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**JAN 23 2024**  
**D. CIMMINO**

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on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SOLANO**

MELISSA JOSEPHINE FLUTY, on behalf of  
herself and others similarly situated,

Plaintiff,

vs.

ZEPEXCO, INC. dba ZEPHYR EXPRESS, a  
California Corporation; WINEBOW, INC., dba  
WINEBOW, a Delaware Corporation;  
CENTRAL COAST WINE COMPANY, a  
California Corporation; and DOES 1 through  
50, inclusive,

Defendants.

Case No.:CU23-05443

**CLASS ACTION**

Assigned for All Purposes To:

Hon. Christine A. Carringer

Dept.:

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime  
Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code §  
226.7;
4. Rest-Break Liability Under Labor Code §  
226.7;
5. Reimbursement of Necessary Expenditures  
Under Labor Code § 2802;
6. Violation of Labor Code § 226(a);
7. Failure to Keep Required Payroll Records  
Under Labor Code §§ 1174, and 1174.5;
8. Penalties Pursuant to Labor Code § 203;
9. Violation of Business & Professions Code §  
17200 *et seq.*; and
10. Penalties pursuant to Labor Code § 2699, *et  
seq.*

**DEMAND FOR JURY TRIAL**

**BY FAX**

1. Plaintiff MELISSA JOSEPHINE FLUTY, (hereinafter “Plaintiff”) on behalf of herself and all others similarly situated (collectively, “Employees”; individually, “Employee”) complains of ZEPEXCO, INC. dba ZEPHYR EXPRESS, WINEBOW, INC., dba WINEBOW, and CENTRAL COAST WINE COMPANY, Defendants, and each of them, as follows:

## INTRODUCTION

2. Plaintiff brings this action on behalf of herself and all current and former Employees within the State of California who, at any time four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt, hourly employees by Defendants ZEPEXCO, INC. dba ZEPHYR EXPRESS , INEBOW, INC., dba WINEBOW, and CENTRAL COAST WINE COMPANY , and DOES 1 through 50 (all defendants being collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC) and California Business & Professions Code, and seeks redress therefore.

3. Plaintiff is a resident of California and during the time period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within the State of California at Defendants' facilities and offices in California. Plaintiff and the other Class members worked for Defendants in Solano County, and in other nonexempt positions, throughout California and, and consistently worked at Defendants' behest without being paid all wages due. More specifically, Plaintiff and the other similarly situated Class members were employed by Defendants and worked at Defendants' offices and other facilities where the conduct giving rise to the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was subjected to the same policies and practices, and (3) endured similar violations at the hands of Defendants as the other Employee Class members who served in similar and related positions.

4. Defendants required Plaintiff and the Employees in the Class to perform work while remaining under Defendants' control during their meal breaks. Defendants thus failed to pay Plaintiff and the Class members for all hours worked, and provided them with inaccurate wage statements that prevented Plaintiff and the Class from learning of these unlawful pay practices.

1 Defendants also failed to provide Plaintiff and the Class with lawful meal and rest periods, as  
2 employees were not provided with the opportunity to take timely, uninterrupted, and duty-free  
3 meal and rest periods as required by the Labor Code.

## 4 **THE PARTIES**

### 5 **A. The Plaintiff**

6 5. Plaintiff MELISSA JOSEPHINE FLUTY has resided in California and during the  
7 time period relevant to this Complaint was employed by Defendants as a non-exempt hourly  
8 employee within the State of California.

### 9 **B. The Defendants**

10 6. Defendant ZEPEXCO, INC. dba ZEPHYR EXPRESS is a California Corporation  
11 with its principle executive offices in Benicia, California, and has been listed as the employer on  
12 wage statements issued to Plaintiff during the relevant time period. ZEPEXCO, INC. employed  
13 Plaintiff and the Employees in Solano County, including at Defendants' offices and facilities in  
14 Benicia, California, and throughout California. Defendants conduct business throughout  
15 California.

16 7. Defendant WINEBOW, INC. is a Delaware Corporation with its principle  
17 executive offices in Pine Brook, New Jersey, and has been listed as the employer on the personnel  
18 file issued to Plaintiff during the relevant time period. WINEBOW, INC. employed Plaintiff and  
19 the Employees in Solano County, including at Defendants' offices and facilities in Benicia,  
20 California, and throughout California and Defendants conduct business throughout California.

21 8. Defendant CENTRAL COAST WINE COMPANY is a California Corporation  
22 with its principle executive offices in Benicia, California, and has been listed as the on the  
23 personnel file issued to Plaintiff during the relevant time period. CENTRAL COAST WINE  
24 COMPANY employed Plaintiff and the Employees in Solano County, including at Defendants'  
25 offices and facilities in Benicia, California, and throughout California and Defendants conduct  
26 business throughout California.

27 9. The true names and capacities, whether individual, corporate, associate, or  
28 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently

unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when their identities become known.

10. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of Employees, or suffered or permitted Employees to work, or engaged, thereby creating a common law employment relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly employed Employees.

## JURISDICTION AND VENUE

11. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities giving rise to this lawsuit occurred at least in part in Solano County and Defendants maintain and operate company offices and facilities in Solano County, and employ Plaintiff and other Class members in Solano County and throughout California.

## FACTUAL BACKGROUND

12. The Employees who comprise the Class and Collective, including Plaintiff, are nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire Employees who work in nonexempt positions at the direction of Defendants in the State of

1 California. Plaintiff and the Class members were either not paid by Defendants for all hours  
2 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,  
3 Plaintiff and Employees were not paid for the time that they worked “pre-shift” and “post-shift”  
4 without compensation by donning and doffing required gear, taking calls and other forms of  
5 mobile communication from supervisors and coworkers, spending time to clock in due to  
6 insufficient time clocks and Defendants’ policies, working while clocked out for meal breaks.  
7 Plaintiff also contends that Defendants failed to pay Plaintiff and the Class members all wages  
8 due and owing, failed to provide meal and rest breaks, and failed to furnish accurate wage  
9 statements, all in violation of various provisions of the California Labor Code and applicable  
10 Wage Orders.

11 13. During the course of Plaintiff and the Class members’ employment with  
12 Defendants, they were not paid all wages they were owed, including for all work performed and  
13 for all overtime hours worked and were forced to work during their meal and rest breaks to keep  
14 labor budgets low.

15 14. As a matter of uniform Company policy, Plaintiff and the Class members were  
16 required to work during their meal and rest breaks which were not compensated by Defendants in  
17 violation of the California Labor Code. Plaintiff and the Class members were also not paid regular  
18 wages and overtime for the time they were required to comply with other requirements imposed  
19 upon them, which they had to complete while working through their meal and rest breaks and  
20 without compensation. As a result, Plaintiff and the Class members worked shifts over eight (8)  
21 hours in a day and over forty (40) hours in a work week, but they were not paid at the appropriate  
22 overtime rate for all such hours, including by being required to perform work duties and tasks  
23 without pay and while off-the-clock. As a result, Plaintiff and the Class members worked  
24 substantial overtime hours during their employment with Defendants for which they were not  
25 compensated, in violation of the California Labor Code, applicable IWC Wage Orders.

26 15. As a result of the above described the daily work demands and pressures to work  
27 through breaks, and the other wage violations they endured at Defendants’ hands, Plaintiff and the  
28 Class members were not properly paid for all wages earned and for all wages owed to them by

1 Defendants, including when working more than eight (8) hours in any given day and/or more than  
2 forty (40) hours in any given week. As a result of Defendants' unlawful policies and practices,  
3 Plaintiff and Class members incurred overtime hours worked for which they were not adequately  
4 and completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and  
5 the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the  
6 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular  
7 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the  
8 Labor Code, applicable IWC Wage Orders.

9       16.     Therefore, from at least four (4) years prior to the filing of this lawsuit and  
10 continuing to the present, Defendants had a consistent policy or practice of failing to pay  
11 Employees for all hours worked, and failing to pay minimum wage for all time worked as required  
12 by California Law.

13       17.     Additionally from at least four (4) years prior to the filing of this lawsuit and  
14 continuing to the present, Defendants had a consistent policy or practice of failing to pay  
15 Employees overtime compensation at premium overtime rates for all hours worked in excess of  
16 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in  
17 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding  
18 sections of IWC Wage Orders.

19       18.     Additionally from at least four (4) years prior to the filing of this lawsuit and  
20 continuing to the present, Defendants have regularly required Employees to work shifts in excess  
21 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty  
22 (30) minutes and shifts in excess of ten (10) hours without providing them with second meal  
23 periods of not less than thirty minutes; nor did Defendants pay Employees "premium pay," i.e. one  
24 hour of wages at each Employee's effective regular rate of pay, for each meal period that  
25 Defendants failed to provide or deficiently provided.

26       19.     From at least four (4) years prior to the filing of this lawsuit and continuing to the  
27 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less  
28 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did

1 Defendant pay Employees premium pay for each day on which requisite rest breaks were not  
2 provided or were deficiently provided at one hour of wages at each Employee's effective regular  
3 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

4 20. Additionally, from at least four (4) years prior to the filing of this lawsuit, and  
5 continuing to the present, Defendants have consistently failed to provide Employees with timely,  
6 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

7 21. From at least four (4) years prior to the filing of this lawsuit and continuing to the  
8 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the  
9 performance of their job duties for Defendants including, but not limited to, cost of cell phone  
10 usage, internet usage, cost of equipment including but not limited to protective equipment which  
11 were necessary to perform their duties under Defendants' employ in violation of Labor Code §  
12 2802.

13 22. Additionally, from at least three (3) years prior to the filing of this lawsuit, and  
14 continuing to the present, Defendants have consistently failed to keep accurate time and wage  
15 records as required by California wage-and-hour laws.

16 23. Additionally, from at least four (4) years prior to filing this lawsuit and continuing  
17 to the present, Defendants have had a consistent policy of failing to pay all wages due and owed to  
18 Employees at the time of their termination of within seventy-two (72) hours of their resignation, as  
19 required by California wage-and-hour laws.

20 24. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor  
21 Code §§ 201, 201.3, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5,  
22 1182.12, 1185, 1194, 1194.2 1197, 1198, 1198.5, 1199, 2699 *et seq.*, and 2802.

23 25. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,  
24 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have  
25 enjoyed from their violations of Labor Code.

#### 26 **CLASS ALLEGATIONS**

27 26. Plaintiff brings this class action on behalf of herself and all others similarly situated  
28 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows:

1 all individuals employed by Defendants, at any time within four (4) years of the filing of this  
2 lawsuit, and have been employed by Defendants within the State of California.

3 27. Further, Plaintiff seeks to represent the following Subclasses composed of and  
4 defined as follows:

5 a. Subclass 1. Minimum Wages Subclass. All Class members who were not  
6 compensated for all hours worked for Defendants at the applicable minimum wage.

7 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not  
8 compensated for all hours worked for Defendants at the required rates of pay, including for all  
9 hours worked in excess of eight in a day and/or forty in a week.

10 c. Subclass 3. Meal Period Subclass. All Class members who were subject to  
11 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-  
12 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

13 d. Subclass 4. Rest Break Subclass. All Class members who were subject to  
14 Defendants' policy and/or practice of failing to authorize and permit Employees to take  
15 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction  
16 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

17 e. Subclass 5. Payroll Records Subclass. All Class members who were subject to  
18 Defendants' policy and/or practice of failing to keep accurate time and wage records as required  
19 by California wage-and-hour laws.

20 f. Subclass 6. Wage Statement Subclass. All Class members who, within the  
21 applicable limitations period, were not provided with accurate itemized wage statements.

22 g. Subclass 7. Failure to Reimburse for Necessary Business Expenditures Subclass.  
23 All Class members who were subject to Defendants failing to reimburse for expenses necessarily  
24 incurred in the performance of Employees job duties for Defendants which were necessary to  
25 perform their duties under Defendants' employ.

26 h. Subclass 8. Termination Pay Subclass. All Class members who, within the  
27 applicable limitations period, either voluntarily or involuntarily separated from their employment  
28 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon

1 termination.

2 i. Subclass 9. UCL Subclass. All Class members who are owed restitution as a  
3 result of Defendants' business acts and practices, to the extent such acts and practices are found to  
4 be unlawful, deceptive, and/or unfair.

5 28. Plaintiff reserves the right under California Rule of Court 3.765 to amend or  
6 modify the class description with greater particularity or further division into subclasses or  
7 limitation to particular issues.

8 29. This action has been brought and may properly be maintained as a class action  
9 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community  
10 of interest in litigation and proposed class is easily ascertainable.

11 **A. Numerosity**

12 30. The potential members of the class as defined are so numerous that joinder of all  
13 the member of the class is impracticable. While the precise number of class member has not been  
14 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the  
15 time period relevant to this lawsuit, employed more than 100 individuals were employed by  
16 Defendant's within the State of California.

17 31. Accounting for employee turnover during the relevant time period increases this  
18 number substantially. Plaintiff alleges that Defendants' employment records will provide  
19 information as to the number and location of all class members.

20 **B. Commonality**

21 32. There are questions of law and fact common to the class that predominate over any  
22 questions affecting only individual class members. These common questions of law and fact  
23 include:

- 24 a. Whether Defendants failed to pay Employees minimum wages;
- 25 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 26 c. Whether Defendants failed to pay Employees overtime as required under Labor  
27 Code § 510;
- 28 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable

IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;

- e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to provide Employees with requisite rest breaks or premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code § 226(a);
- g. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- h. Whether Defendants failed to reimburse Employees for necessary business expenses;
- i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- k. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*;
- k. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- l. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

**C. Typicality**

33. The claims of the named plaintiff are typical of those of the other Employees. Employees all sustained injuries and damages arising out of and caused by Defendant's common course of conducts in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

**D. Adequacy of Representation**

34. Plaintiff will fairly and adequately represent and protect the interest of Employees. Counsel who represents Employees are experienced and competent in litigating employment class actions.

**E. Superiority of Class Action**

35. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only

1 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of  
2 Defendants' illegal policies or practices of failing to compensate Employees properly.

3 36. Class action treatment will allow those persons similarly situated to litigate their  
4 claims in the manner that is most efficient and economical for the parties and the judicial system.  
5 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY MINIMUM WAGES**

8 **(Against All Defendants)**

9 37. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
10 full herein.

11 38. Defendants failed to pay Employees minimum wages for all hours worked.  
12 Defendants had a consistent policy of misstating Employees time records and failing to pay  
13 Employees for all hours worked. Employees would work hours and not receive wages, including  
14 as alleged above in connection with working during meal breaks, worked "pre-shift" and "post-  
15 shift" without compensation by donning and doffing required gear, taking calls and other forms  
16 of mobile communication from supervisors and coworkers, spending time to clock in due to  
17 insufficient time clocks and Defendants' policies. Additionally, Defendants had a consistent  
18 policy of failing to pay Employees for hours worked during alleged meal periods for which  
19 Employees were consistently denied, as also addressed herein. Moreover, Defendants did not pay  
20 Plaintiff and Employees at the applicable minimum wage for all hours worked. Defendants'  
21 uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to  
22 the Class as a whole, as a result of implementing a uniform policy and practice that denied  
23 accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

24 39. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"  
25 states:

26 The minimum wage for employees fixed by the commission is the minimum  
27 wage to be paid to employees, and the payment of a less wage than the  
28 minimum so fixed is unlawful.

1           40.     The applicable minimum wages fixed by the commission for work during the  
2 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are  
3 therefore entitled to double the minimum wage during the relevant period.

4           41.     The minimum wage provisions of California Labor Code are enforceable by private  
5 civil action pursuant to California Labor Code § 1194(a) which states:

6                 Notwithstanding any agreement to work for a lesser wage, any employee  
7 receiving less than the legal minimum wage or the legal overtime  
8 compensation applicable to the employee is entitled to recover in a civil  
9 action the unpaid balance of the full amount of this minimum wage or  
overtime compensation, including interest thereon, reasonable attorney's  
fees and costs of suit.

10           42.     As described in California Labor Code §§ 1185 and 1194.2, any action for wages  
11 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

12           43.     California Labor Code § 1194.2 also provides for the following remedies:

13                 In any action under Section 1194 . . . to recover wages because of the  
14 payment of a wage less than the minimum wages fixed by an order of the  
15 commission, an employee shall be entitled to recover liquidated damages in  
16 an amount equal to the wages unlawfully unpaid and interest thereon.

17           44.     Defendants have the ability to pay minimum wages for all time worked and have  
18 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this  
19 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

20           45.     Wherefore, Employees are entitled to recover the unpaid minimum wages  
21 (including double minimum wages), liquidated damages in an amount equal to the minimum  
22 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant  
23 to California Labor Code § 1194(a).

## 24                                 **SECOND CAUSE OF ACTION**

### 25                                 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

#### 26                                 **(Against All Defendants)**

27           46.     Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
28 full herein.

          47.     By their conduct, as set forth herein, Defendants violated California Labor Code §

1 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:  
2 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a  
3 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked  
4 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours  
5 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight  
6 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not  
7 paying Employees wages for all hours worked including time off the clock working “pre-shift”  
8 and “post-shift” without compensation by donning and doffing required gear, taking calls and  
9 other forms of mobile communication from supervisors and coworkers, spending time to clock in  
10 due to insufficient time clocks and Defendants’ policies, and the uncompensated time included  
11 the time Employees worked off-the-clock during meal periods. Employees regularly worked over  
12 8 hours on a given day without receiving overtime compensation.

13 48. Defendants’ failure to pay compensation in a timely fashion also constituted a  
14 violation of California Labor Code § 204, which requires that all wages shall be paid  
15 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct  
16 violation of that provision of the California Labor Code, Defendants have failed to pay all wages  
17 and overtime compensation earned by Employees. Each such failure to make a timely payment of  
18 compensation to Employees constitutes a separate violation of California Labor Code § 204.

19 49. Employees have been damaged by these violations of California Labor Code §§  
20 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

21 50. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the  
22 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for  
23 the full amount of all their unpaid wages and overtime compensation, with interest, plus their  
24 reasonable attorneys’ fees and costs.

### 25 **THIRD CAUSE OF ACTION**

#### 26 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

#### 27 **(Against All Defendants)**

28 51. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in



57. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift.

58. Defendants failed to provide Employees with timely rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift.

59. Additionally, under *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 260 (2016) “[D]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their time.” Defendants did not allow Employees to leave the Defendants’ location and this is directly at odds with *Augustus*, as it “tethered [employees] by time and policy to a particular location” and therefore fails to relieve employees of all work duties and employer control during rest periods. *Augusts*, 2 Cal.5th at 269.

60. Moreover, Defendants failed to compensate Employees for each rest period not provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee a rest period in accordance with this section, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. Defendants failed to compensate the Employees in the Class for each rest period not provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage Order.

61. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to be proven at trial.

**FIFTH CAUSE OF ACTION**

**FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

**IN VIOLATION OF LABOR CODE § 2802**

**(Against All Defendants)**

62. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

1           63.     Under Labor Code § 2802(a) an employer must indemnify its employees for all  
2 necessary expenditures or losses incurred by the employee in direct consequence of the discharge  
3 of his or her duties, or of his or her obedience to the directions of the employer.

4           64.     Employees incurred necessary expenditures in the performance of their job duties  
5 for Defendants, namely the cost of cell phone usage, internet usage, cost of equipment including  
6 but not limited to protective equipment, which were necessary to perform their duties under  
7 Defendants' employ. From four (4) years prior to the original filing of this lawsuit and continuing  
8 to the present, Defendants consistently failed to reimburse Employees for these necessarily  
9 incurred business expenses.

10          65.     As a result of the unlawful acts of Defendants, Employees have been deprived of  
11 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,  
12 plus interest and penalties thereon, attorneys' fees, and costs.

13                               **SIXTH CAUSE OF ACTION**  
14                               **VIOLATION OF LABOR CODE § 226(a)**  
15                               **(Against All Defendants)**

16          66.     Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
17 full herein.

18          67.     California Labor Code § 226(a) requires an employer to furnish each of his or her  
19 employees with an accurate, itemized statement in writing showing the gross and net earnings,  
20 total hours worked, and the corresponding number of hours worked at each hourly rate; these  
21 statements must be appended to the detachable part of the check, draft, voucher, or whatever else  
22 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these  
23 statements may be given to the employee separately from the payment of wages; in either case the  
24 employer must give the employee these statements twice a month or each time wages are paid.

25          68.     Defendants failed to provide Employees with accurate itemized wage statements in  
26 writing, as required by the Labor Code. Specifically, the wage statements given to Employees by  
27 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal  
28 periods and rest breaks, all of which Defendants knew or reasonably should have known were

1 owed to Employees, as alleged hereinabove. The wage statements provided to Employees were  
2 confusing and required Employees to engage in discovery and refer to outside sources to verify  
3 whether their pay was correct and potentially resulting in a miscalculation by the Employees.

4 69. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),  
5 Employees suffered injuries, including among other things confusion over whether they received  
6 all wages owed them, the difficulty and expense involved in reconstructing pay records, and  
7 forcing them to make mathematical computations to analyze whether the wages paid in fact  
8 compensated them correctly for all hours worked.

9 70. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover  
10 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation  
11 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not  
12 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an  
13 award of costs and reasonable attorneys' fees.

14 71. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a  
15 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for  
16 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each  
17 employee for each pay period.

18 72. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and  
19 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be  
20 shown according to proof.

21 **SEVENTH CAUSE OF ACTION**

22 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE §§ 1174**

23 **and 1174.5**

24 **(Against All Defendants)**

25 73. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
26 full herein.

27 74. California Labor Code § 1174 requires that all employers shall keep accurate time  
28 and wage records for all employees. California Labor Code § 1174.5 further requires that any

1 employee suffering injury due to a willful violation of the aforementioned obligations may seek  
2 damages, including civil penalties, from the employer.

3 75. During the course of Plaintiff's and Employees' employment, Defendants  
4 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as  
5 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,  
6 overtime, and premium pay as discussed above.

7 76. Defendants are also required by the California Labor Code § 1198 and the  
8 applicable Wage Order to maintain a tracking system that accurately records the times at which  
9 Employees works.

10 77. Defendants have maintained a common unlawful policy and practice of failing to  
11 accurately record meal breaks. At all times relevant hereto, Defendants had maintained an  
12 unlawful uniform policy and practice of editing the time records entered by its Employees to  
13 change the actual meal break times recorded by the employee, in order to make it appear as though  
14 Defendants' Employees took timely and compliant meal breaks.

15 78. Defendants' failure to pay wages, as alleged above, was willful in that Defendants  
16 knew wages to be due but failed to pay them.

17 79. Accordingly, Defendants are liable for civil penalties pursuant to the California  
18 Labor Code including §§ 1174.5. for the three (3) years prior to the filing of this Complaint.

19 **EIGHTH CAUSE OF ACTION**  
20 **VIOLATION OF LABOR CODE § 203**  
21 **(Against All Defendants)**

22 80. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
23 full herein.

24 81. Numerous Employees are no longer employed by Defendants; they either quit  
25 Defendants' employ or were fired therefrom.

26 82. Defendants failed to pay these Employees all wages due and certain at the time of  
27 termination or within seventy-two (72) hours of resignation.

28 83. The wages withheld from these Employees by Defendants remained due and owing

1 for more than thirty (30) days from the date of separation of employment.

2 84. Defendants' failure to pay wages, as alleged above, was willful in that Defendants  
3 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties  
4 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up  
5 to thirty (30) days from the date they were due.

6 **NINTH CAUSE OF ACTION**

7 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

8 **(Against All Defendants)**

9 85. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
10 full herein.

11 86. Plaintiff, on behalf of herself, Employees, and the general public, brings this claim  
12 pursuant to Business & Professions Code § 17200 et seq. The conduct of Defendants as alleged in  
13 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the  
14 general public. Plaintiff seeks to enforce important rights affecting the public interest within the  
15 meaning of Code of Civil Procedure  
16 § 1021.5.

17 87. Plaintiff is a "person" within the meaning of Business & Professions Code  
18 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive  
19 relief, restitution, and other appropriate equitable relief.

20 88. Business & Professions Code § 17200 et seq. prohibits unlawful and unfair  
21 business practices.

22 89. Wage-and-hour laws express fundamental public policies. Paying employees their  
23 wages and overtime, providing them with meal and rest periods, etc., are fundamental public  
24 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously  
25 to enforce minimum labor standards, to ensure that employees are not required or permitted to  
26 work under substandard and unlawful conditions, and to protect law-abiding employers and their  
27 employees from competitors who lower costs to themselves by failing to comply with minimum  
28 labor standards.

90. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint Defendants have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Professions Code § 17200 et seq.; which conduct has deprived Plaintiff, and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges guaranteed to all employees under the law.

91. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in violation of the Business & Professions Code § 17200 et seq.

92. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable care should have known that their conduct was unlawful; therefore their conduct violates the Business & Professions Code § 17200 et seq.

93. As a proximate result of the above-mentioned acts of Defendants, Employees have been damaged, in a sum to be proven at trial.

94. Unless restrained by this Court Defendants will continue to engage in such unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by the Business & Professions Code, including but not limited to the disgorgement of such profits as may be necessary to restore Employees to the money Defendants have unlawfully failed to pay.

### TENTH CAUSE OF ACTION

**PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.***

**(Against All Defendants)**

95. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

96. Plaintiff and Employees are aggrieved employees as defined under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the

1 alleged violators, Defendants.

2 97. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'  
3 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the  
4 penalty provisions, without limitation, based on the following California Labor Code sections:  
5 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185,  
6 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2698, 2699, *et seq.* and 2802.

7 98. The penalties shall be allocated as follows: 75% to the Labor and Workforce  
8 Development Agency (LWDA) and 25% to the affected employee.

9 99. Employees also seek any and all penalties and remedies set forth in Labor Code §  
10 558, which states:

11 (a) Any employer or other person acting on behalf of an  
12 employer who violates, or causes to be violated, a section of this chapter or  
13 any provision regulating hours and days of work in any order of the  
14 Industrial Welfare Commission shall be subject to a civil penalty as follows:  
15 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee  
16 for each pay period for which the employee was underpaid in addition to an  
17 amount sufficient to recover underpaid wages. (2) For each subsequent  
18 violation, one hundred dollars (\$100) for each underpaid employee for each  
19 pay period for which the employee was underpaid in addition to an amount  
20 sufficient to recover underpaid wages. (3) Wages recovered pursuant to this  
21 section shall be paid to the affected employee.

22 (b) If upon inspection or investigation the Labor  
23 Commissioner determines that a person had paid or caused to be paid a wage  
24 for overtime work in violation of any provision of this chapter, or any  
25 provision regulating hours and days of work in any order of the Industrial  
26 Welfare Commission, the Labor Commissioner may issue a citation. The  
27 procedures for issuing, contesting, and enforcing judgments for citations or  
28 civil penalties issued by the Labor Commissioner for a violation of this  
chapter shall be the same as those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in  
addition to any other civil or criminal penalty provided by law.

100. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of  
Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)  
per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee  
for each violation in a subsequent citation, for which the employer fails to provide the employee a  
wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the

1 extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

2 101. Plaintiff has exhausted her administrative remedy by sending a certified letter to the  
3 LWDA and Defendants postmarked on November 16, 2023. The LWDA has not provided notice  
4 of its intent to investigate the alleged violations within 65 calendar days of the postmark date of  
5 the letters.

6 **RELIEF REQUESTED**

7 WHEREFORE, Plaintiff prays for the following relief:

8 1. For an order certifying this action as a class action;

9 2. For compensatory damages in the amount of the unpaid minimum wages for work  
10 performed by Employees and unpaid overtime compensation from at least four (4) years prior to  
11 the filing of this action, as may be proven;

12 ///

13 3. For liquidated damages in the amount equal to the unpaid minimum wage and  
14 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;

15 4. For compensatory damages in the amount of the hourly wage made by Employees  
16 for each missed or deficient meal period where no premium pay was paid therefor from four (4)  
17 years prior to the filing of this action, as may be proven;

18 5. For compensatory damages in the amount of the hourly wage made by Employees  
19 for each day requisite rest breaks were not provided or were deficiently provided where no  
20 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may  
21 be proven;

22 6. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

23 7. For penalties pursuant to Labor Code § 226.3, as may be proven;

24 8. For penalties pursuant to Labor Code § 203 for all Employees who quit or were  
25 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

26 9. For penalties pursuant to Labor Code § 1174.5, as may be proven;

27 10. For restitution for unfair competition pursuant to Business & Professions Code  
28 § 17200 et seq., including disgorgement or profits, as may be proven;

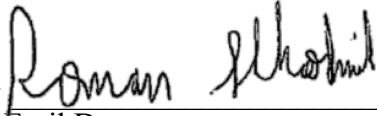
- 1           11.     For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;
- 2           12.     For compensatory damages in the amount of all previously unreimbursed business
- 3 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
- 4 from four (4) years prior to the original filing of this action, as may be proven;
- 5           13.     For an order enjoining Defendants and their agents, servants, and employees, and
- 6 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
- 7 duties adumbrated in this Complaint;
- 8           14.     For all general, special, and incidental damages as may be proven;
- 9           15.     For an award of pre-judgment and post-judgment interest;
- 10          16.     For an award providing for the payment of the costs of this suit;
- 11          17.     For an award of attorneys' fees; and
- 12          18.     For such other and further relief as this Court may deem proper and just.

13

14 DATED: January 22, 2024

D.Law, Inc.

15

16 By 

Emil Davtyan  
David Yeremian  
Roman Shkodnik  
Robert Payaslyan  
Attorneys for Plaintiff  
MELISSA JOSEPHINE FLUTY  
and the putative class

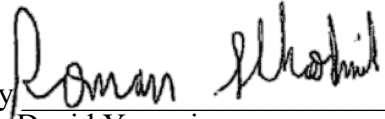
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

3  
4 DATED: January 22, 2024

D.Law, Inc.

5 By   
6 David Yeremian  
7 Roman Shkodnik  
8 Robert Payaslyan  
9 Attorneys for Plaintiff  
10 MELISSA JOSEPHINE FLUTY  
11 and the putative class  
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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

Anna Pham  
[APham@hkemploymentlaw.com](mailto:APham@hkemploymentlaw.com)  
 Hieu T. Williams  
[hwilliams@hkemploymentlaw.com](mailto:hwilliams@hkemploymentlaw.com)  
**HIRSCHFELD KRAEMER LLP**  
 456 Montgomery Street, Suite 200  
 San Francisco, CA 94104

**[ ] (BY MAIL)** I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

☐ **(BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

Executed on January 22, 2024, at Glendale, California.

Natalia Bermudes  
Natalia Bermudes

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Authorize and file on:

Time received by San Francisco County:

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Natalia Bermudes, Yeremian, David & Associates Inc

Roman Shkodnik, Yeremian, David & Associates Inc

Jan 22 2024 3:39PM PST 

Pending 

Court:

Division/Courtroom:

Case Class:

Case Type:

Case Number:

Case Name:

CA Superior Court County of Solano-eService

N/A

Civil-Fluty vs Zepexco Inc (CU23-05443)

Complex Litigation

CU23-05443

Fluty, Melissa Josephine vs Zepexco Inc et al

Transaction Option:

Billing Reference:

Read Status for e-service:

Serve Only - Public

Fluty v. Zepexco, Inc.

Not Purchased

Documents List

|                                                         |                   |                          |         |
|---------------------------------------------------------|-------------------|--------------------------|---------|
| 1 Document(s)                                           |                   |                          |         |
| Attached Document, 25 Pages                             |                   |                          |         |
| Document Type:<br>Amended Complaint                     | Access:<br>Public | Statutory Fee:<br>\$0.00 | Linked: |
| Document title:<br>First Amended Class Action Complaint |                   |                          |         |
|                                                         |                   |                          |         |

Expand All

 Sending Parties (1)

| Party                    | Party Type | Attorney        | Firm                             | Attorney Type      |
|--------------------------|------------|-----------------|----------------------------------|--------------------|
| Fluty, Melissa Josephine | Plaintiff  | Shkodnik, Roman | Yeremian, David & Associates Inc | Attorney in Charge |

 Recipients (2)

 Service List (2)

| Delivery Option | Party       | Party Type | Attorney         | Firm                                   | Attorney Type      | Method    |
|-----------------|-------------|------------|------------------|----------------------------------------|--------------------|-----------|
| Service         | Zepexco Inc | Defendant  | Pham, Anna T     | Hirschfeld Kraemer LLP - San Francisco | Attorney in Charge | E-Service |
| Service         | Zepexco Inc | Defendant  | Williams, Hieu T | Hirschfeld Kraemer LLP - San Francisco | Attorney in Charge | E-Service |

 Additional Recipients (0)

 Case Parties

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