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Assigned for All Purposes
Judge Melissa R. McCormick
Dept. CX104

Attorneys for Plaintiffs and Putative Classes

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

MOISES FLORES, JOSE VALDIVIA
individually, and on behalf of all others
similarly situated,

Plaintiffs,

vs.

BEACHCOMBER AT CRYSTAL COVE,
LLC, a limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 30-2023-01356375-CU-OE-CXC

**CLASS ACTION COMPLAINT FOR
DAMAGES, INJUNCTIVE RELIEF,
DECLARATORY RELIEF, PENALTIES
AND RESTITUTION**

1. Failure to Pay Wages For All Hours Worked (Cal. Lab. Code §§ 204, 210, 218, 1194, 1194.2);
2. Failure to Pay Overtime Wages (Cal. Lab. Code §§ 218, 510, 1194);
3. Failure to Provide Mandatory Meal-and-Rest Breaks (Cal. Lab. Code §§ 226.7, 512);
4. Failure to Provide Accurate Wage Statements (Cal. Lab. Code §§ 226, 1174);
5. Waiting Time Penalties (Cal. Labor Code §§ 201-203); and
6. Violation of California's Unfair Competition Law (Cal. Business & Professions Code §§ 17200, *et seq.*).

DEMAND FOR JURY TRIAL

1 1. Plaintiffs MOISES FLORES and JOSE VALDIVIA (“Plaintiffs”), individually,
2 and on behalf of themselves and classes of those similarly situated, file this Class Action Complaint
3 against Defendants BEACHCOMBER AT CRYSTAL COVE, LLC; and DOES 1 through 50
4 (collectively, “Defendants”), and alleges as follows:

5
6 **I. INTRODUCTION AND FACTUAL BACKGROUND**

7 2. Plaintiffs bring this class action pursuant to Code of Civil Procedure § 382
8 against Defendants for, among other things: (a) nonpayment of wages (including minimum
9 wages and overtime wages); (b) nonprovision of compliant meal periods; (c) nonprovision of
10 compliant rest breaks; (d) failure to provide accurate wage statements; and (e) for failure to pay
11 all wages due upon termination of employment.

12 3. For the four years prior to the filing of this Complaint to the present including any
13 tolling (the “Class Period”), Defendants have and continue to employ non-exempt hourly
14 employees.

15 4. Plaintiffs are informed and believe, and thereon allege, that at all times herein
16 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
17 advisors knowledgeable about California labor and wage law, employment and personnel practices,
18 and about the requirements of California law.

19 5. Labor Code § 1198 provides: “The maximum hours of work and the standard
20 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
21 conditions of labor for employees. The employment of any employee for longer hours than those
22 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

23 6. In accordance with its power under section 1198, the Industrial Welfare
24 Commission adopted Wage Orders prescribing the minimum wages, maximum hours, and standard
25 conditions of employment for employees in this state.

26 7. During the relevant time period, Defendants did not authorize and permit lawful
27 meal periods and rest breaks for Plaintiffs and Class members. This was based on policies (or
28 lack thereof) as well as their practices that applied to all Class members.

1 8. Plaintiffs and Class members were regularly not provided with all compliant
2 meal periods to which they were entitled. This includes that Defendants required Plaintiffs and
3 Class members to regularly work through meal periods. This resulted in interrupted meal
4 periods that were not sufficiently long to comply with the law or a complete lack of a meal
5 period. Defendants were well aware of this, but Plaintiffs and Class members still had 30
6 minutes deducted from their daily time, despite the fact that they were working for part of or
7 all of their meal period and meal period premiums were not paid. Based on the hours worked,
8 the time spent working during meal periods (for which they were not paid) would be overtime
9 hours, and result in not only overtime wages owed but also minimum wage and liquidated
10 damages.

11 9. Furthermore, meal periods were regularly untimely or not taken at all including
12 because of the press of business and pressure of Defendants to complete tasks. In fact, to the
13 extent that meal periods were provided they were regularly well past the 5th hour. Defendant
14 also regularly changed the time of alleged meal periods in the system to make them appear
15 timely. Again, compliant meal period premiums were not paid.

16 10. Additionally, Defendants' non-exempt employees were not authorized and
17 permitted lawful rest breaks as required. Plaintiffs and Class members were not permitted or
18 authorized to take these, and in fact did not take them, due to, among other things, the press of
19 business and Defendants' requirements. Defendant was aware of this but did not pay Plaintiffs
20 and Class members a complaint rest break premium.

21 11. As such, Plaintiffs and Class members were not authorized and permitted lawful
22 meal periods and rest breaks and were not provided with one hour's wages in lieu thereof in violation
23 of, among others, California Labor Code §§ 512 and 226.7 and applicable IWC Wage Orders. This
24 has also resulted in a failure to pay for all wages for hours worked during meal periods. The
25 wages include regular time wages, overtime, and minimum wages (with its resulting liquidated
26 damages)

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1 12. Defendants' non-exempt employees were not authorized and permitted lawful meal
2 periods and rest breaks and were not provided with one hour's wages in lieu thereof, in one or more
3 of the following manners.

- 4 a. employees were regularly not authorized and permitted full and timely thirty-minute
5 meal periods for workdays in excess of five and/or ten hours and were not compensated
6 one hour's wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7,
7 512, and applicable IWC Wage Orders;
8 b. employees were regularly not authorized and permitted full and timely ten-minute rest
9 breaks for workdays in excess of four and/or eight and/or twelve hours and were not
10 compensated one hour's wages in lieu thereof, all in violation of, among others, Labor
11 Code §§ 226.7 and applicable IWC Wage Orders;
12 c. employees were required to work through their daily meal period(s) and rest break(s);
13 d. employees were required to work longer than five hours before being allowed to take a meal
14 period;
15 e. employees were required to work longer than four hours before being allowed to take a rest
16 period; and
17 f. employees were severely restricted in their ability to take a meal period or rest break.

18 13. On information and belief, Plaintiffs allege that they and the Class members did
19 not waive meal periods during the Class period.
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21 14. During the course of Plaintiffs' and Class members' employment, Defendants
22 also failed to compensate Plaintiffs and the Class members for all hours worked (including
23 minimum wage and overtime wages). This includes, as noted above, that they were required
24 to work during their meal periods, but the full thirty minutes was still deducted from their pay.

25 15. Despite Plaintiffs and Class members working in excess of eight hours per day
26 and/or 40 hours per week, they were not paid all wages, or wages at the proper rate, for this
27 time as required by Labor Code §§ 510 and 1194 in one or more of the following manners:
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1. By failing to pay for all hours worked;

2. By failing to pay for all hours worked at the appropriate rate;
3. By deducting time for meal periods during which employees were actually working;
4. By arbitrarily reducing hours worked;
5. Through failure to maintain proper records; and
6. Through other methods to be discovered.

16. Furthermore, as a result of Defendants' illegal and unlawful conduct as set forth above, Defendants have knowingly and intentionally failed to comply with the itemized wage-statement provisions and have failed to pay the damages and penalties for said violations as required by California law, including the failure to include gross and net wages earned, total hours worked and the applicable rate of pay, meal period and rest break premiums. They also failed to record hours and meal periods and maintain accurate payroll in violation of California Labor Code §§ 226 and 1198, as well as the Industrial Wage Order.

17. Furthermore, Defendants failed to timely pay for all wages owed to Class members upon termination of employment. As detailed above, Class members were not provided proper meal periods and/or rest breaks and were not provided with a one-hour penalty in lieu thereof and were not paid all wages owed.

18. As a result of the above, Defendants have also engaged in unfair, fraudulent and deceptive business practices within the meaning of the Business & Professions Code §§ 17200, *et seq.*, as further detailed below.

19. Plaintiffs, on behalf of themselves and the non-exempt employees, bring this action pursuant to California Labor Code §§ 201-203, 204, 210, 218, 226, 226.7, 510, 512, 558, 558.1, 1194, 1194.2, 1174, 1197, 1197.1 and 1198, and the applicable Industrial Welfare Commission Wage Orders ("Wage Orders"), seeking unpaid wages (including minimum and overtime wages), unpaid meal period and rest break premiums, penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

1 20. Plaintiffs, on behalf of themselves and the non-exempt employees, pursuant to
2 Business & Professions Code §§ 17200, *et seq.*, also seeks injunctive relief, and restitution, from
3 Defendants for their failure to pay the wages and penalties as set forth above.

4 **II. THE PARTIES**

5 **A. The Plaintiffs**

6 21. Plaintiff Moises Flores is a current resident of Orange County, California. He was
7 employed by Defendants during the relevant time period. He will serve as an adequate, typical and
8 active participant and class representative for the proposed Class and/or Subclasses as defined
9 herein.

10 22. Plaintiff Jose Valdivia is a current resident of Orange County, California. He was
11 employed by Defendants during the relevant time period. He will serve as an adequate, typical and
12 active participant and class representative for the proposed Class and/or Subclasses as defined
13 herein.

14 23. As detailed above, Plaintiffs were not paid for all hours, were not provided all
15 complaint meal periods, and were not authorized and permitted all and rest breaks during the Class
16 Period.

17 24. Plaintiffs reserve the right to seek leave to amend this complaint to add new
18 plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
19 *American Savings and Loan Association*, 5 Cal. 3d 864, 872 (1971), and other applicable law.

20 **B. The Defendants**

21 25. Defendants are a restaurant.

22 26. Defendants employed Plaintiffs and other non-exempt employees in California. The
23 illegal and unlawful policies and practices described herein were performed by Defendants in
24 California.

25 27. Defendant BEACHCOMBER AT CRYSTAL COVE, LLC, was and is, upon
26 information and belief, a California Limited Liability Company with the capacity to sue and to
27 be sued, and doing business, in the State of California, with a principal place of business in
28 Orange County. At all times hereinafter mentioned, Defendant BEACHCOMBER AT

CRYSTAL COVE, LLC, was an employer whose employees were engaged throughout this county and the State of California.

28. The true names and capacities, whether individual, corporate, associate or otherwise, of defendants DOES 1 through 50 are unknown to Plaintiffs, who therefore sues these defendants by fictitious names pursuant to Code of Civil Procedure § 474. Plaintiffs further allege that each of these fictitious defendants is in some manner responsible for the acts and occurrences herein set forth. Plaintiffs will amend this Complaint to show these defendants' true names and capacities when ascertained, as well as the manner in which each fictitious defendant is responsible.

29. At all times mentioned herein, the Defendants named as DOES 1-50, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured Plaintiffs and aggrieved employees in the State of California.

30. At all times mentioned herein, each Defendant was the agent, servant, or employee of the other Defendants and in acting and omitting to act as alleged herein did so within the course and scope of that agency or employment.

III. JURISDICTION AND VENUE

31. The unlawful acts alleged herein arise under the laws of the State of California and have a direct effect on Plaintiffs and other employees who work and/or performed work within the State of California.

32. Business & Professions Code § 17204 provides that any person acting on his or his own behalf may bring an action in a court of competent jurisdiction.

33. The Orange County Superior Court has personal jurisdiction over Defendants because: (1) they operate within this County; (2) are qualified with the California Secretary of State to do business and is doing business in California, and in this County; and (3) because many of the acts complained of occurred and arose in California, and specifically, this County. Additionally, each is either a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

34. Venue as to Defendants is proper in this judicial district, pursuant to Code of Civil Procedure § 395, as one or more of the named Defendants reside, transact business, or have offices in this county and the acts and omissions alleged herein took place in this county.

IV. CLASS ACTION ALLEGATIONS

35. Plaintiffs are non-exempt employees who were employed by Defendants during the Class Period.

36. Plaintiffs bring this action individually, as well as on behalf of each and all other persons similarly situated in a concerted effort to improve wages and working conditions for other non-exempt and/or hourly employees, and thus seek class certification under Code of Civil Procedure § 382.

37. The proposed Class consists of and is defined as:

All individuals (a) who are currently or formerly employed by Defendants and performed work in California as non-exempt hourly employees or similar job position, job title, job code, job classification, or job description, and (b) who were subject to Defendants' illegal policies and practices as alleged herein during the Class Period.

38. The proposed sub-classes consist of and are defined as:

UNPAID WAGE SUBCLASS: All members of the Class who Defendants failed to pay an hourly wage for each hour worked during the Class Period.

OVERTIME SUB-CLASS: All members of the Class who were not paid overtime compensation for all hours worked in excess of eight hours per day and/or 40 hours per week.

MEAL PERIOD SUB-CLASS: All members of the Class who were not authorized and permitted to take a 30-minute, uninterrupted meal period for every five hours worked per day, and were not compensated one hour's pay for each day on which such meal period was not authorized and permitted.

REST BREAK SUB-CLASS: All members of the Class who were not authorized and permitted to take a 10-minute, uninterrupted rest break for every four hours worked per day, or major fraction thereof, and were not compensated one hour's pay for each day on which such rest break was not authorized and permitted.

1 WAGE STATEMENT SUBCLASS: All members of the Class that
2 Defendants did not provide accurate itemized wage statements showing
3 all hours actually worked, all wages earned, meal period and rest break
premiums and the applicable rates of pay during the Class Period.

4 WAITING TIME SUB-CLASS: All members of the Class who, at any
5 time after the date three years prior to the filing of this Complaint,
6 separated their employment from Defendants and were not paid wages
within the times specified by Labor Code §§ 201-203 and are owed
restitution for waiting time penalties deriving from wages.

7 UCL SUBCLASS: All members of the Class who, during the Class
8 Period, are owed restitution of unpaid wages resulting from Defendants'
9 systematic violations of California's Labor Code and the Wage Orders.

10 39. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or
11 necessary to amend the definition of the Subclasses and reserves the right to do so. In any
12 event, Plaintiffs will formally define and designate a class definition at such time when
13 Plaintiffs seek to certify the Class or Subclasses defined herein.

14 40. At all material times, Plaintiffs were members of the Class.

15 41. There is a well-defined community of interest in the litigation and the Class is
16 readily ascertainable:

- 17 a. Numerosity: The members of the class (and each subclass, if any) are so numerous
18 that joinder of all members would be unfeasible and impractical. The membership
19 of the entire class is unknown to Plaintiffs at this time; however, the class is
20 estimated to be greater than one hundred (100) individuals and the identity of such
21 membership is readily ascertainable by inspection of Defendants' employment
22 records.
- 23 b. Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect the
24 interests of each class member with whom there is a shared, well-defined
25 community of interest. Plaintiffs' claims (or defenses, if any) are typical of all Class
26 members as demonstrated herein.
- 27 c. Adequacy: Plaintiffs are qualified to, and will, fairly and adequately protect the
28 interests of each Class member with whom there is a shared, well-defined

1 community of interest and typicality of claims, as demonstrated herein. Plaintiffs
2 acknowledge that Plaintiffs have an obligation to make known to the Court any
3 relationship, conflicts or differences with any Class member. Plaintiffs' attorneys,
4 the proposed Class counsel, are well versed in the rules governing class action
5 discovery, certification, and settlement.

6 d. Superiority: The nature of this action makes the use of class action adjudication
7 superior to other methods. A class action will achieve economies of time, effort,
8 and expense as compared with separate lawsuits, and will avoid inconsistent
9 outcomes because the same issues can be adjudicated in the same manner and at the
10 same time for the entire class.

11 e. Public Policy Considerations: Employers in the State of California violate
12 employment and labor laws every day. Current employees are often afraid to assert
13 their rights out of fear of direct or indirect retaliation. Former employees are fearful
14 of bringing actions because they believe their former employers might damage their
15 future endeavors through negative references and/or other means. Class actions
16 provide the Class members who are not named in the complaint with a type of
17 anonymity that allows for the vindication of their rights at the same time as their
18 privacy is protected.

19 f. Manageability of Class and Common Proof: The nature of this action and the
20 nature of laws available to Plaintiffs make use of the class action format and
21 procedure a particularly efficient and appropriate procedure to afford relief to
22 Plaintiffs and members of the Class for the wrongs alleged herein. Specifically,
23 liability will turn on Defendants' own uniform, systematic practices of failing
24 to properly pay their employees, failing to provide lawful meal periods and
25 authorize and permit lawful rest breaks in violation of California law during the
26 Class Period. Therefore, the wage violations are predominant questions of fact
27 that are easily capable of being determined through manageable devices of
28 common proof, such as statistical random sampling, survey evidence based on

1 scientific principles, representative testimony, documentary evidence and
2 common practices/procedures of Defendants in treating each of the members of
3 the Class as a homogeneous group. Once the predominant issues of wage
4 compliance are determined, then each of the derivative subclass claims and
5 damages suffered by each member of the Class will be capable of being shown
6 by several means of common proof and limited by individual showings of
7 entitlement to recovery that can be professionally administered and tailored to
8 the facts and circumstances of the case.

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10 42. There are common questions of law and fact as to the Class (and each subclass, if
11 any) that predominate over questions affecting only individual members, including but not
12 limited to:

- 13 a. Whether Defendants' failure to pay wages, without abatement or reduction, in
14 accordance with the California Labor Code, was willful;
- 15 b. Whether Defendants deprived Plaintiffs and Class members of lawful meal periods
16 or one hour of pay in lieu thereof or required Plaintiffs and Class members to work
17 during meal periods without compensation;
- 18 c. Whether Defendants deprived Plaintiffs and Class members of lawful rest breaks or
19 one hour of pay in lieu thereof;
- 20 d. Whether Defendants' conduct was willful or reckless;
- 21 e. Whether Defendants violated Labor Code § 226 by failing to timely furnish
22 Plaintiffs and Class members with accurate wage statements;
- 23 f. Whether Defendants failed to timely pay all wages due to Plaintiffs and Class
24 members upon their discharge or resignation;
- 25 g. Whether Defendants violated Labor Code § 204/210 by failing to pay employees all
26 wages due;
- 27 h. Whether Defendants engaged in unfair business practices in violation of California
28 Business & Professions Code § 17200, et seq.;

- i. Whether the members of the Class are entitled to compensatory damages, and if so, the means of measuring such damages;
- j. Whether the members of the Class are entitled to injunctive relief;
- k. Whether the members of the Class are entitled to restitution; and
- l. Whether Defendants are liable for attorneys' fees and costs to the extent permitted by California law.

43. Class certification is appropriate under Cal. Civ. Proc. Code § 382 because questions of law and fact common to the Class and Subclasses predominate over any questions affecting only individual members of the Class and Subclasses of this litigation. Defendants' policies and practices unlawfully treated members of the Class and Subclasses in a uniform fashion. The damages suffered by individual members of the Class and Subclasses are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

44. Class certification is also appropriate pursuant to Cal. Civ. Proc. Code § 382 because Defendants have acted or refused to act on grounds generally applicable to the Class, making appropriate declaratory relief with respect to and the Class and Subclasses as a whole.

45. Plaintiffs intend to send notice to all members of the Class and Subclasses to the extent required by law and each will be given an opportunity to opt out of the proceedings.

46. Defendants have willfully refused to pay Plaintiffs and the members of the Class the required compensation for all hours worked (including minimum wage, overtime, and meal period and rest break premiums at the correct rate,) and failed to keep complaint records as required by law.

47. Defendants' company-wide policies and practices violate California law as pled herein. Plaintiffs seek declaratory relief, wages, premium wages for meal period and rest break violations, liquidated damages, and other damages and penalties as permitted by California law, interest, and attorneys' fees and costs.

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1 55. Labor Codes §§ 218.5, 218.6, 1194(a) and 1194.2(a) provide that an employee
2 who has not been paid the legal wage may recover the unpaid balance and together with
3 attorney's fees and costs of suit, as well as liquidated damages in an amount equal to the wages
4 unpaid and interest thereon.

5 56. At all relevant times herein, Defendants were required to compensate Plaintiffs
6 and the members of the Class for all hours worked pursuant to Labor Code § 1194.

7 57. By uniformly failing to track and record all of the hours worked by Plaintiffs
8 and members of the Class, requiring them to work off the clock, and deducting a full thirty
9 minutes for meal periods when a shorter time had been taken (or no meal period at all),
10 Defendants were able to skim wages from employees by not paying them a separate hourly
11 wage for each and every hour worked as required by California law. Through this unlawful
12 and illegal policy and practice, Defendants have failed to pay Plaintiffs and the Class all wages
13 owed to them.

14 58. By the course of conduct set forth above, Defendants failed to pay all wages and
15 violated the minimum wage requirements as set forth in Labor Code §§ 218 and 1194.

16 59. Plaintiffs are informed and believe and based thereupon allege that the result of
17 the unlawful and illegal policy and practice caused damage in the nonpayment of minimum and
18 regular wages to themselves and the proposed Class and/or Unpaid Wage Subclass, in an
19 amount according to proof at trial.

20 60. Plaintiffs are informed and believe that the nonpayment of wages is fixed and
21 ascertainable on a class wide basis such that prejudgment interest on those wages is
22 recoverable.

23 61. As a direct and proximate result of Defendants' unlawful conduct, as set forth
24 herein, Plaintiffs and the Class Members have sustained damages, including loss of earnings,
25 in an amount to be established at trial, plus prejudgment interest pursuant to statute.

26 62. Pursuant to Labor Code sections 1194, Plaintiffs and the proposed Class and/or
27 Unpaid Wage Subclass are entitled to, and seek to, recover unpaid minimum wage and overtime
28 compensation, and other unpaid wages, plus interest, penalties, attorneys' fees and costs, and
liquidated damages in an amount equal to the amount unlawfully unpaid according to Labor

Code § 1194.2. The specific amounts are to be determined at trial.

SECOND CAUSE OF ACTION

(Failure to Pay Overtime Wages)

(Labor Code §§ 510 and 1194)

(Brought by Plaintiffs on Behalf of Themselves And Members of the Class Against All Defendants)

63. Plaintiffs reallege and incorporate by this reference each of the preceding and foregoing paragraphs as if fully set forth herein.

64. Plaintiffs seek to represent the proposed Class or, in the alternative, the Overtime Subclass as a basis to enforce equal or greater protections for wages owed that are offered by California law. Because the practices alleged herein are uniform, systematic and continuous and affect each proposed member of the Class in a legally identical way, Plaintiffs, at the appropriate time will move to certify the Class or Overtime Subclass to the extent permitted by Cal. Civ. Proc. Code § 382.

65. Plaintiffs and the Class were at all times subject to California's laws and regulations protecting the employees' entitlement to be paid and presumption to be paid overtime wages for requisite hours worked beyond a normal workday or a normal work week, as specified, without limitation, by Cal. Labor Code §§ 510, 1194 and the Wage Orders.

66. California law requires employers, such as Defendants, to pay overtime compensation to all nonexempt employees for all hours worked over 40 hours per week or over 8 hours per day. Labor Code § 204 establishes the fundamental right of all employees in the State of California to be paid wages, including straight time and overtime, in a timely fashion for their work. This precludes any waiver for unpaid due and owing wages that remain unpaid at the time of separation.

67. Labor Code § 510(a) states in pertinent part: "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee." In addition, Labor Code § 510(a) provides that "[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an

employee.”

68. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the hours set by the IWC.

69. As set forth above, Plaintiffs and the members of the Class were entitled to be paid overtime compensation for all overtime hours worked. Plaintiffs, and members of the Class, were regularly required to work overtime during the Class Period, but were not paid for all overtime hours worked (including for time worked during short or missed meal periods when the full 30 minutes was deducted).

70. During the Class Period, Defendants did not pay Plaintiffs and members of the Class overtime pay for all overtime hours worked.

71. As a direct and proximate result of Defendants’ unlawful conduct as set forth herein, Plaintiffs and members of the Class have sustained damages, including loss of earnings for unpaid overtime hours worked, in an amount to be established at trial, prejudgment interest, and costs and attorneys’ fees, pursuant to California law.

THIRD CAUSE OF ACTION

(Failure to Provide Compliant Meal-and-Rest Break)

(Labor Code §§ 226.7, 512, and Industrial Wage Order)

(Brought by Plaintiffs on Behalf of Themselves And Members of the Class Against All Defendants)

72. Plaintiffs reallege and incorporate by this reference each of the preceding and foregoing paragraphs as if fully set forth herein.

73. Labor Code § 226.7(b) provides that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the [IWC] ...”

74. Labor Code 512(a) provides that “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more

1 than six hours, the meal period may be waived by mutual consent of both the employer and
2 employee.”

3 75. Labor Code § 512(a) further provides that “[a]n employer may not employ an
4 employee for a work period of more than 10 hours per day without providing the employee with a
5 second meal period of not less than 30 minutes, except that if the total hours worked is no more than
6 12 hours, the second meal period may be waived by mutual consent of the employer and the
7 employee only if the first meal period was not waived.”

8 76. Labor Code § 516 provides that the IWC may adopt or amend working condition
9 orders with respect to meal periods for any workers in California consistent with the health and
10 welfare of those workers.

11 77. The Wage Order provides that “[u]nless the employee is relieved of all duty during
12 a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted
13 as time worked.” “An ‘on duty’ meal period shall be permitted only when the nature of the work
14 prevents an employee from being relieved of all duty and when by written agreement between the
15 parties an on-the-job paid meal period is agreed to. The written agreement shall state that the
16 employee may, in writing, revoke the agreement at any time.”

17 78. The Wage Order further provides that “[i]f an employer fails to provide an employee
18 a meal period in accordance with the applicable provisions of this order, the employer shall pay the
19 employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that
20 the meal period is not provided.”

21 79. The members of the Class consistently worked over 5 hours per shift and therefore
22 were entitled to a meal period of not less than 30 minutes prior to exceeding 5 hours of work, and
23 the same applies to shifts over 10 hours.

24 80. Throughout the Class Period, Defendants failed to consistently allow and provide
25 the meal periods required by applicable California law, including the Wage Orders. Plaintiffs and
26 the members of the Class regularly worked a full day and did not receive proper meal periods (as
27 detailed above). Instead, Plaintiffs and Class members were required and/or encouraged to shorten,
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1 work through or miss their meal periods, were prevented from taking them until past the 5th hour/10th
2 hour, or had their meal periods interrupted or limited.

3 81. Defendants failed to provide Plaintiffs and the members of the Class compliant meal
4 periods as required by law or compensate them at one hour of “premium wage” at the employee’s
5 regular rate of pay for each day that a meal period was not authorized, permitted or otherwise
6 compliant with California law.

7 82. The members of the Class did not waive their meal periods by mutual consent with
8 Defendants or otherwise.

9 83. The members of the Class did not enter into any written agreement with Defendants
10 agreeing to an on-the-job paid meal period.

11 84. Similarly, Plaintiffs and members of the Class were entitled to be authorized and
12 permitted paid, duty-free, uninterrupted 10-minute rest periods for every four hours worked (or
13 every major fraction thereof)

14 85. Plaintiffs and the members of the Class regularly worked shifts in excess of four
15 hours without being permitted the opportunity to take a paid rest period of at least ten (10)
16 consecutive minutes, uninterrupted, relieved of all job duties; worked more than six (6) hours at a
17 time without being allowed a second paid ten (10) consecutive minute, uninterrupted, rest period,
18 relieved of all job duties; worked shifts in excess of ten hours without being allowed a third paid ten
19 (10) consecutive minute, uninterrupted, rest period, relieved of all job duties.

20 86. Defendants failed to authorize and permit Plaintiffs and the members of the Class to
21 take adequate rest periods as required by law or compensate them at one hour of “premium wage”
22 at the employee’s regular rate of pay for each day that a rest period was not authorized, permitted or
23 otherwise compliant with California law.

24 87. Plaintiffs and the members of the Class are therefore entitled to payment of
25 additional wages as provided by law.

26 88. Defendants failed to comply with the required meal period and rest break laws
27 established by Labor Code §§ 226.7, 512, 516 and the Wage Orders.
28

1 89. Therefore, the members of the Class or, in the alternative, the Meal Period Subclass
2 and the Rest Period Subclass, were effectively deprived of their legally requisite meal-and-rest
3 periods.

4 90. Under the Wage Order– which states “[i]f an employer fails to provide an employee
5 a meal or rest ... period in accordance with a state law ..., the employer shall pay the employee one
6 additional hour of pay at the employee’s regular rate of compensation for each workday that the
7 meal or rest ... period is not provided” – the members of the Meal Period and Rest Break Subclasses
8 are entitled to damages in an amount equal to one additional hour of pay at each employee’s regular
9 rate of compensation for each work day that the meal or rest period was not provided, in a sum to
10 be proven at trial.

11 91. Pursuant to Labor Code § 218.6 and Civil Code § 3287, the members of the Meal
12 Period Subclass and the Rest Period Subclass seek recovery of prejudgment interest on all amounts
13 recovered herein.

14 92. Plaintiffs limit the recovery of “premium wages” to one hour of pay per day for each
15 day that a meal period was not authorized, permitted or otherwise compliant with California law,
16 and one hour of pay for each day that a rest period was not authorized, permitted or otherwise
17 compliant with California law for each employee at their respective regular rate of pay, as set forth
18 in the Division of Labor Standards Enforcement Policy Manual guidelines, for a maximum recovery
19 of two premium wage payments per employee per day.
20

21 **FOURTH CAUSE OF ACTION**

22 **(Failure to Provide Accurate Wage Statements)**

23 **(Labor Code §§ 226, 1174, 1174.5, and Industrial Wage Order)**

24 **(Brought by Plaintiffs on Behalf of Themselves And Members of the Class Against All** 25 **Defendants)**

26 93. Plaintiffs reallege and incorporate by this reference each of the preceding and
27 foregoing paragraphs as if fully set forth herein.

28 94. Defendants knowingly and intentionally failed to provide accurate, itemized wage
statements including, *inter alia*, total hours worked, gross and net wages earned (including minimum

1 wage and overtime), meal period and break premiums in accordance with Labor Code § 226(a).

2 95. Labor Code § 226(a) states, in pertinent part, that “[e]very employer shall,
3 semimonthly or at the time of each payment of wages, furnish each of his or his employees, either
4 as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when
5 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
6 gross wages earned, (2) total hours worked by the employee ..., (5) net wages earned, (6) the
7 inclusive dates of the period for which the employee is paid ..., and (9) all applicable hourly rates
8 in effect during the pay period and the corresponding number of hours worked at each hourly rate
9 by the employee ...”

10 96. Labor Code § 226 (e)(1) states that “[a]n employee suffering injury as a result of a
11 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover
12 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
13 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
14 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
15 costs and reasonable attorney’s fees.”

16 97. Labor Code § 226(e)(2)(B) states “[a]n employee is deemed to suffer injury for
17 purposes of this subdivision if the employer fails to provide accurate and complete information as
18 required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot
19 promptly and easily determine from the wage statement alone one or more of the following: (i) The
20 amount of the gross wages or net wages paid to the employee during the pay period or any of the
21 other information required to be provided on the itemized wage statement pursuant to items (2) to
22 (4), inclusive, (6), and (9) of subdivision (a). (ii) Which deductions the employer made from gross
23 wages to determine the net wages paid to the employee during the pay period.”

24 98. Labor Code § 226(e)(2)(C) defines “promptly and easily determine” to mean “a
25 reasonable person would be able to readily ascertain the information without reference to other
26 documents or information.”

27 99. Labor Code § 226(e)(3) states that the phrase “knowing and intentional failure”
28 “does not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake.”

1 100. From the outset, Defendants have failed to comply with Labor Code § 226. As a
2 matter of common policy and practice, Defendants did not include the non-exempt hourly
3 employees' "corresponding number of hours worked at each hourly rate by the employee." In
4 addition, the wage statements distributed to Plaintiffs and members of the Class did not contain all
5 wages earned (including minimum wage, overtime and meal period and rest break premiums).
6 Defendants' knowing, and intentional omissions caused Plaintiffs and members of the Class to suffer
7 "injury" by, among other things, impeding them from knowing the amount of wages to which they
8 are and were entitled.

9 101. At all times relevant herein, Defendants failed to maintain records of hours worked
10 by Plaintiffs and the members of the Class as required under Labor Code § 1174(d).

11 102. Plaintiffs and members of the California Class seek (i) injunctive relief requiring
12 Defendants to comply with Labor Code §§ 226(a) and 1174(d), (ii) the amounts provided under
13 Labor Code §§ 226(e) and 1174.5, including the greater of all actual damages or \$50 for the initial
14 pay period in which a violation occurs and \$100 per employee for each violation in a subsequent
15 pay period, and (iii) attorneys' fees and costs.

16
17 **FIFTH CAUSE OF ACTION**

18 **(Failure to Timely Pay All Wages Due Upon Separation)**

19 **(Labor Code §§ 201, 202, and 203)**

20 **(Brought by Plaintiffs on Behalf of Themselves And Members of the Class Against All**
21 **Defendants)**

22 103. Plaintiffs reallege and incorporate by this reference each of the foregoing paragraphs
23 as if fully set forth herein.

24 104. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
25 due within the time specified by law. California Labor Code § 203 provides that if an employer
26 willfully fails to timely pay such wages, the employer must continue to pay the subject employees'
27 wages until the back wages are paid in full or an action is commenced, up to a maximum of 30 days
28 of wages.

105. All members of the Class who ceased employment with Defendants are entitled to unpaid compensation, but to date have not received such compensation.

106. More than 30 days have passed since certain members of the Class left Defendants' employ.

107. As a consequence of Defendants' willful conduct in not paying compensation for all hours worked, the members of the Class whose employment ended during the Class Period are entitled to 30 days' wages under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

SIXTH CAUSE OF ACTION

(Violation of California's Unfair Competition Law)

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

(Brought by Plaintiffs on Behalf of Themselves And Members of the Class Against All Defendants)

108. Plaintiffs reallege and incorporate by this reference each of the foregoing paragraphs as if fully set forth herein.

109. Defendants' failure to pay all wages (including minimum wage and overtime wages), failure to pay compliant premium wages for noncompliant meal periods and rest breaks constitute unlawful activity, acts and practices that are prohibited by Business & Professions Code §§ 17200, *et seq.* The actions of Defendants described above constitute unfair, fraudulent and deceptive business practices, within the meaning of Business and Professions Code §§ 17200, *et seq.* Defendants have violated multiple provisions of California law and provisions of the Wage Orders, which has the same force and effect of a violation of law. This includes, without limitation, California Labor Code §§ 201-203, 204, 210, 218, 226, 226.7, 510, 512, 558, 558.1, 1194, 1194.2, 1174, 1197, 1197.1 and 1198 which serve as statutory predicates for which restitution and disgorgement are owed by Defendants.

110. Plaintiffs and members of the UCL Subclass are entitled to an injunction, restitution, and other equitable relief against such unlawful practices in order to prevent future damage, for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits.

111. As a result of these unlawful acts, Defendants have reaped and continue to reap unfair benefits and illegal profits at the expense of Plaintiffs and the members of the Class that Plaintiffs seeks to represent. Defendants should be enjoined from this activity and make restitution for these ill-gotten gains to restore to Plaintiffs and the members of the Class the wrongfully withheld wages, pursuant to Business & Professions Code § 17203, and specific performance of payment of penalties ordered under Business and Professions Code § 17202.

112. Plaintiffs are informed and believe, and based thereon allege, that Defendants are unjustly enriched through the acts described above and that he and the Class have and continue to suffer irreparable prejudice by Defendants' unfair practices. Further, by engaging in such activities, Defendants are illegally operating at an advantage to other law-abiding employers in the State of California and underpaying payroll and other applicable taxes that are collected by the State and local governmental entities in California.

113. The illegal conduct alleged herein is continuing, and there is no indication that Defendants will not continue such activity into the future. Plaintiffs allege that if Defendants are not enjoined from the conduct set forth in this Complaint, it will continue to fail to pay all wages, premium wages for meal-and-rest violations, comply with the legal requirements addressed above, and paying appropriate taxes, insurance, and unemployment withholdings.

114. Plaintiffs will request that the Court issue a preliminary and permanent injunction prohibiting Defendants from continuing to fail to fully pay all appropriate hourly and overtime rates of pay, and all wages due at termination, and requiring Defendants to provide accurate hourly wage statements.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of himself and all members of the Class and Subclasses he seeks to represent, prays for relief as follows:

1. For an order certifying the First through Sixth causes of action and maintaining said causes of action as a class action pursuant to Cal. Civ. Proc. Code § 382 on behalf of the members of the Class and/or Subclasses who were either employed or who performed work here in the State of California within the Class Period and that

notice of the pendency of this action be provided to members of the Class;

2. Designation of Plaintiffs as the Class Representative for the Class and/or Subclasses and Plaintiffs' attorneys as Class Counsel for the Class and/or Subclasses;
3. A declaratory judgment that the practices complained of herein are unlawful under appropriate state law;
4. Appropriate equitable relief to remedy Defendants' violations of California law including, but not necessarily limited to, an order enjoining Defendants from continuing their unlawful practices;
5. For an award of unpaid wages and liquidated damages in an amount equal to the amount unlawfully unpaid pursuant to Labor Code §§ 1194 and 1194.2;
6. For an award of unpaid overtime wages pursuant to Labor Code §§ 510 and 1194;
7. All appropriate California statutory penalties and civil penalties;
8. Compensation at the rate of one hour of regular pay for each instance in which a member of the Class had non-compliant meal periods;
9. Compensation at the rate of one hour of regular pay for each instance in which a member of the Class had non-compliant rest breaks;
10. Labor Code § 203 penalties;
11. Damages and penalties pursuant to Labor Code §§ 226(a);
12. For an order that Defendants make restitution to Plaintiffs and the Class due to their unlawful business practices, including unlawfully-collected compensation pursuant to Business & Professions Code §§ 17203 and 17204;
13. Pre-judgment and post-judgment interest, as provided by law;
14. Such other equitable relief as the Court may deem just and proper; and
15. Attorneys' fees and costs of suit, including expert fees and fees pursuant to, among others, California Labor Code §§ 218.5, 226, 1194, Code of Civil Procedure § 1021.5, and other applicable California laws.

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Dated: October 16, 2023

By: Ian M. Silvers
 Ian M. Silvers
 Farid Masoud
 Attorneys for Plaintiffs and Putative Classes