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6 Attorneys for Plaintiff
ROBERT ROOPE
7

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SONOMA
10

11 ROBERT ROOPE, an individual,

12 Plaintiff,

13 vs.

14 CHUNG L CORPORATION, dba
KOALA'S FINE FOOD, a California
15 corporation; and DOES 1 through 15,
inclusive,

16 Defendants.
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Case No. 24CV00897

COMPLAINT FOR:

- (1) Unpaid Wages
- (2) Meal Period Violations
- (3) Rest Break Violations
- (4) Unreimbursed Expenses
- (5) Failure To Provide Accurate Itemized Wage Statements
- (6) Failure To Pay All Wages Due Upon Separation From Employment
- (7) Failure To Produce Required Records
- (8) Unfair Or Unlawful Business Practices
- (9) Representative Action Under PAGA

DEMAND FOR JURY TRIAL

1 Plaintiff Robert Roope brings this civil action and, on information and belief, alleges
2 as follows:

3 **PARTIES, JURISDICTION, AND VENUE**

4 1. Plaintiff Robert Roope ("Plaintiff" or "Roope") is an individual and a resident
5 of California, specifically Sonoma County.

6 2. Defendant Chung L Corporation ("Defendant" or the "Company") is a
7 California corporation. Defendant operates one or more restaurants in California, and does
8 business as Koala's Fine Food.

9 3. Plaintiff, a former employee, worked for Defendant in California in Sonoma
10 County. By way of this Complaint, Plaintiff seeks unpaid wages, penalties, and other
11 monetary relief that render this matter an "unlimited" civil case within the meaning of
12 California law. This Complaint invokes all forms of applicable tolling, including, without
13 limitation, the tolling provided by the Judicial Council's emergency rules. On information
14 and belief, Defendant evades services of process by refusing to accept mail delivery at its
15 registered business address, at the address of its registered agent for service of process, and
16 at the restaurant location at which Plaintiff worked.

17 4. The true names and capacities of the Doe Defendants (Does 1 through 10,
18 inclusive) are unknown to Plaintiff at this time and Plaintiff is informed and believes that
19 they are in some way liable for the illegal conduct, injury, and damages alleged herein. The
20 Doe Defendants are believed to be responsible individuals (e.g., executives, owners, etc.) or
21 affiliated entities, joint employers, or otherwise liable for the conduct complained of herein,
22 whether because of alter-ego status, agency principles, aider and abettor (or co-conspirator)
23 status, statutorily-imposed responsibility (e.g., Labor Code section 558.1), or otherwise.

24 5. The Court has personal jurisdiction over Defendant because it does business
25 in this State on a reoccurring basis, and otherwise has minimum contacts with this State.
26 The Court has personal jurisdiction over Plaintiff because he is a resident of California and
27 has sufficient minimum contacts with this State. Venue is proper in Sonoma County
28 inasmuch as Defendant conducts business in Sonoma County, Plaintiff has performed work

1 for Defendant in Sonoma County, and alleged unlawful conduct and/or its effects have
2 occurred, in whole or in part, in Sonoma County.

3 **GENERAL ALLEGATIONS**

4 6. The Company subjected Plaintiff and other similarly-situated employees to
5 wage-and-hour violations, including, among others, unpaid wages, meal period violations,
6 rest break violations, inaccurate wage statements, deficient final paychecks, and
7 unreimbursed expenses. They are discussed below in the various causes of action in this
8 Complaint.

9 **FIRST CAUSE OF ACTION**

10 Unpaid Wages

11 (Against Defendant, And Does 1 Through 15, Inclusive)

12 7. Plaintiff re-alleges and incorporates by reference herein the allegations set
13 forth in Paragraphs 1 through 6 inclusive.

14 8. Labor Code section 1198 makes it unlawful for an employer to employ any
15 person under conditions of employment that violate the Wage Orders.

16 9. Section 2(K) of the IWC Wage Orders define “hours worked” as the “time
17 during which an employee is subject to the control of the employer, and includes all the time
18 the employee is suffered or permitted to work, whether or not required to do so.”

19 10. Labor Code sections 1194 and 1197, and Section 4 of the IWC Wage Orders,
20 require employers to pay their non-exempt employees at least the California minimum wage
21 for all time worked.

22 11. Labor Code sections 510 and 1194, and Section 3 of the IWC Wage Orders,
23 require employers to pay overtime wages to their non-exempt employees at no less than one
24 and one-half times their regular rates of pay for all hours worked in excess of eight hours in
25 one workday, all hours worked in excess of forty hours in one workweek, and for the first
26 eight hours worked on a seventh consecutive workday.

27 12. Labor Code sections 510 and 1194, and Section 3 of the IWC Wage Orders,
28 also require employers to pay overtime wages to their non-exempt employees at no less than

1 two times their regular rates of pay (i.e., double-time) for all hours worked in excess of
2 twelve hours in one workday, and for all hours worked in excess of eight hours on a seventh
3 consecutive workday.

4 13. Labor Code sections 204 and 218 require employers to pay the earned wages
5 of their employees on a timely and periodic basis. Labor Code section 1174(d) also requires
6 employees to keep accurate records of hours worked by employees.

7 14. At all material times, Plaintiff worked as a non-exempt employee of
8 Defendant. Plaintiff, and other employees, were not paid by the Company for all
9 compensable work time.

10 15. The Company did not utilize a time-keeping system for the recordation of
11 employee work time, but instead required employees to handwrite the beginning and end of
12 their shift on a Company calendar or other document. The Company required employees to
13 not record their work start-time or work end-time by the minute, but instead use an easy
14 whole number (e.g., instead of recording an actual 11:08 a.m. start time, write 11:05 a.m.
15 instead, the nearest 5-minute interval). The Company did not keep records of the beginning
16 and/or end of purported meal periods, and instead made assumptions about meal periods in
17 the pay issued to employees. The Company also required employees to engage in work-
18 related communications off-the-clock. As a result of all these practices, employees, Plaintiff
19 included, routinely had compensable work that was not captured in their time records or pay.

20 16. Plaintiff is entitled to the unpaid balance of all forms of unpaid wages he is
21 owed including straight-time pay, minimum wage, and overtime. Pursuant to Labor Code
22 section 1194, Plaintiff is entitled to recover the unpaid balance of the full amount of
23 California minimum wages owed, including interest thereon, reasonable attorney's fees, and
24 costs of suit. Furthermore, under Labor Code section 1194.2, Plaintiff is entitled to recover
25 liquidated damages in an amount equal to the California minimum wages unlawfully unpaid
26 and interest thereon. Plaintiff is entitled to recover all damages, penalties and other remedies
27 available for a violation of Labor Code section 1197 and the General Minimum Wage Order.

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1 violations.

2 24. Defendant failed to provide Plaintiff with timely uninterrupted meal periods
3 of at least thirty (30) minutes when Plaintiff worked more than five (5) hours.

4 25. Defendant failed to provide a second timely uninterrupted meal period of at
5 least thirty (30) minutes for shifts exceeding ten (10) hours of work.

6 26. Defendant failed to pay Plaintiff all the required meal period premium pay to
7 which he was entitled as a result of all the meal period violations.

8 27. Defendant's non-provision of compliant meal periods, and its non-payment of
9 the requisite meal period premiums, violated and is actionable under Labor Code section
10 512, subdivision (a), and Labor Code sections 226.7, subdivisions (b) & (c).

11 28. As a result of Defendant's violation of California's meal period rules, Plaintiff
12 is entitled to, among other things, one (1) hour of pay at his regular rate of pay for each
13 workday in which a meal period violation occurred.

14 **THIRD CAUSE OF ACTION**

15 Failure To Provide Compliant Rest Periods

16 (Against Defendant, And Does 1 Through 15, Inclusive)

17 29. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 28 as
18 though fully set forth herein.

19 30. Under California law, employers must authorize and permit all non-exempt
20 employees to take a "net" 10-minute rest period for every four (4) hours worked, or major
21 fraction thereof. (IWC Wage Orders, § 12(A).) More specifically, employers must authorize
22 and permit non-exempt employees to take one 10-minute rest break for shifts from three and
23 one-half (3 ½) hours to six (6) hours in length, two 10-minute rest breaks for shifts of more
24 than six (6) hours up to ten (10) hours in length, three 10-minute rest breaks for shifts of
25 more than ten (10) hours up to fourteen (14) hours in length, and so on. (*Brinker Restaurant*
26 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1029.) In terms of the timing of rest breaks,
27 employers must authorize and permit the taking of rest breaks "in the middle of each work
28 period." (IWC Wage Orders, § 12(A).)

1 31. Employers must provide employees with "suitable resting facilities" (Wage
2 Orders, §13(B)) that are "away from the work station" (DLSE Enforcement Manual, §
3 45.3.3). An employee's rest period starts the moment when the employee can reach an area
4 of rest away from the work station and be free from employer control. (*Vaquero v.*
5 *Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 112 [a rest period "begins when the
6 employee reaches an area away from the work station that is appropriate for rest"]; *Augustus*
7 *v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273 ["California law requires employers
8 to relieve their employee of all work-related duties and employer control during 10-minute
9 rest periods"].)

10 32. Under California law, it is illegal for an employer to require an employee to
11 work during a rest period that is mandated by California statutory law or an IWC Wage
12 Order. (Labor Code, § 226.7(b).)

13 33. Under California law, employers must provide an employee with an additional
14 one (1) hour of pay for each workday that an employee is not provided with a rest period "in
15 accordance with" California statutory law or IWC Wage Orders. (Labor Code, § 226.7(c).)

16 34. Plaintiff regularly worked 3.5 hours or more in a shift for Defendant and was
17 entitled to rest breaks that conformed with California law. At all relevant times, Plaintiff
18 did not waive his legally-mandated rest breaks.

19 35. Defendant failed to provide Plaintiff, and other employees, with timely
20 uninterrupted rest periods of at least ten (10) minutes for every four (4) hours worked, or
21 major fraction thereof. Defendant failed to provide Plaintiff with first, second, and/or third
22 rest breaks that complied with California law. The Company has not established or provided
23 employees with a sufficient break system in the busy customer-focused environment in
24 which they work, causing employees to routinely take delayed or shortened rest periods,
25 interrupted rest periods, or to forgo them altogether. There were no break schedules, relief
26 shifts, electronic notifications, or other break infrastructure.

27 36. On information and belief, the Company simply failed to provide second or
28 third rest breaks at all, or second and third rest breaks that otherwise complied with the legal

1 requirements of California law.

2 37. Defendant failed to pay Plaintiff all the required rest period premium pay for
3 all the rest period violations.

4 38. Defendant's non-provision of compliant rest periods, and Defendant's non-
5 payment of the requisite rest period premiums, violated and is actionable under Labor Code
6 sections 226.7 subdivisions (b) & (c).

7 39. As a result of Defendant's violation of California's rest period rules, Plaintiff
8 is entitled to, among other things, one (1) hour of pay at his regular rate of pay for each
9 workday in which a rest period violation occurred.

10 **FOURTH CAUSE OF ACTION**

11 Unreimbursed Expenses

12 (Against Defendant, And Does 1 Through 15, Inclusive)

13 40. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 39
14 inclusive as though fully set forth herein.

15 41. At all relevant times, Labor Code section 2802 required and continues to
16 require employers to fully reimburse employees for expenses incurred in the discharge of
17 their work-related duties or while carrying out the directions of their employer. Plaintiff and
18 other employees incurred work-related expenses for which they were not reimbursed.

19 42. Among other things, the Company required Plaintiff and other employees to
20 utilize their personal cell-phones or other devices for work-related purposes. The Company
21 did not reimburse Plaintiff for the Company-required usage of his personal cell-phones or
22 other devices. The Company's failure to properly pay the expenses of Plaintiff violates and
23 is actionable under Labor Code § 2802(a)-(c).

24 43. In addition to other appropriate relief, Plaintiff is entitled to full
25 reimbursement of all expenses owed, plus interest, attorney's fees and costs, as provided for
26 in Labor Code section 2802.

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1 **FIFTH CAUSE OF ACTION**

2 Failure To Provide Accurate Itemized Wage Statements

3 (Against Defendant, And Does 1 Through 15 Inclusive)

4 44. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 43
5 inclusive as though fully set forth herein.

6 45. Labor Code section 226, subdivision (a), requires that employers (such as the
7 Company) furnish to their employees, semi-monthly or at the time of each payment of
8 wages, an accurate itemized statement in writing showing the “(1) gross wages earned, (2)
9 total hours worked by the employee ..., (3) the number of piece-rate units earned and any
10 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, ..., (5)
11 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7)
12 the name of the employee and only the last four digits of his or her social security number
13 or an employee identification number other than a social security number, (8) the name and
14 address of the legal entity that is the employer and, ... , and (9) all applicable hourly rates in
15 effect during the pay period and the corresponding number of hours worked at each hourly
16 rate by the employee[.]”

17 46. Labor Code section 226(a) applied to Defendant's employment of Plaintiff.
18 The Company did not issue accurate itemized wage statements to Plaintiff or other
19 employees.

20 47. Among other deficiencies, Plaintiff's wage statements failed to include the
21 accurate hours worked by Plaintiff each pay period, in violation of Labor Code section
22 226(a)(2) and (a)(9). Plaintiff had hours worked that were not accounted for by Defendant
23 in his pay or wage statements, causing his gross and net wages earned to be inaccurately
24 reflected, in violation of Labor Code section 226(a)(1) and (a)(5).

25 48. Because meal and rest period premiums are wages subject to Labor Code
26 section 226(a), the Company's failure to pay at all and list on its wage statements, and/or the
27 Company's failure to properly pay and list on its wage statements, the meal and rest period
28 premiums to which Plaintiff was entitled caused the Company's wage statements to

1 inaccurately list his gross and net wages earned, in violation of Labor Code section 226(a)(1)
2 and (a)(5).

3 49. In addition to the above, the Company failed to accurately list the name and
4 address of the entity that is the employer on its wage statements. (Labor Code, § 226(a)(8).)
5 Among other things, the Company's wage statements fail to list any address information for
6 the purported employer. In addition, the Company also failed to fulfill its record-keeping
7 obligations under Labor Code § 226 and has maintained inaccurate records.

8 50. Plaintiff has suffered the requisite "injury" as a result of the violations, and
9 Defendant's violation was "knowing and intentional," as those terms are used in Labor Code
10 section 226. Plaintiff is entitled to the greater of (i) all actual damages or (ii) \$50 for the
11 initial wage statement violation, and \$100 for each subsequent violation, not to exceed an
12 aggregate penalty of \$4,000 (Labor Code, § 226(e)(1)), in addition to attorney's fees and
13 costs.

14 **SIXTH CAUSE OF ACTION**

15 Failure To Pay All Wages Due Upon Separation From Employment

16 (Against Defendant, And Does 1 Through 15, Inclusive)

17 51. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 50
18 inclusive as though fully set forth herein.

19 52. Labor Code sections 201 and 202 impose time requirements on tendering to a
20 discharged or quitting employee their final wages. At all relevant times, Labor Code section
21 201 provided that, if an employer discharged an employee, the employee's wages earned and
22 unpaid at the time of discharge are due and payable immediately. At all relevant times,
23 Labor Code section 202 provided that, if an employee quits without giving 72 hours advance
24 notice, all of his or her wages are due within 72 hours of quitting; if an employee quits and
25 provides 72 hours or more of advance notice, all of his or her wages are due at the time of
26 quitting. Plaintiff's employment at Defendant ended over thirty (30) days ago and, to this
27 day, he has not received all the wages due to him.

28 53. Defendant has willfully failed to pay Plaintiff, and other separated employees,

1 all wages due in violation of Labor Code sections 201 and 202. Plaintiff's final pay from
2 Defendant did not include all the wages to which he was entitled, including, among others:
3 (i) pay for off-the-clock/unrecorded work, and (ii) unpaid meal and rest period premiums.

4 54. At all relevant times, Labor Code section 203 provided that, if employers (such
5 as the Company) willfully fail to pay any wages of an employee who is discharged or quits
6 in the time required by Labor Code section 201 or 202, the wages of the employee shall
7 continue as a penalty from the due date thereof at the same rate until paid or until an action
8 therefor is commenced, but the wages shall not continue for more than thirty (30) days.
9 Accordingly, Plaintiff is entitled to receive statutory penalties up to a maximum of thirty
10 (30) days, as well as attorney's fees and costs, under Labor Code section 203.

11 **SEVENTH CAUSE OF ACTION**

12 Failure To Produce Required Records

13 (Against Defendant, And Does 1 Through 15, Inclusive)

14 55. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 54
15 inclusive as though fully set forth herein.

16 56. Plaintiff, through counsel, requested Defendant to provide his employment
17 records, including his personnel file, all documents he signed in connection with his
18 employment, his time records, wage statements, and records (if any) regarding his accrual
19 and use of paid sick leave. More than thirty (30) days elapsed and the Company did not
20 produce the requested records. The Company, as of this complaint, still has not produced
21 the requested records.

22 57. The Company's non-production of the requested documents in the time
23 required by law violated Labor Code §§ 1198.5, 226(c), 247.5(a), and 432. Plaintiff is
24 entitled to all penalties the law allows for the violation of these sections, as well as attorney's
25 fees and costs.

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1 **EIGHTH CAUSE OF ACTION**

2 Unfair Or Unlawful Business Practices

3 (Against Defendant, And Does 1 Through 15, Inclusive)

4 58. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 57
5 inclusive as though fully set forth herein.

6 59. At all relevant times, Defendant's practices, as alleged above, have been unfair,
7 unlawful, deceptive, and harmful to Plaintiff, others employees similarly situated, and the
8 general public. Defendant's illegal practices, as alleged in this Complaint, constitute
9 violations of Business and Professions Code sections 17200 *et seq.* A practice that violates
10 any state law or regulation may constitute the basis of an unlawful business practice
11 prohibited by Business and Professions Code sections 17200 *et seq.*

12 60. In light of all the above-mentioned violations, pursuant to Business and
13 Professions Code sections 17200 *et seq.*, Plaintiff is entitled to restitution of wages and other
14 property held by Defendant and/or other relief requiring Defendant to pay all wages and
15 other sums due to Plaintiff and to disgorge profits obtained through the unlawful, unfair, or
16 deceptive business practices. Defendant has been unjustly enriched as result of its unlawful,
17 unfair or deceptive business practices.

18 61. Plaintiff is entitled to restitution for Defendant's actions, the equitable remedy
19 of disgorgement, and reasonable attorney's fees and costs.

20 62. Plaintiff has no adequate remedy at law. Plaintiff meets the standing
21 requirements for seeking relief pursuant to Business and Professions Code section 17203, in
22 that he has suffered injury in fact and has lost money as a result of the Company's actions,
23 as more fully set forth in this pleading.

24 **NINTH CAUSE OF ACTION**

25 Representative Action Under PAGA

26 (Against Defendant, And Does 1 Through 15, Inclusive)

27 63. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 62
28 inclusive as though fully set forth herein.

1 64. Pursuant to Labor Code section 2699.3, Plaintiff, on behalf of himself and all
2 other aggrieved employees, brings this action as a non-class representative action under
3 PAGA for civil penalties based on violations of the California Labor Code and the applicable
4 IWC Wage Order(s).

5 65. Plaintiff has timely and adequately exhausted his administrative remedies
6 under PAGA. Plaintiff submitted his PAGA Notice (incorporated in full herein by reference
7 and attached hereto as **Exhibit A**) to the LWDA, mailed a copy of the same to Defendant
8 via certified mail, and waited the requisite time-period before filing this PAGA action in
9 court.

10 66. Consistent with the PAGA Notice, this PAGA action applies to Plaintiff and
11 all current and former non-exempt employees who worked for the Company in California at
12 any of the Company's locations at any time during the applicable limitations period
13 ("aggrieved employees").

14 67. Pursuant to Labor Code section 2699.5, Plaintiff asserts this representative
15 action on behalf of himself and other aggrieved employees for civil penalties for the
16 violations alleged above and in **Exhibit A**, including, without limitation, for:

- 17 a. Unpaid wages;
- 18 b. The failure to provide legally-compliant meal and rest periods, and pay the
19 required meal and rest-period premiums;
- 20 c. Unreimbursed expenses;
- 21 d. Inaccurate wage statements;
- 22 e. Unlawful recordkeeping;
- 23 f. The failure to pay all the wages due separated employees; and
- 24 g. The failure to produce required records.

25 68. Labor Code section 2699(f)(2), in turn, provides that the default civil penalties
26 recoverable under PAGA for such violations are "one hundred dollars (\$100) for each
27 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200)
28 for each aggrieved employee per pay period for each subsequent violation," except where

1 the Labor Code specifically provides for another penalty. In addition to the default civil
2 penalties PAGA provides, Plaintiff seeks, through PAGA, any other civil penalties available
3 under the Labor Code (including, without limitation, Labor sections 226.3, 558, and 1174.5)
4 for the above-alleged violations of the Labor Code and/or applicable IWC Wage Order(s).

5 **Future Amendment**

6 69. Plaintiff reserves the right to amend this Complaint to include additional
7 causes of action which are presently unknown but which are uncovered in the discovery
8 process. Furthermore, Plaintiff reserves the right to amend this Complaint to include
9 representative action allegations on behalf of others, and to name additional defendants.

10 **PRAYER**

11 WHEREFORE, Plaintiff requests judgment as follows:

12 **On The First Cause Of Action**

- 13 1. For all recoverable damages and unpaid wages, including unpaid minimum
14 wages, straight-time pay, and overtime wages;
- 15 2. For liquidated damages pursuant to Labor Code § 1194.2;

16 **On The Second Cause Of Action**

- 17 3. For premium pay for meal period violations under Labor Code § 226.7;

18 **On The Third Cause Of Action**

- 19 4. For premium pay for rest period violations under Labor Code § 226.7;

20 **On The Fourth Cause Of Action**

- 21 5. For the full reimbursement of expenses owed, including interest thereon, under
22 Labor Code § 2802;

23 **On The Fifth Cause Of Action**

- 24 6. For statutory penalties under Labor Code § 226, or actual damages incurred as
25 a result of Defendant issuing inaccurate wage statements, according to proof;

26 **On The Sixth Cause of Action**

- 27 7. For statutory penalties under Labor Code § 203, up to the statutory maximum;

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1 **On The Seventh Cause Of Action**

2 8. For statutory penalties under Labor Code §§ 1198.5(k), 226(f), any penalties
3 or damages recoverable for the violation of Labor Code §§ 432 and 247.5, and injunctive
4 relief to obtain compliance with all of these sections;

5 **On The Eighth Cause Of Action**

6 9. For restitution of all unpaid wages, straight-time, overtime, minimum wages,
7 premium pay, unpaid interest, and other monies withheld from Plaintiff together with the
8 disgorgement of any profits received as a result of Defendant's unlawful or unfair business
9 practices;

10 **On The Ninth Cause Of Action**

11 10. For all forms of relief and civil penalties recoverable under PAGA, and for
12 entry of judgment in favor of the aggrieved employees;

13 **On All Causes Of Action**

14 11. For attorney's fees and costs pursuant to Civil Code § 1021.5, all provisions of
15 the Labor Code that authorize attorney's fees and costs (including, e.g., Labor Code §§ 218.5,
16 226(h), 203, 1198.5(l), 1194(a), 1194.3, 2699, 2802, 3287, and 3289), the "catalyst" theory,
17 and/or any other applicable theory or doctrine;

18 12. For prejudgment interest on all amounts owing, commencing from the date
19 such amounts were due; and

20 13. For all such other relief as the Court deems just and proper.

21 Dated: February 5, 2024

SCHEPPACH BAUER PC

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23 By: _____

24 JOHN M. SCHEPPACH
25 Attorneys for Plaintiff
26 ROBERT ROOPE
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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims and causes of action so triable.

Dated: February 5, 2024

SCHEPPACH BAUER PC

By: 

JOHN M. SCHEPPACH
Attorneys for Plaintiff
ROBERT ROOPE

EXHIBIT A

PAGA NOTICE

November 29, 2023

VIA CERTIFIED MAIL TO:

Employer

**Chung L Corporation, dba
Koala's Fine Food**
16380 Mill St, Suite A
Guerneville, CA 95446

**Chung L Corporation, dba
Koala's Fine Food**
Attn: Julie Chung
Registered Agent For Service Of Process
4040 Hoen Ave, #24
Santa Rosa, CA 95405

VIA ONLINE SUBMISSION TO:

State Agency:

**The State Of California,
Labor & Workforce Development Agency**

Current Website Address:

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

Re: *Robert Roope, et al. v. Chung L Corporation, dba Koala's Fine Food, et al.*
PAGA Notice

Dear Employer And The LWDA:

Robert Roope ("Roope"), on behalf of himself and all other aggrieved employees, and through his undersigned representative, hereby provides notice pursuant to the California Private Attorneys General Act of 2004, Labor Code sections 2698 – 2699.5 ("PAGA"), of alleged violations of the California Labor Code committed by Chung L Corporation, dba Koala's Fine Food (the "Company" or the "Restaurant"). Pursuant to the requirements of PAGA, the Labor Code provisions allegedly violated, including the alleged facts and theories in support thereof, are set forth below. All citations herein are to the California Labor Code as it is presently constituted. The Labor Code may be amended in one or more respects after the date of this PAGA Notice.

This PAGA Notice invokes all available forms of tolling, including any tolling provided by Judicial Council Emergency Rule 9.

This PAGA Notice is also alleged against Does 1 through 10, inclusive, as additional responsible parties, which includes any predecessor, successor, or affiliate entity who was the joint employer of Roope or who was otherwise responsible for the Labor Code violations herein asserted. If and when such additional responsible parties are ascertained and identified, this PAGA

Notice may be amended to name such additional responsible parties, and any such amendment shall relate back to this PAGA Notice.

I. BACKGROUND.

The Company operates one or more restaurants in California, one of which is called Koala's Fine Food. Roope worked for the Company in California at a restaurant as a non-exempt employee. During his employment at the Company, Roope experienced wage-and-hour violations.

PAGA Group

This PAGA Notice applies to Roope and all current and former non-exempt employees who worked for the Company in California at any of the Company's locations at any time during the applicable limitations period.

II. ALLEGED LABOR CODE VIOLATIONS.

A. Unpaid Wages.

At all applicable times, the Company had policies and/or practices that failed to capture and pay employees properly for all hours worked and all compensation owed.

Among other things, the Company did not utilize a time-keeping system, but instead required employees to handwrite the beginning and end of their shift on a Company calendar or other document. The Company required employees to not record their work start-time or work end-time by the minute, but instead use an easy whole number (e.g., instead of recording an actual 11:07 a.m. start time, write 11:05 a.m. instead, the nearest 5-minute interval). (Labor Code, § 204.) The Company did not keep records of the beginning and/or end of purported meal periods, and instead made assumptions about meal periods in the pay issued to employees. The Company also required employees to engage in work-related communications off-the-clock. As a result of all these practices, employees routinely had compensable work that was not captured in their time records or pay.

As a result of the above, employees (i) have not been paid the applicable California minimum wage for all compensable work (Labor Code §§ 204, 1194, 1194.2, 1197, 1197.1 & 1199), (ii) have not been paid all their wages due during employment (Labor Code §§ 204 & 218), (iii) have not received all overtime and/or double-time compensation owed to them (Labor Code §§ 204, 510, 511, & 1198), (iv) have not received accurate itemized wage statements, because their wage statements do not accurately capture their total hours worked, their net and gross wages earned, or the applicable rates of pay for their work (Labor Code, § 226(a)(1), (2), (5) & (9)), and (vi) have not received all wages due to them upon separation from employment (Labor Code §§ 201, 202, and 203).

The Restaurant was required to keep, in a centralized location, three years' worth of accurate records showing the hours worked by, and wages paid to, its employees; however, as a

result of the above, the Restaurant failed to keep accurate records in violation of Labor Code § 1174(d).

B. Meal Period Violations.

At all material times, the Company maintained policies and/or practices that prevented aggrieved employees from receiving legally-compliant first and second meal periods. The Company's policies and/or practices have caused employees to not be provided with the legally-compliant meal periods to which they were and are entitled.

Under California law, all non-exempt employees who work more than five (5) hours in a shift are entitled to take an uncontrolled, duty-free meal period of at least thirty (30) minutes. Meal periods must start after no more than five (5) hours of work. (Labor Code, § 512(a); IWC Wage Orders, § 11.) Under California law, all non-exempt employees who work more than ten (10) hours in a shift are entitled to take a second uncontrolled, duty-free meal period of at least thirty (30) minutes. Second meal periods must start after no more than ten (10) hours of work. (Labor Code, § 512(a); IWC Wage Orders, § 11.) Employers are forbidden from requiring employees to work during a meal period that is mandated by California statutory law or by an IWC Wage Order. (Labor Code, § 226.7(b).) Under California law, employers must provide an employee with an additional hour of pay for each workday that an employee is not provided with a meal period "in accordance with" California statutory law or IWC Wage Orders. (Labor Code, § 226.7(c).)

At all material times, the Company did not establish or provide employees with a sufficient break system or break infrastructure, causing employees to routinely take delayed or shortened meal periods, interrupted meal periods, or to forgo them altogether. There were no break schedules, relief shifts, electronic notifications, or other break infrastructure. The Company also failed to record the beginning and end of purported meal periods, giving rise to a presumption of meal period violations.

Rooke and the aggrieved employees routinely worked the requisite hours to be entitled to a first meal period under California law. The Company was required to provide a first meal period to the aggrieved employees in accordance with law, and the Company failed to do so. Specifically, and without limitation, the Company failed to provide the aggrieved employees with first meal periods that were timely, duty and control-free, and/or a full 30 minutes. Likewise, and for the same reasons, the Company has also routinely failed to provide the aggrieved with legally-compliant second meal periods on shifts they worked more than ten (10) hours. The Company failed to provide the aggrieved employees with second meal periods that were timely, duty and control-free, and/or a full 30 minutes.

No valid waiver exists to excuse the meal period violations. The Company did not properly pay aggrieved employees the required premium wages owed for the first and second meal period violations. The Company's non-provision of compliant meal periods, and the Company's non-payment of the required meal period premiums, violated and is actionable under Labor Code § 512(a), and Labor Code §§ 226.7(b) & (c).

As meal period premiums are wages subject to Labor Code section 226(a), the Company's failure to pay at all and list on its wage statements, and/or the Company's failure to properly pay and list on its wage statements, the meal period premiums to which Roope and the aggrieved employees were entitled caused the Company's wage statements to inaccurately list the gross and net wages earned, in violation of Labor Code section 226(a)(1) and (a)(5). The Company's non-compliance with California's wage statement requirements violated and is actionable under Labor Code §§ 226(a) and 226.3.

As meal period premiums are wages subject to Labor Code sections 201-203, the Restaurant also failed to include in the final pay of separated aggrieved employees (Roope included) all the meal period premiums to which they were entitled. These deficiencies in final pay violated and are actionable under Labor Code sections 201, 202, 203, 208, and 256.

C. Rest Period Violations.

At all material times, the Company maintained policies and/or practices that prevented aggrieved employees from receiving legally-compliant rest periods. The Company's policies and/or practices have caused employees to not be provided with the legally-compliant rest periods to which they were and are entitled.

Under California law, all non-exempt employees must be authorized and permitted to take a "net" 10-minute rest break for every four (4) hours worked, or major fraction thereof. (IWC Wage Orders, § 12(A).) Non-exempt employees must be authorized and permitted to take one 10-minute rest break for shifts from three and one-half (3 ½) hours to six (6) hours in length, two 10-minute rest breaks for shifts of more than six (6) hours up to ten (10) hours in length, three 10-minute rest breaks for shifts of more than ten (10) hours up to fourteen (14) hours in length, and so on. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1029.)

In terms of rest break timing, the employer must authorize and permit the taking of rest breaks "in the middle of each work period." (IWC Wage Orders, § 12(A); see also *Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1040 [analyzing the rest break timing rule].) In terms of rest break duration, California law requires employers to provide employees with a "net" rest time of 10 minutes. (IWC Wage Orders, § 12.) An employee's 10 minutes of rest begins the moment the employee can reach an appropriate area of rest and be free from employer control. (*Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 112 [a rest period "begins when the employee reaches an area away from the work station that is appropriate for rest"]; *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273 ["California law requires employers to relieve their employee of all work-related duties and employer control during 10-minute rest periods"].)

Under California law, it is illegal for an employer to require an employee to work during a rest period that is mandated by California statutory law or an IWC Wage Order. (Labor Code, § 226.7(b).) Under California law, employers must provide an employee with an additional hour of pay for each workday that an employee is not provided with a rest period "in accordance with" California statutory law or IWC Wage Orders. (Labor Code, § 226.7(c).)

Roope and the other aggrieved employees worked the requisite hours to be entitled to first, second, and/or third rest periods under California law. The Company was required to authorize and permit Roope and the other aggrieved employees to take rest periods in accordance with California law, and the Company failed to do so.

At all material times, the Company did not establish or provide employees with a sufficient break system or break infrastructure, causing employees to routinely take delayed or shortened rest periods, interrupted rest periods, or to forgo them altogether. There were no break schedules, relief shifts, electronic notifications, or other break infrastructure.

On information and belief, the Company simply failed to provide second or third rest breaks at all, or second and third rest breaks that otherwise complied with the legal requirements of California law.

No valid waiver exists to excuse the rest period violations. The Company did not properly pay Roope or the other aggrieved employees the required premium wages owed for the rest period violations. The Company's non-provision of compliant rest periods, and the Company's non-payment of rest period premiums, violated and is actionable under Labor Code sections 226.7(b) and (c). The Company's failure to provide legally-compliant rest periods also violated regulatory law. (IWC Wage Orders, § 12 [rest period requirements].)

As rest period premiums are wages subject to Labor Code section 226(a), the Company's failure to pay and list on its wage statements the rest period premiums to which Roope and the aggrieved employees were entitled caused the Company's wage statements to inaccurately list the gross and net wages earned, in violation of Labor Code section 226(a)(1) and (a)(5). The Company's non-compliance with California's wage statement requirements violated and is actionable under Labor Code §§ 226(a) and 226.3.

As rest period premiums are wages subject to Labor Code sections 201-203, the Company has also failed to include in the final pay of separated aggrieved employees (Roope included) all the rest period premiums to which they were entitled. These deficiencies in final pay were willful within the meaning of Labor Code section 203, and are actionable under Labor Code sections 201, 202, 203, 208, and 256.

D. Inaccurate Wage Statements.

Labor Code section 226, subdivision (a), requires that employers (such as the Company) furnish to their employees, semi-monthly or at the time of each payment of wages, an accurate itemized statement in writing showing the "(1) gross wages earned, (2) total hours worked by the employee ..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, ..., (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, ... , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee[.]"

As discussed throughout this PAGA Notice, the Company violated Labor Code section 226 in numerous respects. The above-mentioned violations of Labor Code section 226 were knowingly and intentionally committed, and resulted in injury to the employees.

In addition to the above, the Company failed to accurately list the name and address of the entity that is the employer on its wage statements. (Labor Code, § 226(a)(8).) Among other things, the Company's wage statements fail to list any address information for the purported employer.

E. Unreimbursed Expenses.

Labor Code section 2802 requires employers to reimburse employees for expenses incurred in the discharge of their work-related duties or while carrying out the directions of their employer. Aggrieved employees incurred expenses for which they were not reimbursed, including (without limitation) those set forth below, in violation of Labor Code section 2802.

Among other things, Roope and other aggrieved employees routinely had to utilize their personal cell phones for work-related communications, but were not reimbursed by the Company. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.)

The Company's failure to properly pay the expenses of Roope and the other aggrieved employees violates and is actionable under Labor Code § 2802(a)-(c).

F. Recordkeeping Violations.

Through counsel, Roope requested in writing, and yet the Company did not produce (and, to date, has not produced), the following records: (i) Roope's personnel file (Labor Code, § 1198.5), (ii) all documents he executed in connection with his employment (Labor Code, § 432), (iii) his wage statements (Labor Code, § 226(b)-(c)), or (iv) his time records (Labor Code, §§ 247.5(a) & 226(b)-(c)).

III. CIVIL PENALTIES SOUGHT.

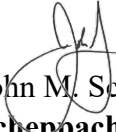
For all the above-specified Labor Code violations, Roope seeks all available civil penalties against the Company that the law allows, including the default civil penalties provided by PAGA, and any civil penalties specifically provided by statute for the alleged Labor Code violations (including Labor Code §§ 210, 226(f), 226.3, 256, 558, 1174.5, 1197.1, 1198.5(k)) which are recoverable under PAGA.

To the extent any other entity under the control of or acting in concert with the Company, or to the extent any owner, director, officer, or managing agent of the Company, caused or contributed to the Labor Code violations, civil penalties are also sought as to such entities or responsible parties to the extent authorized by law.

IV. RESERVATION OF RIGHTS.

Roope reserves the right to assert claims and theories for Labor Code violations and associated civil penalties that are uncovered through discovery (formal or informal) but which are presently unknown. Roope reserves the right to amend this PAGA Notice to allege such claims and theories, and to expressly name additional parties including (without limitation) through doe amendments. Any such amendment shall relate back to this PAGA Notice.

Very truly yours,


John M. Scheppach
Scheppach Bauer PC