly calculated to include all applicable remuneration.

6 55.

7 56. During the applicable limitations period, Defendants violated the rights of Plaintiffs
8 and the putative class under the above-referenced Labor Code sections by failing to pay them
9 overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194, and 1198
10 as a result of not correctly calculating their regular rate of pay to include all applicable
11 remuneration, including, but not limited to, non-discretionary bonuses and/or shift-differential pay.

12 **Minimum Wage**

13 57. Throughout the time period involved in this case, Defendants regularly failed to pay
14 Plaintiffs and the putative class at least minimum wages for all hours worked. Defendants knew or
15 should have known that Plaintiffs and the putative class were entitled to receive at least minimum
16 wages for all hours worked and that they were not receiving at least minimum wages for all hours
17 worked. Defendants' failure to pay minimum wages included, inter alia, failing to pay Plaintiffs
18 and the putative class at the required minimum wage pursuant to California law.

19 58. Throughout the time period involved in this case, Defendants regularly failed to pay
20 Plaintiffs and the putative class all wages owed to them upon discharge or resignation. Defendant
21 knew or should have known that Plaintiffs and the putative class were entitled to receive all wages
22 owed to them upon termination within the time permissible under California Labor Code section
23 202. Plaintiffs and the putative class did not receive payment of all final wages owed to them upon
24 discharge or resignation, including overtime compensation and minimum wages within any time
25 permissible under California Labor Code section 202.

26 **Expense Reimbursement**

27 59. Throughout the time period involved in this case, Defendants failed to reimburse
28 Plaintiffs and the putative class for all necessary business-related expenses. Defendants knew or

1 should have known that Defendants were required to reimburse Plaintiffs and the putative class for
2 all necessary business-related expenses and costs, but, in fact, failed to do so in violation of
3 California law.

4 **Wage Statements**

5 60. Plaintiffs and the putative class were not provided with accurate wage statements as
6 mandated by law pursuant to Labor Code § 226.

7 61. Defendants failed to comply with Labor Code 0167 226(a)(1) as “gross wages
8 earned” were not accurately reflected in that all hours worked, including overtime, and “off-the-
9 clock” work were not included.

10 62. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours
11 worked by the employee” were not accurately reflected in that all hours worked, including
12 overtime, and “off-the-clock” work were not included.

13 63. Defendants failed to comply with Labor Code section 226(a)(4) as “all deductions”
14 were not accurately reflected in that deductions, even “aggregated and shown as one item,” were not
15 included.

16 64. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages
17 earned” were not accurately reflected in that all hours worked, including overtime, and “off-the-
18 clock” work were not included.

19 65. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
20 hourly rates in effect during the pay period and the corresponding number of hours worked at each
21 hourly rate by the employee” were not accurately reflected in that all hours worked, including
22 overtime, and “off-the-clock” work were not included.

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PROVIDE MEAL PERIODS**

25 **(Lab. Code §§ 204, 223, 226.7, 512 and 1198)**

26 **(Plaintiffs and Meal Period Sub-Class)**

27 66. Plaintiffs incorporate by reference the preceding paragraphs as if fully alleged
28 herein.

1 67. At all relevant times, Plaintiffs and the **Meal Period Sub-Class** members have been
2 non-exempt employees of Defendants entitled to the full meal period protections of both the Labor
3 Code and the applicable Industrial Welfare Commission Wage Order (“Wage Order”).

4 68. Labor Code § 512 and § 11 of the applicable Wage Order impose an affirmative
5 obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal
6 periods of at least thirty minutes for each work period of five hours, and to provide them with two
7 uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

8 69. Labor Code § 226.7 and § 11 of the applicable Wage Order both prohibit employers
9 from requiring employees to work during required meal periods and require employers to pay non-
10 exempt employees an hour of premium wages on each workday that the employee is not provided
11 with the required meal period.

12 70. Compensation for missed meal periods constitutes wages within the meaning of
13 Labor Code § 200.

14 71. Labor Code § 1198 makes it unlawful to employ a person under conditions that
15 violate the applicable Wage Order.

16 72. Section 11 of the applicable Wage Order states:

17 “No employer shall employ any person for a work period of more than five (5)
18 hours without a meal period of not less than 30 minutes, except that when a
19 work period of not more than six (6) hours will complete the day’s work the
20 meal period may be waived by mutual consent of the employer and employee.
21 Unless the employee is relieved of all duty during a 30 minute meal period, the
22 meal period shall be considered an ‘on duty’ meal period and counted as time
worked. An ‘on duty’ meal period shall be permitted only when the nature of
the work prevents an employee from being relieved of all duty and when by
written agreement between the parties an on-the-job paid meal period is agreed
to. The written agreement shall state that the employee may, in writing, revoke
the agreement at any time.”

23 73. At all relevant times, Plaintiffs was not subject to a valid on-duty meal period
24 agreement. Plaintiffs are informed and believe that, at all relevant times, **Meal Period Sub-Class**
25 members were not subject to valid on-duty meal period agreements with Defendants.

26 74. Plaintiffs allege that, at all relevant times during the applicable limitations period,
27 Defendants maintained a policy or practice of not providing Plaintiffs and members of the **Meal**
28 **Period Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for

1 each five (5) hour work period, as required by Labor Code § 512 and the applicable Wage Order.

2 75. Plaintiffs allege that, at all relevant times during the applicable limitations period,
3 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
4 **Class** members when they worked five (5) hours without clocking out for any meal period.

5 76. Plaintiffs allege that, at all relevant times during the applicable limitations period,
6 Defendants maintained a policy or practice of automatically deducting one-half hour for a meal
7 period from the paychecks of **Meal Period Sub-Class** members on each day they worked,
8 regardless of whether or not they were able to take an uninterrupted, duty-free meal period.

9 77. Plaintiffs allege that, at all relevant times during the applicable limitations period,
10 Defendants maintained a policy or practice of not providing Plaintiffs and members of the **Meal**
11 **Period Sub-Class** with a second meal period when they worked shifts of ten or more hours and
12 failed to pay them premium wages as required by Labor Code § 512 and the applicable Wage
13 Order.

14 78. Moreover, Defendants' written policies do not provide that employees must take
15 their first meal period before the end of the fifth hour of work, that employees are entitled to a
16 second meal period if they work a shift of over ten hours, or that the second meal period must
17 commence before the end of the tenth hour of work, unless waived.

18 79. At all relevant times, Defendants failed to pay Plaintiffs and the **Meal Period Sub-**
19 **Class** members additional premium wages, and/or were not paid premium wages at the employees'
20 regular rates of pay when required meal periods were not provided.

21 80. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiffs, on behalf of themselves
22 and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon,
23 and costs of suit.

24 81. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
25 benefit doctrine, and/or the common fund doctrine, Plaintiffs, on behalf of themselves and the **Meal**
26 **Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

27 **SECOND CAUSE OF ACTION**

28 **FAILURE TO PROVIDE REST PERIODS**

(Lab. Code §§ 204, 223, 226.7 and 1198)

(Against All Defendants)

82. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

83. At all relevant times, Plaintiffs and the **Rest Period Sub-Class** members have been non-exempt employees of Defendants entitled to the full rest period protections of both the Labor Code and the applicable Wage Order.

84. Section 12 of the applicable Wage Order imposes an affirmative obligation on employers to permit and authorize employees to take required rest periods at a rate of no less than ten minutes of net rest time for each four-hour work period, or major fraction thereof, that must be in the middle of each work period insofar as practicable.

85. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers from requiring employees to work during required rest periods and require employers to pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each workday that the employee is not provided with the required rest period(s).

86. Compensation for missed rest periods constitutes wages within the meaning of Labor Code § 200.

87. Labor Code § 1198 makes it unlawful to employ a person under conditions that violate the Wage Order.

88. Plaintiffs allege that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class** with net rest period of at least ten minutes for each four-hour work period, or major fraction thereof, as required by the applicable Wage Order.

89. At all relevant times, Defendants failed to pay Plaintiffs and the **Rest Period Sub-Class** members additional premium wages when required rest periods were not provided.

90. Specifically, Defendants written policies do not provide that employees may take a rest period for each four hours worked, or major fraction thereof, nor that rest periods should be taken in the middle of each work period insofar as practicable.

91. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiffs, on behalf of themselves

1 and **Rest Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon,
2 and costs of suit.

3 92. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
4 benefit doctrine, and/or the common fund doctrine, Plaintiffs, on behalf of themselves and **Rest**
5 **Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

8 **(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

9 **(Against All Defendants)**

10 93. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

11 94. At all relevant times, Plaintiffs and **Hourly Employee Class** members are or have
12 been non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
13 applicable Wage Order.

14 95. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
15 which an employee is subject to the control of the employer, and includes all the time the employee
16 is suffered or permitted to work, whether or not required to do so."

17 96. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
18 employees at least the minimum wage set forth therein for all hours worked, which consists of all
19 hours that an employer has actual or constructive knowledge that employees are working.

20 97. Labor Code § 1194 invalidates any agreement between an employer and an
21 employee to work for less than the minimum or overtime wage required under the applicable Wage
22 Order.

23 98. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated damages
24 in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the
25 underlying unpaid minimum wages and interest thereon.

26 99. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than
27 the minimum wage required under the applicable Wage Order for all hours worked during a payroll
28 period.

1 100. Labor Code § 1197.1 provides that it is unlawful for any employer or any other
2 person acting either individually or as an officer, agent, or employee of another person to pay an
3 employee, or cause an employee to be paid, less than the applicable minimum wage.

4 101. Labor Code § 1198 makes it unlawful for employers to employ employees under
5 conditions that violate the applicable Wage Order.

6 102. Labor Code § 204 requires employers to pay non-exempt employees their earned
7 wages for the normal work period at least twice during each calendar month on days the employer
8 designates in advance and to pay non-exempt employees their earned wages for labor performed in
9 excess of the normal work period by no later than the next regular payday.

10 103. Labor Code § 223 makes it unlawful for employers to pay their employees lower
11 wages than required by contract or statute while purporting to pay them legal wages.

12 104. Labor Code § 510 and § 3 of the applicable Wage Order require employers to pay
13 non-exempt employees overtime wages of no less than one and one-half times the employees'
14 respective regular rates of pay for all hours worked in excess of eight hours in one workday, all
15 hours worked in excess of forty hours in one workweek, and for the first eight hours worked on the
16 seventh consecutive day of one workweek.

17 105. Labor Code § 510 and § 3 of the applicable Wage Order also require employers to
18 pay non-exempt employees overtime wages of no less than two times the employees' respective
19 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
20 worked in excess of eight hours on a seventh consecutive workday during the workweek.

21 106. Plaintiffs are informed and believe that, at all relevant times, Defendants have
22 applied centrally devised policies and practices to him and **Hourly Employee Class** members with
23 respect to working conditions and compensation arrangements.

24 107. At all relevant times, Defendants failed to pay hourly wages to Plaintiffs and **Hourly**
25 **Employee Class** members for all time worked, including but not limited to, overtime hours at
26 statutory and/or agreed rates.

27 108. At all relevant times during the applicable limitations period, Defendants maintained
28 a policy or practice of automatically deducting one-half hour from Plaintiffs's wages on every

1 workday for a meal period, regardless of whether or not Plaintiffs was provided with a meal period.

2 109. Plaintiffs are informed and believe that, at all relevant times during the applicable
3 limitations period, Defendants maintained a policy or practice of automatically deducting one-half
4 hour from **Hourly Employee Class** members' timecard on every workday for a meal period,
5 regardless of whether or not **Hourly Employee Class** members were provided with a meal period.

6 110. As a result of Defendants' policy or practice of automatically deducting one-half
7 hour from employees' timecards for every workday for a meal period, Plaintiffs and **Hourly**
8 **Employee Class** members were required to perform off-the-clock work that Defendants either
9 knew or should have known they were working.

10 111. At all relevant times, Defendants failed to pay hourly wages to Plaintiffs for all time
11 worked, including but not limited to, overtime wages at statutory and/or agreed rates by suffering or
12 permitting her to work during unpaid meal periods and/or failing to properly pay Plaintiffs for all
13 overtime hours worked.

14 112. Plaintiffs are informed and believe that, at all relevant times during the applicable
15 limitations period, Defendants maintained a policy or practice of not paying hourly wages to
16 **Hourly Employee Class** members for all time worked, including but not limited to, overtime hours
17 at statutory and/or agreed rates by suffering or permitting them to work during unpaid meal periods.

18 113. During the relevant time period, Defendants failed to pay Plaintiffs and **Hourly**
19 **Employee Class** members all earned wages every pay period at the correct rates, including
20 overtime rates, because Defendants directed, permitted, or otherwise encouraged Plaintiffs and
21 **Hourly Employee Class** members to perform off-the-clock work.

22 114. As a result of Defendants' unlawful conduct, Plaintiffs and **Hourly Employee Class**
23 members have suffered damages in an amount subject to proof, to the extent they were not paid the
24 full amount of wages earned during each pay period during the applicable limitations period,
25 including overtime wages.

26 115. Pursuant to Labor Code §§ 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiffs, on
27 behalf of themselves and **Hourly Employee Class** members, seeks to recover unpaid straight time
28 and overtime wages, interest thereon, and costs of suit.

1 116. The regular rate of pay under California law includes all remuneration for
2 employment paid, on behalf of the employer, to the employee. This requirement includes but is not
3 limited to, shift differential pay.

4 117. During the applicable limitations period, Defendants violated the rights of Plaintiffs
5 and **Hourly Employee Class** members under the above-referenced Labor Code sections by failing
6 to pay them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194
7 and 1198 by not correctly calculating their regular rate of pay to include all applicable
8 remuneration, including but not limited to, shift differential pay.

9 118. California law uses the terms “compensation” and “pay” interchangeably and
10 requires that all applicable remuneration be included when calculating an employee’s regular rate of
11 pay.

12 119. At all relevant times, Defendants paid Plaintiffs premium wages based on a rate of
13 compensation that did not reflect, among other things, shift differential pay, as required by Labor
14 Code § 226.7(b) and §§ 11 and 12 of the applicable Wage Order on the occasions when Defendants
15 paid him premium wages in lieu of meal and/or rest periods.

16 120. Plaintiffs are informed and believe, and thereupon allege, that, at all relevant times
17 during the applicable limitations period, Defendants maintained a policy or practice of paying
18 **Hourly Employee Class** members premium wages based on rates of compensation that have not
19 reflected shift differential pay as required by Labor Code § 226.7(b) and §§ 11 and 12 of the
20 applicable Wage Order on the occasions when Defendants paid them premium wages in lieu of
21 meal and/or rest periods.

22 121. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
23 benefit doctrine, and/or the common fund doctrine, Plaintiffs, on behalf of themselves and **Hourly**
24 **Employee Class** members, seeks to recover reasonable attorneys’ fees.

25 **FOURTH CAUSE OF ACTION**

26 **FAILURE TO PAY VACATION WAGES**

27 **(Lab. Code § 227.3)**

28 **(Against All Defendants)**

122. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

123. California Labor Code section 227.3 provides:

Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

124. At all relevant times during the applicable limitations period, Plaintiffs and members of the **Vacation Pay Class** accrued vacation time during their employment with Defendants.

125. As a result of Defendants' reimbursement policies and practices, Plaintiffs are informed and believe and thereon alleges that Defendants failed to reimburse him and **Vacation Pay Class** members for all accrued vacation wages.

126. By reason of the above, Plaintiffs and the members of the **Vacation Pay Class** are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the date of the filing of the original Complaint until the date of entry of judgment.

127. Plaintiffs, on behalf of themselves and the members of the **Vacation Pay Class**, seeks interest thereon pursuant to California Labor Code section 218.6, costs pursuant to California Labor Code section 218.6, and reasonable attorneys' fees pursuant to California Code of Civil Procedure section 1021.5.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(Against All Defendants)

128. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

129. Labor Code § 226(a) states:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an

1 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
2 worked by the employee, except as provided in subdivision (j), (3) the number of
3 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
4 rate basis, (4) all deductions, provided that all deductions made on written orders of
5 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
6 inclusive dates of the period for which the employee is paid, (7) the name of the
7 employee and only the last four digits of his or her social security number or an
8 employee identification number other than a social security number, (8) the name and
9 address of the legal entity that is the employer and, if the employer is a farm labor
10 contractor, as defined in subdivision (b) of Section 1682, the name and address of the
11 legal entity that secured the services of the employer, and (9) all applicable hourly
12 rates in effect during the pay period and the corresponding number of hours worked
13 at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
14 temporary services employer as defined in Section 201.3, the rate of pay and the total
15 hours worked for each temporary services assignment. The deductions made from
16 payment of wages shall be recorded in ink or other indelible form, properly dated,
17 showing the month, day, and year, and a copy of the statement and the record of the
18 deductions shall be kept on file by the employer for at least three years at the place of
19 employment or at a central location within the State of California. For purposes of
20 this subdivision, 'copy' includes a duplicate of the itemized statement provided to an
21 employee or a computer-generated record that accurately shows all of the information
22 required by this subdivision.

23 130. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize
24 the "detachable part of the check" provision and the "accurate itemized statement in writing"
25 provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each
26 employee retains the right to elect to receive a written paper stub or record and that those who are
27 provided with electronic wage statements retain the ability to easily access the information and
28 convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion
Letter July 6, 2006.)

131. Plaintiffs are informed and believe that, at all relevant times during the applicable
limitations period, Defendants have failed to provide **Wage Statement Penalties Sub-Class**
members with written wage statements as described above.

132. Plaintiffs are informed and believe that Defendants' failure to provide him and **Wage**
Statement Penalties Sub-Class members with accurate written wage statements were intentional in
that Defendants had the ability to provide them with accurate wage statements but had intentionally
provided them with written wage statements that Defendants knew do not comply with Labor Code
§ 226(a).

133. Plaintiffs and **Wage Statement Penalties Sub-Class** members have suffered

1 injuries, in that Defendants have violated Plaintiffs's and **Wage Statement Penalties Sub-Class**
2 members' legal rights to receive accurate wage statements and have misled them about their actual
3 rates of pay and wages earned. In addition, inaccurate information on their wage statements have
4 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and
5 mathematical computations to determine the amount of wages owed, has caused difficulty and
6 expense in attempting to reconstruct time and pay records, and/or has led to the submission of
7 inaccurate information about wages and deductions to federal and state government agencies.

8 134. Pursuant to Labor Code § 226(e), Plaintiffs, on behalf of themselves and **Wage**
9 **Statement Penalties Sub-Class** members, seeks the greater of actual damages or fifty dollars
10 (\$50.00) for the initial pay period in which a violation of Labor Code section 226(a) occurred and
11 one hundred dollars (\$100.00) for each subsequent pay period in which a violation of Labor Code §
12 226(a) occurred, not to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per class
13 member.

14 135. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
15 the common fund doctrine, Plaintiffs, on behalf of themselves and **Wage Statement Penalties Sub-**
16 **Class** members, seek awards of reasonable attorneys' fees and costs.

17 SIXTH CAUSE OF ACTION

18 FAILURE TO INDEMNIFY

19 (Lab. Code § 2802)

20 (Against All Defendants)

21 136. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

22 137. Labor Code section 2802(a) states:

23 An employer shall indemnify his or her employee for all necessary expenditures or
24 losses incurred by the employee in direct consequence of the discharge of his or her
25 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them to
be unlawful.

26 138. At all relevant times during the applicable limitations period, Plaintiffs and the
27 **Expense Reimbursement Class** members incurred necessary business-related expenses and costs.

28 139. Plaintiffs are informed and believe and thereupon alleges that the reimbursement

1 paid by Defendants was insufficient to indemnify Plaintiffs for all necessary expenses incurred in
2 the discharge of their duties.

3 140. Plaintiffs are informed and believe and thereupon alleges that the reimbursement
4 paid by Defendants was insufficient to indemnify **Expense Reimbursement Class** members for all
5 necessary business expenses incurred in the discharge of their duties.

6 141. Pursuant to Labor Code § 452, an employer is authorized to prescribe the weight,
7 color, quality, texture, style, form, and make of uniforms required to be worn by their employees.

8 142. Section 9 of the applicable Wage Order states:

9 When uniforms are required by the employer to be worn by the employee as a
10 condition of employment, such uniforms shall be provided and maintained by the
11 employer. The term 'uniform' includes wearing apparel and accessories of distinctive
12 design or color.

13 143. At all relevant times during the applicable limitations period, Defendants required
14 Plaintiffs and the **Expense Reimbursement Class** members to pay for expenses and/or losses
15 caused by Defendants' want of ordinary care. Defendants failed to indemnify Plaintiffs and
16 **Expense Reimbursement Class** members for all such expenditures.

17 144. At all relevant times during the applicable limitations period, Defendants required
18 Plaintiffs and **Expense Reimbursement Class** members to purchase and maintain uniforms and
19 apparel unique to Defendants at Plaintiffs's and **Expense Reimbursement Class** members'
20 expense. Defendants failed to indemnify Plaintiffs and **Expense Reimbursement Class** members
21 for all such expenditures.

22 145. Plaintiffs are informed and believe that, during the applicable limitations period,
23 Defendants maintained a policy or practice of not reimbursing Plaintiffs and **Expense**
24 **Reimbursement Class** members for all necessary business expenses.

25 146. Accordingly, Plaintiffs and **Expense Reimbursement Class** members are entitled to
26 restitution for all unpaid amounts due and owing within four years of the date of the filing of the
27 original Complaint and until the date of entry of judgment.

28 147. Plaintiffs, on behalf of themselves , and **Expense Reimbursement Class** members,
seeks interest thereon and costs pursuant to Labor Code § 218.6 and reasonable attorneys' fees

1 pursuant to Code of Civil Procedure § 1021.5.

2 **SEVENTH CAUSE OF ACTION**

3 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

4 **(Lab. Code §§ 201–203)**

5 **(Against All Defendants)**

6 148. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

7 149. At all relevant times, Plaintiffs and **Waiting Time Penalties Sub-Class** members
8 have been entitled, upon the end of their employment with Defendants, to timely payment of all
9 wages earned and unpaid before termination or resignation.

10 150. At all relevant times, pursuant to Labor Code § 201, employees who have been
11 discharged have been entitled to payment of all final wages immediately upon termination.

12 151. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
13 after giving at least seventy-two (72) hours' notice of resignation have been entitled to payment of
14 all final wages at the time of resignation.

15 152. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
16 after giving less than seventy-two (72) hours' notice of resignation have been entitled to payment of
17 all final wages within seventy-two (72) hours' of giving notice of resignation.

18 153. During the applicable limitations period, Defendants failed to pay Plaintiffs all of his
19 final wages in accordance with the Labor Code by failing to timely pay him all of his final wages.

20 154. Plaintiffs are informed and believe that, at all relevant times during the applicable
21 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
22 members all of their final wages in accordance with the Labor Code.

23 155. Plaintiffs are informed and believe that, at all relevant times during the applicable
24 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
25 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
26 §§ 201 or 202 by failing to timely pay them all final wages.

27 156. Plaintiffs are informed and believe and thereupon alleges that Defendants' failure to
28 timely pay all final wages to him and **Waiting Time Penalties Sub-Class** members have been

1 willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201
2 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
3 requirements.

4 157. Pursuant to Labor Code §§ 203 and 218.6, Plaintiffs, on behalf of themselves and
5 **Waiting Time Penalties Sub-Class** members, seeks waiting time penalties from the respective
6 dates that their final wages had first become due until paid, up to a maximum of thirty days, and
7 interest thereon.

8 158. Pursuant to Labor Code § 226, Code of Civil Procedure § 1021.5, the substantial
9 benefit doctrine and/or the common fund doctrine, Plaintiffs, on behalf of themselves and **Waiting**
10 **Time Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

11 **EIGHTH CAUSE OF ACTION**

12 **UNFAIR COMPETITION**

13 **(Bus. & Prof. Code §§ 17200 *et seq.*)**

14 **(Against All Defendants)**

15 159. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

16 160. Business and Professions Code § 17200 defines “unfair competition” to include any
17 unlawful business practice.

18 161. Business and Professions Code §§ 17203–17204 allow a person who has lost money
19 or property as a result of unfair competition to bring a class action in accordance with Code of Civil
20 Procedure § 382 to recover money or property that may have been acquired from similarly situated
21 persons by means of unfair competition.

22 162. California law requires employers to pay hourly, non-exempt employees for all hours
23 they are permitted or suffered to work, including hours that the employer knows or reasonably
24 should know that employees have worked.

25 163. Plaintiffs, on behalf of themselves and the **UCL Class** members, re-alleges and
26 incorporates the FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, and SEVENTH causes of
27 action herein.

28 164. Plaintiffs lost money and/or property as a result of the aforementioned unfair

1 competition.

2 165. Defendants have or may have acquired money by means of unfair competition.

3 166. Plaintiffs are informed and believe and thereupon alleges that, by committing the
4 Labor Code violations described in this Complaint, Defendants violated Labor Code §§ 215, 216,
5 225, 226.6, 354, 408, 553, 1175, 1199 and 2802. Defendants thus committed misdemeanors by
6 violating the Labor Code as alleged herein.

7 167. Defendants have committed criminal conduct through their policies and practices of,
8 *inter alia*, failing to comport with their affirmative obligations as an employer to provide non-
9 exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each
10 work period of five or more hours, by failing to pay non-exempt employees for all hours worked,

11 168. At all relevant times, Plaintiffs and **UCL Class** members have been non-exempt
12 employees and entitled to the full protections of both the Labor Code and the applicable Wage
13 Order.

14 169. Defendants' unlawful conduct as alleged in this Complaint amounts to and
15 constitutes unfair competition within the meaning of Business and Professions Code section 17200
16 *et sequitur*. Business and Professions Code §§ 17200 *et sequitur* protect against unfair competition
17 and allow a person who has suffered an injury-in-fact and has lost money or property as a result of
18 an unfair, unlawful, or fraudulent business practice to seek restitution on behalf of themselves and
19 on behalf of similarly situated persons in a class-action proceeding.

20 170. As a result of Defendants' violations of the Labor Code during the applicable
21 limitations period, Plaintiffs has suffered an injury-in-fact and has lost money or property in the
22 form of earned wages. Specifically, Plaintiffs has lost money or property as a result of Defendants'
23 conduct.

24 171. Plaintiffs are informed and believe that other similarly situated persons have been
25 subject to the same unlawful policies or practices of Defendants.

26 172. Due to the unfair and unlawful business practices in violation of the Labor Code,
27 Defendants have gained a competitive advantage over other comparable companies doing business
28 in the State of California that comply with their legal obligations.

1 173. California’s Unfair Competition Law (“UCL”) permits civil recovery and injunctive
2 relief for “any unlawful, unfair or fraudulent business act or practice,” including a practice or act
3 that violates, or is considered unlawful under, any other state or federal law.

4 174. Accordingly, pursuant to Business & Professions Code §§ 17200 and 17203,
5 Plaintiffs requests the issuance of temporary, preliminary, and permanent injunctive relief
6 enjoining Defendants, and each of them, and their agents and employees, from further violations of
7 the Labor Code and applicable Industrial Welfare Commission Wage Orders, and upon a final
8 hearing, an order permanently enjoining Defendants, and each of them, and their respective agents
9 and employees, from further violations of the Labor Code and applicable Industrial Welfare
10 Commission Wage Orders.

11 175. Pursuant to Business and Professions Code § 17203, Plaintiffs, on behalf of
12 themselves and **UCL Class** members, seeks declaratory relief and restitution of all monies
13 rightfully belonging to them that Defendants did not pay them or otherwise retained by means of its
14 unlawful and unfair business practices.

15 176. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
16 the common fund doctrine, Plaintiffs and **UCL Class** members are entitled to recover reasonable
17 attorneys’ fees in connection with their unfair competition claims.

18 **NINTH CAUSE OF ACTION**

19 **CIVIL PENALTIES**

20 **(Lab. Code §§ 2698 *et seq.*)**

21 **(Against All Defendants)**

22 177. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

23 178. During the applicable limitations period, Defendants have violated Labor Code §§
24 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1194, and 2802.

25 179. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of
26 themselves and other current and former employees, to bring a representative civil action to recover
27 civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not,
28 be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

1 180. Plaintiffs, former employees against whom Defendants committed one or more of
2 the alleged Labor Code violations during the applicable limitations period, is an aggrieved
3 employee within the meaning of Labor Code § 2699(c).

4 181. Plaintiffs have complied with the procedures for bringing suit specified in Labor
5 Code § 2699.3.

6 182. Pursuant to Labor Code sections 2699(a) and (f), Plaintiffs seek the following civil
7 penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7,
8 227.3, 510, 512, 1194, and 2802.

- 9 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 1194, 1198
10 and 2802, one hundred dollars (\$100) for each employee per pay period for
11 each initial violation and two hundred dollars (\$200) for each employee per
12 pay period for each subsequent violation (penalties set by Labor Code §
13 2699(f)(2));
- 14 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
15 thirty (30) days' pay as waiting time (penalties set by Labor Code § 256);
- 16 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
17 employee for each initial violation that was neither willful nor intentional,
18 two hundred dollars (\$200) for each employee, plus 25% of the amount
19 unlawfully withheld from each employee, for each initial violation that was
20 either willful or intentional, and two hundred dollars (\$200) for each
21 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
22 from each employee, for each subsequent violation, regardless of whether the
23 subsequent violation was either willful or intentional (penalties set by Labor
24 Code § 210);
- 25 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
26 employee for each initial violation that was neither willful nor intentional,
27 two hundred dollars (\$200) for each employee, plus twenty-five percent
28 (25%) of the amount unlawfully withheld from each employee, for each

1 initial violation that was either willful or intentional, and two hundred dollars
2 (\$200) for each employee, plus twenty-five percent (25%) of the amount
3 unlawfully withheld from each employee, for each subsequent violation,
4 regardless of whether the subsequent violation was either willful or
5 intentional (penalties set by Labor Code § 225.5);

6 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
7 citation, two hundred and fifty dollars (\$250) for each employee for each
8 violation. Alternatively, if an initial citation or its equivalent occurred before
9 the filing of this action, one thousand dollars (\$1,000) for each employee for
10 each violation (penalties set by Labor Code § 226.3);

11 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
12 employee for each initial pay period for which the employee was underpaid,
13 and one hundred dollars (\$100) for each employee for each subsequent pay
14 period for which the employee was underpaid (penalties set by Labor Code §
15 558);

16 vii. Pursuant to Labor Code § 2699(g), Plaintiffs seeks an award of reasonable
17 attorneys' fees and costs in connection with Plaintiffs's claims for civil
18 penalties.
19

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs, on behalf of themselves, all others similarly situated, and the
22 general public, pray for relief and judgment against Defendants as follows:

- 23 (1) An order that the action be certified as a class action;
- 24 (2) An order that Plaintiffs be appointed class representative;
- 25 (3) An order that counsel for Plaintiffs be appointed class counsel;
- 26 (4) Unpaid wages;
- 27 (5) Actual damages;
- 28 (6) Liquidated damages;

- 1 (7) Restitution;
2 (8) Declaratory relief;
3 (9) Pre-judgment interest;
4 (10) Statutory penalties;
5 (11) Civil penalties;
6 (12) Costs of suit;
7 (13) Reasonable attorneys' fees; and
8 (14) Such other relief as the Court deems just and proper.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs, on behalf of themselves, all other similarly situated, and the general public,
11 hereby demands a jury trial on all issues so triable.

12
13 Dated: November 21, 2023

BLUESTONE LAW

14
15
16 /s/ Rotem Tamir
17 ROTEM TAMIR
18 Attorneys for Plaintiffs
19 ZACHARIA KRASOWSKI
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PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)

I, the undersigned, 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; am employed with Bluestone Law and my business address is 7012 Owensmouth Ave., Second Floor, Canoga Park, CA 91303, Los Angeles CA, 90048. My e-mail address is rotem@bluestone.law.

On November 21, 2023, I served the foregoing document entitled **FIRST AMENDED COMPLAINT**, Case No. 23STCV22879, on all the appearing and/or interested parties in this action by placing ☐ *the original* ☒ *a true copy* thereof enclosed in sealed envelope(s) addressed as follows:

Bill Woolman
SAGASER, WATKINS & WIELAND,
PC
5260 N. Palm Ave. Ste. 400
Fresno, CA 93704
(559) 421-7000
bill@sw2law.com

Attorneys for Defendant, Sagar Diner, Inc.
and Dev Sagar.

Sagar Diner, Inc.
44816 S. Grimmer Blvd.,
Fremont, CA 94538

Defendant

☒ **[by MAIL]** - I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☒ **[by ELECTRONIC SERVICE]** - Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification address listed above.

☐ **[by PERSONAL SERVICE]** - I caused to be delivered by messenger such envelope(s) by hand to the office of the addressee(s). Such messenger is over the age of eighteen years and not a party to the within action and employed with Express Network, whose business address is 1605 W. Olympic Boulevard, Suite 800, Los Angeles, CA 90015.

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

Executed November 21, 2023, at Canoga Park, California.

Rotem Tamir

Print Name

By: /s/ Rotem Tamir

Signature