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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

SYDNEY HOUSER, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

THE FISH HOUSE VERA CRUZ, INC., a
California Corporation; and DOES 1 to 100,

Defendants.

) CASE NO. 37-2023-00045659-CU-OE-NC
)
) CLASS ACTION
)
) Judge: Cynthia A. Freeland
)
) FIRST AMENDED COMPLAINT
)
) 1. Violation of Unfair Competition Law
) 2. Failure to Provide Meal Breaks
) 3. Failure to Provide Rest Breaks
) 4. Work Expense Reimbursement Violations
) 5. Violation of Labor Code §§ 351 and 353
) 6. Waiting Time Penalty
) 7. Wage Statement Penalty
) 8. PAGA

Action filed: October 20, 2023

1 Plaintiff, Sydney Houser, on behalf of herself and all others similarly situated and the
2 general public, hereby complains against The Fish House Vera Cruz, Inc. (hereinafter referred to as
3 “Fish House”), and DOES 1 to 100, as follows:

4 **GENERAL ALLEGATIONS**

5 **JURISDICTION**

6 1. This is a civil action seeking recovery of unpaid wages under California Labor Code
7 §§ 203, 210, 226, 226.7, 351, 353, 512, 558, 1194, 1197.1, 1198, 2698, 2699, and 2802. The Plaintiff
8 for herself and on behalf of all others similarly situated, brings an action for monetary damages for
9 failure to pay wages as well as for injunctive relief, declaratory relief and restitution for Defendant’s
10 violations of Business and Professions Code (B&PC) §17200, et seq., including full restitution of all
11 compensation retained by Defendant, as a result of its unlawful, fraudulent and unfair business
12 practices. Plaintiff seeks all available relief, including full damages, full restitution and/or
13 disgorgement of all revenues, earnings, profits, compensation and benefits retained by Defendant as
14 a result of its unlawful, unfair business practices. Plaintiff will amend this complaint to add a PAGA
cause of action once the administrative prerequisites have expired.

15 **VENUE**

16 2. Venue as to the Defendant is proper in San Diego County pursuant to California Code
17 of Civil Procedure (CCP) §§ 395(a) and 395.5, as at least some of the acts complained of herein
18 occurred in the County of San Diego. Defendant either owns or maintain offices, transacts business,
19 has an agent or agents within the County of San Diego, or otherwise is found within the County of
20 San Diego, and Defendant is within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Sydney Houser is an individual over the age of eighteen (18). At all relevant times
23 herein, Plaintiff Houser was and currently is a resident of the County of San Diego.

24 4. Plaintiff is informed and believes and thereon alleges that at all times mentioned
25 herein, Defendant The Fish House Vera Cruz is a corporation based in San Diego County.

26 5. Plaintiff is informed and believes and thereon alleges that at all times mentioned
27 herein, Defendant and each of them listed herein are professional entities licensed to do business in
28 California.

1 6. Plaintiff is informed and believes and thereon alleges that at all relevant times each
2 Defendant was licensed to do business in the County of San Diego with its principal place of business
3 in San Diego County.

4 7. Further, Defendant is and was the employer of the Plaintiff and the Class during the
5 Class Period. During the liability period, Defendant employed Plaintiff and similarly situated non-
6 exempt hourly employees and due to Defendant's uniform payroll practices, failed to pay Plaintiff
7 and Plaintiff Class for all time worked due to failing to provide compliant meal and rest periods or
8 payment for non-compliant breaks, failed to reimburse Plaintiff and Plaintiff Class for out of pocket
9 reasonable and necessary expenses paid for training and uniform expenses, and failed to provide
10 accurate wage statements. On information and belief and based thereon, Plaintiff alleges that
11 Defendant is conducting business in good standing in California.

12 8. Plaintiff is informed and believes and thereon alleges that Defendant and DOES 1 to
13 100, control and operate business and establishments in locations within the State of California,
14 including, but not limited to, the County of San Diego. Thus, each named Defendant and DOES 1
15 to 100 are subject to B&PC §17200, et seq. (Unfair Competition Law) and the Labor Code as
16 hereinafter alleged.

17 9. Plaintiff does not know the true names or capacities, whether individual, partner, or
18 corporate, of Defendant sued herein as DOES 1 to 100, inclusive, and for that reason, said Defendants
19 are sued under such fictitious names, and Plaintiff will amend this Complaint when such true names
20 and capacities are discovered. Plaintiff is informed and believes and thereon alleges that each
21 Defendant and each fictitious Defendant, whether individual, partners, or corporate, was responsible
22 in some manner for the circumstances alleged herein, and proximately caused Plaintiff and all others
23 similarly situated to be subjected to the unlawful employment practices, wrongs, injuries and
24 damages complained of herein.

25 **PRIVATE ATTORNEY GENERAL ALLEGATIONS**

26 10. Plaintiff on behalf of herself and all others similarly situated, filed this cause of action
27 acting as a private attorney general under the Unfair Competition Law.

28 11. B&PC §17200, et seq., often referred to as the Unfair Competition Law, prohibits
unfair competition, which is defined to include any unlawful, unfair, or fraudulent business act or
practices. Defendant has instituted and implemented unlawful wage-and-hour policies, which

1 constitute unfair, unlawful, or fraudulent business acts or practices within the State of California.
2 Any person that has suffered injury may initiate an action to enforce B&PC §17200. The court is
3 authorized to order injunctive relief, declaratory relief, and restitution to those affected..

4 12. Plaintiff is entitled to an award of attorneys' fees and costs in prosecuting this action
5 as a private attorney general against Defendant under CCP §1021.5 based in part on the following:

6 a. A successful outcome in this action will result in the enforcement of
7 important rights affecting the public interest by maintaining the integrity of entities that employ
8 employees;

9 b. This action will result in a significant benefit to the general public by ceasing
10 unlawful, unfair and deceptive activity, and by causing the return of ill-gotten gains obtained by
11 Defendant through their failure to properly pay their employees;

12 c. Unless this action is prosecuted, people will not recover monies wrongfully
13 taken from them, and many employees and consumers would not be aware that they were
14 victimized by Defendant's wrongful acts and practices; and unless attorneys' fees and costs are
15 awarded against Defendant, the people will not be made whole.

16 CLASS REPRESENTATIVE

17 13. The class representative Plaintiff who worked in the position of non-exempt hourly
18 employee, while employed by Defendant within the State of California, is Sydney Houser.

19 CLASS ACTION ALLEGATIONS

20 14. Plaintiff brings this action on behalf of herself and all others similarly situated as a
21 class action pursuant to CCP §382. The Classes which Plaintiff seeks to represent are composed of
22 and defined as follows:

23 **Class Definition:**

24 All non-exempt hourly employees who worked for Defendant in California at least one (1)
25 day at any time from four (4) years preceding the filing of this Complaint through the date of the
26 class certification order.

27 **Class 1:**

28 All non-exempt hourly employees who worked for Defendant at least one (1) day in
California at any time from four (4) years preceding the filing of this Complaint through the date of
the class certification order, and who were not provided legally-compliant meal periods ("Meal

1 Break Class”).

2 **Sub-Class 1:**

3 All non-exempt hourly employees who worked for Defendant at least one (1) day in
4 California at any time from four (4) years preceding the filing of this Complaint through the date of
5 the class certification order, who were required to remain on premises for their meal period. (“On-
6 Premises Meal Break Sub-Class”).

7 **Class 2:**

8 All non-exempt hourly employees who worked for Defendant at least one (1) day in
9 California at any time from four (4) years preceding the filing of this Complaint through the date of
10 the class certification order, who were not reimbursed for reasonable and necessary out-of-pocket
11 expenses required in order to perform their job. (“Reimbursement Class”).

12 **Class 3:**

13 All non-exempt hourly employees who worked for Defendant at least one (1) day in
14 California at any time from four (4) years preceding the filing of this Complaint through the date of
15 the class certification order, who had any portion of their tips withheld or unpaid by Defendant.
16 (“Tip Class”).

17 **Class 4:**

18 All non-exempt hourly employees who worked for Defendant at least one (1) day in
19 California at any time from three (3) years preceding the filing of this Complaint through the date
20 of the class certification order, who are no longer employed by Defendant and were not paid all
21 their earned wages. (“Waiting Time Penalty Class”). (This is a derivative class for all classes and
22 sub-classes).

23 **Class 5:**

24 All non-exempt hourly employees who worked for Defendant at least one (1) day in
25 California at any time from one (1) year preceding the filing of this Complaint through the date of
26 the class certification order who were provided a paystub (a.k.a. wage statement) from Defendant
27 (“Pay Stub Class”). (This is a stand-alone and derivative class for all classes and sub-classes).

28 **Class 6:**

All non-exempt hourly employees who worked for Defendant at least one (1) day in
California at any time from four (4) years preceding the filing of this Complaint through the date of

1 the class certification order, and who were not provided legally-compliant rest periods (“Rest Break
2 Class”).

3 **Sub-Class 2:**

4 All non-exempt hourly employees who worked for Defendant at least one (1) day in
5 California at any time from four (4) years preceding the filing of this Complaint through the date of
6 the class certification order, who were required to remain on premises for their rest breaks. (“On-
7 Premises Rest Break Sub-Class”).

8 15. The members of the classes are so numerous that joinder of all members would be
9 unfeasible and not practicable. The membership of the classes is unknown to Plaintiff at this time;
10 however, it is estimated that the classes number greater than 50 individuals. The identity of such
11 membership is readily ascertainable via inspection of Defendants’ employment records.

12 16. There are common questions of law and fact as to Plaintiff and all others similarly
13 situated which predominate over questions affecting only individual members including, without
14 limitation to:

- 15 i. Whether Defendant improperly retained, appropriated or deprived Plaintiff
16 of the use of monies or sums to which Plaintiff was legally entitled;
- 17 ii. Whether Defendant engaged in unfair business practices;
- 18 iii. Whether Defendant, and each of them, were participants in the alleged
19 unlawful conduct;
- 20 iv. Whether Defendant’s conduct was willful or reckless;
- 21 v. The effect upon and the extent of injuries suffered by Plaintiff and all others
22 similarly situated and the appropriate amount of compensation;
- 23 vi. The appropriate amount of monetary penalties allowed by Labor Code
24 §§201, et. seq. and 226;
- 25 vii. Whether Defendant violated Labor Code §226 and relevant IWC Wage
26 Orders;
- 27 viii. Whether Defendant knowingly and intentionally failed to maintain records
28 for Plaintiff and members of the Plaintiff class as required by Labor Code §
1174 and §7 of the IWC Order 5-2001 and its successors;
- ix. Whether Defendant willfully violated provisions of the California Labor

1 Code;

2 x. Whether Defendant withheld tips from Plaintiff and Plaintiff Class;

3 xi. Whether Defendant fails to reimburse Plaintiff and the classes for their out-
4 of-pocket costs to purchase items required to perform their job, such as
5 training and uniforms; and

6 xii. Whether Defendant is subject to civil penalties pursuant to Labor Code
7 §§2699, et seq.;

8 17. Plaintiff's claims are typical of the claims of all members of the classes and subclasses
9 mentioned herein. Plaintiff, as representative party, will fairly and adequately protect the interest of
10 the classes by vigorously pursuing this suit through her attorneys who are skilled and experienced in
11 handling matters of this type. Plaintiff has no claims or interests that are antagonistic to any class
12 member.

13 18. The nature of this action and the nature of laws available to the members of the classes
14 identified herein make use of the class action format a particularly efficient and appropriate procedure
15 to afford relief to Plaintiff for the wrongs alleged herein. Further, this claim involves one large
16 employer, Defendant, and a large number of individual employees (Plaintiff and all others similarly
17 situated) with many relatively small claims with common issues of law and fact. If each employee
18 were required to file an individual lawsuit, the corporate Defendant would necessarily gain an
19 unconscionable advantage since it would be able to exploit and overwhelm the limited resources of
20 each individual Plaintiff with their vastly superior financial and legal resources. Requiring each class
21 member to pursue an individual remedy would also discourage the assertion of lawful claims by
22 employees who would be disinclined to pursue an action against their present and/or former employer
23 for an appreciable and justifiable fear of retaliation and permanent damage to their careers at present
24 and/or subsequent employment. Proof of a common business practice or factual pattern, of which
25 the named Plaintiff experienced, is representative of the class mentioned herein and will establish the
26 right of each of the members of the named class to recovery on the causes of action alleged herein.

27 19. The prosecution of separate actions by the individual class members, even if possible,
28 would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the
individual class members against Defendant herein; and which would establish potentially
incompatible standards of conduct for Defendant; and/or (b) legal determinations with respect to

1 individual class members which would, as a practical matter, be dispositive of the interest of the
2 other class members not parties to adjudications or which would substantially impair or impede the
3 ability of the class members to protect their interests. Further, the claims of the individual members
4 of the class are not sufficiently large to warrant vigorous individual prosecution considering all of
5 the concomitant costs and expenses attending thereto.

6 20. Plaintiff and all others similarly situated are entitled to the wages and other monies
7 unlawfully withheld.

8 **FIRST CAUSE OF ACTION**

9 **(Violation of B&PC §17200, et seq.)**

10 21. Plaintiff re-alleges and incorporates by reference herein the allegations of all
11 preceding paragraphs as though fully set forth herein.

12 22. Beginning on an exact date unknown to Plaintiff, Defendant has engaged in a pattern
13 and practice of acts of unfair competition in violation of B&PC §17200, including the practices
14 alleged herein.

15 **VIOLATION OF MEAL PERIOD PROVISIONS**

16 23. Defendant's improper meal policies are in violation of California law including, but
17 not limited to Labor Code § 226.7, 512, and IWC Wage Order 5-2001. The Plaintiff and the members
18 of the class are entitled to a half hour meal period for every five (5) hours of their shift worked.
19 Defendant violated the meal break provisions and did not provide Plaintiff and the class with duty
20 free meal periods. Plaintiff and the class were entitled to one (1) hour of pay for each meal break
21 violation at their regular rate of pay. Plaintiff believes and thereon alleges that Defendant failed to
22 pay Plaintiff and the putative class members missed meal period payments at the regular rate and had
23 a policy and practice of interrupting and/or requiring Plaintiff and the class to remain on premises
24 for their meal periods, thereby creating an on-duty meal without any agreement.

25 24. Defendant failed to provide, impeded and/or discouraged Plaintiff and others from
26 taking timely meal breaks of not less than thirty (30) minutes as required by the Labor Code during
27 the relevant class period.

28 **FAILURE TO PERMIT AND AUTHORIZE REST PERIOD BREAKS**

25 25. Plaintiff and all others similarly situated, during their employment by Defendant,
including within the Class Period, were entitled to the benefits of Labor Code §226.7 and IWC Wage

1 Order 5-2001. Pursuant to Labor Code §226.7 and IWC Wage Order 5-2001, Plaintiff and all others
2 similarly situated were entitled to separate rest periods of at least 10 minutes for each four (4) hour
3 period of work or major fraction thereof, and one hour of additional pay for every shift a rest period
4 was not provided in conformance with this obligation.

5 26. Plaintiff is informed and believes, and thereon alleges that Defendant failed to provide
6 suitable rest areas for Plaintiff and the class. Plaintiff and the class were essentially always on call
7 and as a result would have to respond to customers while on break. Further, Plaintiff and the class
8 were not allowed to leave the work premises unless clocked out. Thus, they were subject to
9 Employer's control during the rest breaks.

10 **FAILURE TO PAY ALL WAGES DUE TO TIP POOLING**

11 27. Plaintiff re-alleges and incorporates by reference herein the allegations of all
12 preceding paragraphs as though fully set forth herein.

13 28. Throughout the applicable time period, Plaintiff and the aggrieved employees were
14 denied benefits and protections of the California Labor Code and IWC Wage Orders and were
15 damaged thereby.

16 29. Defendant failed to provide Plaintiff and other non-exempt employees with all tips
17 due and owing to them, in violation of Labor Code section 351. The violations were caused, in part,
18 by Defendant's illegal "tip pooling" system, whereby Defendant and its agents would improperly
19 collect, withhold, and/or take a portion of the gratuities from the gratuities paid, given to, or left for
20 the employees. Defendant and its agents would also fail to timely provide for the remuneration of
21 gratuities provided via credit or debit card. Defendant also failed to keep accurate records of all
22 gratuities received, in violation of Labor Code section 353.

23 **FAILURE TO REIMBURSE**

24 30. Defendants further adopted, implemented and enforced a uniform policy and practice
25 of failing to reimburse Plaintiff for reasonable and necessary out-of-pocket expenses. Plaintiff and
26 the class were required to pay for their own training and uniforms, without reimbursement by
27 Defendants. Thus, Defendants are in violation of Labor Code §2802.

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1 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

2 31. Plaintiff is informed and believes and thereon alleges that as part of Defendant's
3 ongoing unfair business practices, Defendant, and each of them, fails to provide its employees with
4 proper and understandable itemized wage statement, as required by Labor Code § 226.

5 32. Plaintiff is informed, and believes, and thereon alleges, that Defendant, and each of
6 them, fail to provide each employee with an itemized statement which states the actual regular rate
7 paid, the actual total hours worked by the employee, the net wages earned, and all applicable hourly
8 rates in effect during the pay period and the corresponding number of hours worked at each hourly
9 rate by the employee.

10 **VIOLATION OF LABOR CODE § 201, ET SEQ.**

11 33. Plaintiff is informed and believes and thereon alleges that as part of Defendant's
12 ongoing unfair business practices, Defendant failed to provide all hourly employees all wages at the
13 time of their separation in violation of Labor Code § 201, et. seq. This is a derivative claim in that
14 all hourly employees who are no longer employed by Defendant who establish liability on any claim
alleged in this action are entitled to recover under Labor Code §203.

15 34. Labor Code § 201, et seq. provides that an employer is required to pay an employee
16 all wages (including accrued vacation) within twenty-four (24) hours of the employee's involuntary
17 separation from employment; within twenty-four (24) hours of his or her voluntary separation if the
18 employee gave at least seventy-two (72) hours' notice, and within seventy-two (72) hours, if the
19 employee voluntarily separated, but did not give at least seventy-two (72) hours' notice.

20 35. Plaintiff is informed and believes and thereon alleges that all employees who have
21 been separated from Defendant did not timely receive a final paycheck detailing the proper amount
22 of wages from Defendant in violation of Labor Code § 201, et. seq.

23 36. Pursuant to Labor Code § 201, et seq. employees that no longer work for Defendant,
24 and who were not timely paid, are entitled to one (1) day of pay in penalties for each day that he or
25 she was paid late, until payment was made, up to a maximum of thirty (30) days.

26 37. Plaintiff seeks restitution for all the aforementioned violations.

27 38. Defendant, and each of them, have engaged in unfair business practices in California
28 by practicing, employing and utilizing the employment practices complained of herein. Defendant's
use of such practices constitutes an unfair business practice, unfair competition, and provides an

1 unfair advantage over Defendant's competitors. Plaintiff and the putative class seek full restitution
2 of said monies, as necessary and according to proof, to restore any and all monies withheld and/or
3 acquired by Defendant by means of the unfair business practices complained of herein. Plaintiff
4 seeks on behalf of all current and former employees of Defendant, restitution of said monies. Plaintiff
5 further seeks on behalf of the Plaintiff and the putative class, the appointment of a receiver, as
6 necessary, to establish the total restitutionary relief from Defendant. The restitution includes all
7 wages withheld by Defendant as a result of the unfair business practices, including interest thereon.
8 Absent a statutory provision specifically governing the type of claim at issue, the prejudgment
9 interest rate is 10 percent.

10 39. Plaintiff is informed and believes and thereon alleges that at all times herein
11 mentioned, Defendant has engaged in unlawful, deceptive, and unfair business practices prohibited
12 by California B&PC §17200, thereby depriving their employees and the putative class the minimum
13 working condition, standards and conditions due to them under the California labor laws and
14 Industrial Welfare Commission wage orders as specifically described herein. Plaintiff further seeks
15 an order requiring Defendant to identify by full name, telephone number, and last known address
16 employees who worked or still work for Defendant from four (4) years preceding the filing of the
17 Complaint through the date of judgment; Plaintiff further seeks an order requiring Defendant to
18 timely pay restitution to all current and former employees, including back wages, and interest. The
19 acts complained of herein occurred, at least in part, within the last four (4) years preceding the filing
20 of the original Complaint.

21 40. By and through its unfair, unlawful, and/or fraudulent business practices and acts
22 described herein, Defendant has obtained valuable services from Plaintiff and all persons similarly
23 situated and has deprived Plaintiff and all persons similarly situated of valuable rights and benefits
24 guaranteed by law, all to their detriment.

25 41. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled to
26 and do seek such relief as may be necessary to restore to them the money and property which
27 Defendant has acquired, or of which Plaintiff and class members have been deprived by means of
28 the herein described unfair, unlawful, and/or fraudulent business practices.

42. Plaintiff, and all persons similarly situated, and all persons in interest, are further
entitled to and do seek a declaration that the above-described business practices are unfair, unlawful,

1 and/or fraudulent, and injunctive relief restraining Defendant from engaging in any of the herein
2 described unfair, unlawful, and/or fraudulent business practices at all times in the future.

3 43. Plaintiff requests attorney's fees and costs pursuant to Code of Civil Procedure
4 §1021.5 since this action is brought to vindicate important rights of a large class and the public.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PROVIDE MEAL BREAKS**

7 44. Plaintiff incorporates by reference as if fully set forth herein, the allegations of
8 paragraphs above.

9 45. Labor Code §226.7 requires an employer to pay an additional hour of compensation
10 for each meal period the employer fails to provide. Plaintiff alleges that Defendant failed to provide
11 legally compliant meals in addition to impeding, discouraging and/or dissuading employees from
12 taking legally compliant meal periods. Employees are entitled to a meal period of at least thirty (30)
13 minutes per five (5) hour work period. Plaintiff and the class consistently worked over five (5) hour
14 shifts without meal periods due to Defendant's policy of discouraging, dissuading and/or impeding
15 Plaintiff and the class from taking meal periods. Plaintiff and the class were scheduled by Defendant
16 in such a way that they were not able to take compliant meal breaks and complete their tasks for the
17 day. Pursuant to the Code, Plaintiff and the class are entitled to a meal period of not less than thirty
(30) minutes prior to exceeding five (5) hours of employment.

18 46. Defendant failed to provide, impeded and/or discouraged Plaintiff and others from
19 taking timely meal breaks of not less than thirty (30) minutes as required by the Labor Code during
20 the relevant class period. Further, Defendant had a practice that required Plaintiff and the Class to
21 remain on premises and/or would interrupt Plaintiff and the class such that their meals were on-duty.

22 47. Pursuant to Labor Code §226.7, Plaintiff is entitled to damages in an amount equal to
23 one (1) hour of wages at the employee's regular rate per missed meal break, in a sum to be proven at
24 trial.

25 **THIRD CAUSE OF ACTION**

26 **FAILURE TO ALLOW REST BREAKS PURSUANT TO LABOR CODE §226.7**

27 **(Against All Defendants)**

28 48. Plaintiff re-alleges and incorporates by reference as if fully set forth herein, the
aforementioned allegations.

1 49. The Plaintiff alleges that Defendant has violated Labor Code §§226.7 & the applicable
2 Wage Order. Section 226.7 of the Labor Code requires an employer to pay an additional hour (1) of
3 compensation for each rest period the employer fails to provide. Hourly non-exempt employees are
4 entitled to a paid ten (10) minute rest break for every four (4) hours worked or major fraction thereof.
5 The Defendant's policy discourages, dissuades, and prevents all hourly non-exempt employees from
6 taking a duty-free rest period break for any work period that is greater than two (2) hours up to four
7 (4) hours. Plaintiff and the class consistently worked over four (4) hours per shift with no duty-free,
8 off-premises rest breaks, due to Defendants' policy of discouraging, dissuading and/or preventing
9 hourly employees from taking said breaks off-premises.

10 50. Pursuant to Labor Code §226.7, Plaintiff and the class are entitled to damages in an
11 amount equal to one (1) hour of wages at the hourly non-exempt regular rate of pay per rest break
12 violation, in a sum to be proven at trial.

13 **FOURTH CAUSE OF ACTION**

14 **Work Expense Reimbursement Violations**

15 **(Violation of Labor Code § 2802)**

16 **Against All Defendants**

17 51. Plaintiff re-alleges and incorporates by reference herein, the allegations of all
18 preceding paragraphs as though fully set forth herein.

19 52. Labor Code § 2802(a) requires "[a]n employer [to] indemnify his or her employee for
20 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge
21 of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful,
22 unless the employee, at the time of obeying the directions, believed them to be unlawful."

23 53. Defendant and each of them maintained and enforced a policy requiring non-exempt
24 hourly employees to incur out of pocket expenses in connection with their employment, including
25 but not limited to out-of-pocket expense for her training and uniform expenses.

26 54. Despite requiring Plaintiff and Class members to use and incur costs associated with
27 their employment, Defendants failed to reimburse Plaintiff and the Class members for the costs of
28 such equipment.

 55. Accordingly, Plaintiff and the class members are entitled to full compensation for out-
of-pocket costs for training and uniforms at the direction of Defendant, in an amount to be proven at

1 trial, plus attorney fees, costs of suit, and interest, pursuant to Labor Code § 2802.

2 **FIFTH CAUSE OF ACTION**

3 **Violation of Labor Code sections 351 and 353 (Improper “Tip Pooling”)**

4 56. Plaintiff re-alleges and incorporates by reference herein the allegations of all
5 preceding paragraphs as though fully set forth herein.

6 57. Throughout the applicable time period, Plaintiff and the aggrieved employees were
7 denied benefits and protections of the California Labor Code and IWC Wage Orders) and were
8 damaged thereby. Plaintiff brings this action under the UCL as referenced above and under the
9 PAGA once the time period for administrative prerequisites expires.

10 58. Plaintiff believes that Defendant failed to provide Plaintiff and other non-exempt
11 employees with all tips due and owing to them, in violation of Labor Code section 351. The
12 violations were caused, in part, by Defendant’s illegal “tip pooling” system, whereby Defendant and
13 its agents would improperly collect, withhold, and/or take a portion of the gratuities from the
14 gratuities paid, given to, or left for the employees. Defendant and its agents would also fail to timely
15 provide for the remuneration of gratuities provided via credit or debit card. Defendant also failed to
16 keep accurate records of all gratuities received, in violation of Labor Code section 353.

17 59. As a direct result of Defendant’s failure to comply with the foregoing provisions of
18 the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
19 proven at trial.

20 60. Plaintiff has incurred and continues to incur legal expenses and attorneys’ fees.
21 Plaintiff is presently unaware of the precise amount of these expenses and fees and prays for leave
22 of court to amend this Complaint when the amounts are fully known.

23 **SIXTH CAUSE OF ACTION**

24 **FAILURE TO PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES**

25 **WAITING TIME PENALTIES (Labor Code §§201-203)**

26 61. Labor Code §201 states that an employer is required to provide an employee who is
27 terminated all unpaid wages immediately upon termination.

28 62. Plaintiff is informed and believes and thereon alleges that Defendant failed to pay
Plaintiff all wages due and owing immediately upon termination, thereby violating Labor Code §201.

63. Labor Code §202 states, in pertinent part, that an employer is required to provide an employee who quits his or her employment all wages due and owing not later than 72 hours thereafter.

64. Plaintiff is informed and believes and thereon alleges that Defendant and each of them failed to pay Plaintiff all wages due and owing upon voluntary resignation, thereby violating Labor Code §202.

65. Labor Code §203 states that if an employer willfully fails to pay an employee wages according to Labor Code §§201 and 202, these wages shall continue as a penalty for up to a maximum of 30 days.

66. Defendant willfully withheld paying Plaintiff's wages thereby violating Labor Code §203. As such, Defendant is required to pay Plaintiff a 30-day wage penalty in addition to all unpaid wages as described herein.

67. Accordingly, Plaintiff and the Waiting Time Penalty Class members are entitled to attorneys' fees, and costs, pursuant to Labor Code § 203 and prejudgment interest.

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

PURSUANT TO LABOR CODE §226

Against All Defendants

68. Plaintiff re-alleges and incorporates by reference herein the allegations of all preceding paragraphs as though fully set forth herein. The applicable Wage Order provides:

Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. Subsection (e) provides: "Any employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an award of costs and reasonable attorney's fees."

69. During the Class Period, Defendant knowingly and intentionally failed to provide Plaintiff and the class with timely and accurate wage statements showing gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity employing that Class Member, the inclusive dates of the period for which the employee is paid, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate by that Class Member. Additionally, Plaintiff alleges that Defendant's pay stubs failed to list the correct rates as there are no payments for missed meal or rest period violations.

70. Defendant thus required Plaintiff and the class to work under conditions prohibited by order of the Industrial Welfare Commission, in violation of those orders.

71. The Class Members, including Plaintiff, suffered injury as a result of Defendants' knowing and intentional failure to provide the Class Members, including Plaintiff, with the wage and hour statements required by law, as Plaintiff and the class were unable to tell from looking at their pay stubs if they were being paid properly.

72. Based on Defendants' conduct as alleged herein, Defendants are liable for actual damages, statutory damages and/or statutory penalties pursuant to Labor Code §226, attorney's fees and costs.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES UNDER LABOR CODE §§ 2698-2699

73. Plaintiff re alleges and incorporates each and every one of the allegations of all preceding paragraphs contained in paragraphs, inclusive of this Complaint, as if fully set forth herein.

74. Labor Code §§2698, 2699, the Labor Code Private Attorney General Act of 2004, provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code, may be recovered through a civil action by an aggrieved employee on behalf of himself or herself, and collectively on behalf of all other current or former employees.

75. Whenever the LWDA, or any of its departments, divisions, commissions, boards agencies or employees, has discretion to assess a civil penalty, a court in a civil action is authorized

1 to exercise the same discretion, subject to the same limitations and conditions to assess a civil
2 penalty.

3 76. Plaintiff, and all hourly non-exempt employees of Defendants are "aggrieved
4 employees" as defined by Labor Code §2699, in that they are all current or former employees of
5 Defendants, and one or more of the alleged violations was committed against them.

6 77. Prior to filing this Complaint, Plaintiff gave written notice to the LWDA on or about
7 October 11, 2023, via mandatory online filing through the State of California LWDA/ Department
8 of Industrial Relations website with a copy to the employer via certified mail, of the specific
9 provisions of this code alleged to have been violated, including listing some facts and some
10 theories to support the alleged violations as required by Labor Code §2699.3; A true and correct
11 copy of the letter is attached hereto as **Exhibit 1**. Plaintiff alleges that she has exhausted all
12 administrative remedies and filed the herein complaint 65 days after mailing said notice. At the
13 date of filing this Complaint, the LWDA has not responded with any intention to investigate. As
14 such, Plaintiff has exhausted her administrative requirements pursuant to Labor Code §2699.3(a)(1)
and (2) (A-C).

15 78. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of
16 themselves and other current or former employees, to bring a civil action to recover civil penalties
17 pursuant to the procedures specified in Labor Code § 2699.3.

18 79. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiff and the aggrieved employees
19 are entitled to recover civil penalties for each of the Defendant's violations of Labor Code §§ 201,
20 202, 203, 204, 226, 226.7, 510, 512, and 1194, 1197, and 1198 during the applicable limitations
21 period in the following amounts:

22 a. For violations of California Labor Code § 204, one hundred dollars (\$100.00)
23 for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for
24 each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld
25 from each aggrieved employee for each subsequent, willful or intentional violation (penalty
26 amounts established by California Labor Code § 210).

27 b. For violations of Labor Code § 226(a), two hundred fifty dollars (\$250.00) per
28 employee for initial violation and one thousand dollars (\$1,000.00) per employee for each
subsequent violation (penalty amounts established by Labor Code § 226.3).

1 c. For violations of Labor Code § 512, fifty dollars (\$50.00) for each aggrieved
2 employee for each initial violation for pay period for which the employee was underpaid in
3 addition to an amount sufficient to recover unpaid wages and one hundred dollars (\$100.00)
4 for each underpaid employee for each pay period for which the employee was
5 underpaid (penalty amounts established by Labor Code § 558).

6 d. For violations of Labor Code § 1197, one hundred dollars (\$100.00) for each
7 aggrieved employee for each initial and intentional violation per pay period (regardless of
8 whether the initial violations were intentionally committed) and two hundred fifty dollars
9 (\$250.00) for each aggrieved employee for each subsequent violation per pay period
10 (regardless of whether the initial violations were intentionally committed), in addition to an
11 amount sufficient to recover unpaid wages, liquidated damages pursuant to Labor Code §
12 1194.2, and applicable penalties imposed pursuant to Labor Code § 203.

13 e. For violations of Labor Code §§ 201, 202, 203, and 226.7, one hundred dollars
14 (\$100.00) for each aggrieved employee per pay period for each initial violation and two
15 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
16 violation (penalty amounts established by Labor Code § 2699(f)(2)).

17 f. Penalties under Code of Regulations, Title 8 §11070 or other applicable Code
18 of Regulations in the amount of \$50 for each aggrieved employee per pay period for the initial
19 violation, and \$100 for each aggrieved employee per pay period for each subsequent
20 violation;

21 g. Penalties under Labor Code §210, in addition to and entirely independent
22 and apart from other penalty provided in the Labor Code, in the amount of \$100 for
23 each aggrieved employee per pay period for each violation, and \$200 for each aggrieved
24 employee per pay period for each subsequent violation, plus 25% of the wage wrongly
25 withheld;

26 h. Penalties under Labor Code §256, in addition to and entirely independent
27 and apart from other penalty provided in the Labor Code, including Labor Code
28 §2699, et seq., for any aggrieved employee who was discharged or quit, and was not paid all
earned wages at termination in accordance with Labor Code §§201, 201.1, 201.5, 202, and

1 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each day that
2 he or she was paid late, until payment was/is made, up to a maximum of thirty (30) days;

3 i. Penalties under Labor Code §558, in addition to and entirely independent
4 and apart from other penalty provided in the Labor Code, in the amount of \$50 for
5 each underpaid aggrieved employee for each pay period the aggrieved employee was
6 underpaid, and \$100 for each subsequent violation for each underpaid employee for each pay
7 period for which the employee was underpaid pursuant to Labor Code §558 provided to the
8 affected employees;

9 j. Penalties under Labor Code §226.3, in addition to and entirely independent
10 and apart from other penalty provided in the Labor Code, in the amount of \$250 for each
11 aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved
12 employee per pay period for each subsequent violation;

13 k. Any and all additional penalties and sums as provided by the Labor Code
14 and/or other statutes.

15 l. Penalties under Labor Code section 210 for the weekly pay violations.

16 80. Pursuant to Labor Code §2699(g), Plaintiff and the aggrieved employees are entitled
17 to an award of civil penalties, reasonable attorney's fees and costs in connection with their claims
18 for civil penalties.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays:

21 1. That the Court determine this action may be maintained as a class action;

22 **As to the First Cause of Action:**

23 2. For an order preliminarily and permanently enjoining Defendant from engaging in
24 the practices challenged herein;

25 3. An order for full restitution of all monies, as necessary and according to proof, to
26 restore any and all monies withheld by the Defendants by means of the unfair practice complained
27 of herein. Plaintiff seeks, on behalf of the putative class, the appointment of a receiver, as
28 necessary. The restitution includes all monies retained as wages, as defined in Labor Code §§ 200,
et seq., 510, and 1194, and interest, and attorneys' fees as a result of the unfair business practices or
retained in violation of Labor Code §1198 and IWC Wage Order 5-2001;

1 4. For an order finding and declaring that Defendants' acts and practices as challenged
2 herein are unlawful, and unfair and/or fraudulent;

3 5. For an accounting, under administration of Plaintiff and subject to Court Review, to
4 determine the amount to be returned by Defendants and the amounts to be refunded to members
5 who are or were not paid all their wages due to Defendants' unfair business practices;

6 6. For the creation of an administrative process wherein each injured current and
7 former employee receives his or her back wages in the form of overtime pay or alternatively that
8 each current or former eligible employee may submit a claim in order to receive his/her money;

9 7. For an order requiring Defendants to make full restitution and payment pursuant to
10 B&PC Sections 17200, et seq. for unfair business practices that violate Labor Code §§ 200, et seq.,
11 510, and 1194;

12 8. For reasonable attorneys' fees under Code of Civil Procedure §1021.5 all other
13 appropriate declaratory and equitable relief;

14 9. For pre-judgment interest to the extent permitted by law;

15 10. For pre-judgment interest to the extent permitted by law and the California
16 Constitution;

17 11. For an order requiring Defendants to identify, by name, address and telephone
18 number of each person who worked as an hourly non-exempt employee for Defendants from four
19 (4) years before filing of the original complaint in this action through the time of judgment;

As to the Second Cause of Action:

20 12. One (1) hour of pay at each of the employees' regular rate of compensation for each
21 workday that a meal break was not provided, impeded, discouraged and/or dissuaded and/or correct
22 pay for missed meal premiums at the correct regular rate;

As to the Third Cause of Action:

23 13. One (1) hour of pay at each of the employees' regular rate of compensation for each
24 workday that a rest break was not remitted or authorized, or was impeded, discouraged and/or
25 dissuaded.

As to the Fourth Cause of Action:

26 14. For reimbursement of all costs and losses necessarily incurred by Defendant's
27 requirement that employees pay for their own training and uniforms;
28

15. For prejudgment interest as allowed by Labor Code § 2802(b);

16. For an award of reasonable attorneys' fees and costs;

As to the Fifth Cause of Action:

17. For penalties and restitution of wages according to proof, as set forth under Labor Code sections 351 and 353.

As to the Sixth Cause of Action:

18. For waiting time penalties for all former employees not timely paid their last pay check, including vacation pay;

19. For reasonable attorneys' fees and costs;

As to the Seventh Cause of Action:

20. For recovery as authorized by Labor Code §226(e);

21. For an award of costs and reasonable attorneys' fees pursuant to Labor Code §226(e) and/or §226(g);

As to the Eighth Cause of Action:

22. On behalf of all current and former employees, for all civil penalties authorized by Labor Code Private Attorney General Act of 2004 as specified in Labor Code §558 plus Labor Code §1197.1 for former or current employees who are due wage payments;

23. For civil penalties per Labor Code §226.3 in the amount of \$250 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

24. For civil penalties per Labor Code §256 in the amount of one day of pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination, until payment was/is made, up to a maximum of thirty (30) days;

25. For civil penalties, pursuant to Labor Code § 558 as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid;

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid;

26. For civil penalties under Labor Code §210, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved

1 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period
2 for each subsequent violation, plus 25% of the wage wrongly withheld;

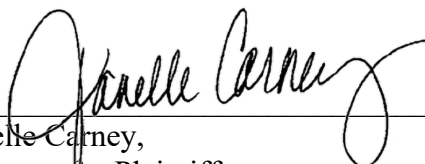
3 27. For civil penalties under Labor Code §2699(f), in addition to and entirely
4 independent and apart from other penalty provided in the Labor Code and for Labor Code
5 violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per
6 pay period for each violation, and \$200 for each aggrieved employee per pay period for each
7 subsequent violation.

8 **As to All Causes of Action:**

9 28. For such other and further relief as this Court may deem just and proper.

10 Date: December 15, 2023

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

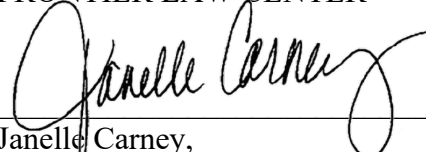
11
12 
13 _____
14 Janelle Carney,
15 Attorney for Plaintiff
16 Sydney Houser

17 **JURY TRIAL DEMAND**

18 Plaintiff SYDNEY HOUSER hereby demands a jury trial on all issues so triable.

19 Date: December 15, 2023

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

20
21 
22 _____
23 Janelle Carney,
24 Attorney for Plaintiff
25 Sydney Houser
26
27
28



October 11, 2023

Via Online Filing

<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Via Certified Mail

Fish House Vera Cruz
360 Via Vera Cruz
San Marcos, CA 92078

Subject: *Sydney Houser v. Fish House Vera Cruz*

Dear Representative:

This office along with Frontier Law Center represents Sydney Houser in connection with Labor Code violation claims related to employment with Fish House Vera Cruz ("Fish House").

Ms. Houser intends to seek PAGA penalties on behalf of herself and all other non-exempt employees of Fish House in California who were subject to any of the Labor Code violations during the PAGA Period ("Aggrieved Employees"). The PAGA Period begins one year prior to the date of this letter.

Meal Break Violations

Labor Code section 512 and the applicable Wage Order 5-01 provide that an employer shall 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, or more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. Meal periods must be uninterrupted, and the employee must be relieved of all duty.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant meal period was not provided. Ms. Houser and the Aggrieved Employees could not take compliant meal periods; Meal periods were short, late, or missed altogether. Ms. Houser was regularly interrupted on her breaks, thus she should have received premium pay for each missed break. Nonetheless, no premium pay was paid, and as a result PAGA penalties apply.

Ms. Houser is entitled to the PAGA penalties in LC § 558 and 2699, et seq.

Rest Break Violations

Further, Fish House failed to provide suitable rest areas for Ms. Houser and the Aggrieved Employees.

Wage Order 5-01 requires employers to authorize and permit employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net per four hours or major fraction thereof. Employees must be relieved of all duties during their rest breaks.

Labor Code section 226.7(c) further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant rest break was not provided. Further, an employer may not place restrictions on its employees during their rest breaks, such as requiring its employees to remain on the premises and subject to the employer's control. In fact, the Division of Labor Standards and Enforcement has provided the following guidance on its website:

Q. Can my employer require that I stay on the work premises during my rest period?

A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself. In *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the rest period requirement "obligates employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time." (citation omitted) As a practical matter, however, if an employee is provided a ten minute rest period, the employee can only travel five minutes from a work post before heading back to return in time.

Here, Ms. Houser and the Aggrieved Employees were always on call and as a result would have to respond to customers while on break. Further, Ms. Houser and the Aggrieved Employees were not allowed to leave the work premises unless clocked out. Thus, they were subject to Employer's control during the rest breaks. The Aggrieved Employees and Ms. Houser were not provided with compliant rest breaks and PAGA penalties apply.

Unreimbursed Work Expenses

Labor Code section 2802 requires an employer to "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." Here, Ms. Houser and the Aggrieved Employees incurred out of pocket expenses in connection with their employment, including but not limited to out-of-pocket

expense for her training and uniform expenses. These expenses were not reimbursed. As a result, PAGA penalties apply.

Violation of Labor Code §§ 351 and 353

Throughout the applicable time period, Ms. Houser and other Aggrieved Employees were denied the benefits and protections of the California Labor Code and IWC Wage Order(s) because Fish House failed to provide Ms. Houser and other Aggrieved Employees with all tips due and owing to them, in violation of Labor Code section 351. The violations were caused, in part, by Defendant's illegal "tip pooling" systems, whereby Defendant and their agents would improperly collect, withhold and/or take a portion of the gratuities from the gratuities paid, given to, or left for the employees. Defendant and its agents would also fail to timely provide for the remuneration of gratuities provided via credit or debit card. Defendant also failed to keep accurate records of all gratuities received, in violation of Labor Code section 353.

Wage Statement Violations

Ms. Houser alleges that Fish House willfully failed to provide accurate itemized wage statements to her and other Aggrieved Employees pursuant to Labor Code § 226. Specifically, Fish House wage statements failed to include accurate information and this violation is uniform for all employees. This is a derivative and stand-alone claim as Fish House's pay stubs do not contain required elements of Labor Code §226, including the correct rates as there are no payments for missed meal or rest period violations.

Ms. Houser and other employees are entitled to recover civil penalties pursuant to section 226.3, which states in relevant part: "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of...(\$250) per employee per violation in an initial citation and...(\$1,000) per employee for each violation in a subsequent citation, for...fail[ing] to keep the records required in subdivision (a) of Section 226."

Waiting Time Penalties

The unpaid wages described above were still due when Ms. Houser and the Aggrieved Employees stopped working for Fish House. Because Employer did not pay the Aggrieved Employees all wages owed during their employment, it follows that the Aggrieved Employees were also never paid these wages after the conclusion of their employment. Thus, Fish House had an obligation to pay waiting time penalties, but intentionally failed to do so and did not pay waiting time penalties. Thus, PAGA penalties apply.

Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Ms. Houser becomes aware of additional compensation owed or losses incurred by Ms. Houser or by any other aggrieved employee, Ms. Houser expressly reserves the right to revise these facts and/or add any new claims

by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Please advise the undersigned if the agency intends to investigate the alleged violations. If not, Ms. Houser intends to pursue her claims and those of the aggrieved employees under PAGA in a civil lawsuit. Please also consider this letter as providing notice on behalf of other aggrieved employees working for the employer that were subject to the same Labor Code violations described above.

Very truly yours,



Janelle Carney

JC/jw
Cc: Frontier Law Center