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SUPERIOR COURT OF CALIFORNIA
NORTH
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

PHUONG HUYNH, an individual

Plaintiff,

vs.

PHO LOVERS LT, INC., an unknown business
entity; TUNG PHAM, an individual; LEON
NGUYEN, an individual; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 30-2024-01379995-CU-OE-NJC

Assigned For All Purposes To: Judge Nathan Vu

Dept:

COMPLAINT FOR:

- 1. FAILURE TO PAY OVERTIME WAGES;**
- 2. FAILURE TO PAY MINIMUM WAGES;**
- 3. FAILURE TO PROVIDE MEAL PERIODS;**
- 4. FAILURE TO PERMIT REST PERIODS;**
- 5. FAILURE TO PROVIDE PROPER
ITEMIZED STATEMENTS;**
- 6. FAILURE TO PAY WAGES DUE UPON
TERMINATION OF EMPLOYMENT;**
- 7. FAILURE TO COMPLY WITH WRITTEN
REQUEST TO RECEIVE COPY OF
PERSONNEL RECORDS**
- 8. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

DEMAND FOR JURY TRIAL

All allegations in this Complaint are based upon information and belief except for those allegations, which pertain to the PLAINTIFF named herein and PLAINTIFF's counsel. Each allegation in this Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

1 **I. INTRODUCTION**

2 1. This is an individual and representative wage and hour action.

3 2. By this action, PLAINTIFF, PHUONG HUYNH (“PLAINTIFF”), is seeking damages,
4 statutory and civil penalties and attorneys’ fees pursuant to the claims alleged in this Complaint
5 against Defendants, PHO LOVERS LT, INC., TUNG PHAM, and LEON NGUYEN (collectively
6 referred to as “DEFENDANTS”).

7 3. PLAINTIFF also files this action as a representative on behalf of other current and
8 former employees of DEFENDANTS, pursuant to Labor Code §§ 2698, et seq., of the Private
9 Attorneys General Act of 2004 (“PAGA”) seeking penalties, attorneys’ fees, and injunctive relief.

10 4. For at least three years prior to the filing of this action, DEFENDANTS consistently
11 maintained and enforced against PLAINTIFF and DEFENDANTS’ non-exempt employees, among
12 others, the following unlawful practices and policies, in violation of California state wage and hour
13 laws:

14 (a) DEFENDANTS had a consistent policy of requiring PLAINTIFF and
15 DEFENDANTS’ non-exempt employees to work more than eight (8) hours in
16 any given day and/or more than forty (40) hours in any given week, and not
17 paying overtime compensation pursuant to applicable California Labor Code
18 requirements;

19 (b) DEFENDANTS had a consistent policy of not paying PLAINTIFF and
20 DEFENDANTS’ non-exempt employees minimum wages and/or overtime
21 compensation for all hours worked pursuant to applicable California Labor
22 Code requirements;

23 (c) DEFENDANTS had a consistent policy of requiring PLAINTIFF and
24 DEFENDANTS’ non-exempt employees to work at least five (5) hours without
25 a lawful meal period and failing to pay employees one (1) hour of pay at her
26 regular rate of compensation for each workday that the meal period is not
27 provided, as required by California state wage and hour laws.
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(d) DEFENDANTS had a consistent policy of failing to provide PLAINTIFF and DEFENDANTS' non-exempt employees rest periods of at least (10) minutes for every shift over 3.5 hours and/or 7 hours worked or major fraction thereof and failing to pay PLAINTIFF one (1) hour of pay at his regular rate of compensation for each workday that the rest period is not provided, as required by California state wage and hour laws.

(e) With respect to PLAINTIFF and DEFENDANTS' non-exempt employees who either were discharged, laid off, or resigned, DEFENDANTS failed to pay them in accordance with the requirements of Labor Code sections 201, 202, 203; and

(f) DEFENDANTS failed to maintain accurate records of PLAINTIFF's and DEFENDANTS' non-exempt employees earned wages and work periods.

5. PLAINTIFF brings this action pursuant to California Labor Code sections 201, 202, 203, 204.11, 218, 218.6, 221, 224, 226, 226.2, 226.7, 351, 353, 511, 512, 558, 558.1, 1174, 1182.11-1182.13, 1194, 1197, 1197.1, 1198, 2751, 2698, 2699, among others, and California Code of Regulations, Title 8, section 11050 *et seq.*, seeking unpaid meal and rest period compensation, penalties, injunctive, and other equitable relief, and reasonable attorneys' fees and costs.

II. PARTIES

A. PLAINTIFF

6. At all times relevant, PLAINTIFF, PHUONG HUYNH, is a former non-exempt employee of DEFENDANTS and is a resident of the County of Orange, State of California. PLAINTIFF worked for DEFENDANTS in various job position as a cashier, and waiter/waitress. As part of her duties, PLAINTIFF engaged in performing tasks of cleaning of the restaurant and bathrooms, loading and unloading supplies, preparing of food items, taking orders, serving food, receiving payments from diners at DEFENDANTS' business located at **9892 Westminster Ave Suite 314-316, Garden Grove, CA 92844.**

B. DEFENDANTS

1 7. PLAINTIFF is informed and believe, and thereon allege, that Defendant, PHO
2 LOVERS LT, INC. ("PHO LOVERS") is an unknown business entity domiciled within the State of
3 California and doing business in the City of Westminster, CA. Defendant PHO LOVERS is a popular
4 Asian restaurant and is a type of business covered under IWC Wage Order No. 5-2001 covering the
5 "Public Housekeeping Industry." The IWC Orders are codified at Title 8, California Code of
6 Regulations, Section 11010, et seq. PLAINTIFF is informed and believes that each family member
7 works at the restaurant on a daily and weekly basis and directs the work of PLAINTIFF and are
8 involved in the controlling the hours worked, participate in calculating and payment of wages to
9 PLAINTIFF and other restaurant employees.

10 8. PLAINTIFF is informed and believes, and thereon alleges, that Defendants, TUNG
11 PHAM ("PHAM"), and LEON NGUYEN ("LEON"), are residents of the County of Orange. PHAM
12 and LEON are individuals and owners of PHO LOVERS who control the scheduling of work hours
13 and payment of wages and tips. Defendants, PHAM and LEON are personally liable for certain
14 claims alleged herein pursuant to Labor Code §558.1 because they were either the "employer" or a
15 "other person" acting on behalf of PHO LOVERS, as an owner, director, officer, or managing agent
16 of PHO LOVERS who violated or caused to be violated Labor Code laws regarding payment of
17 wages, overtime and meal and rest breaks. *Seviour-Iloff v. LaPaille* (2022) 80 Cal.App.5th 427.

18 9. At all times alleged herein, DEFENDANTS, PHAM, and LEON had operated and
19 became the successors-in-interests, joint venture, and/or the alter egos of Defendant, PHO LOVERS
20 by virtue of, among other reasons, the intermingling of corporate funds with personal funds,
21 application of corporate funds and assets to personal use and overall treatment of the corporation as
22 one and the same as TUNG, and LEON, for themselves, and controlled, dominated and operated PHO
23 LOVERS without any separate identity, observation of corporate formalities or other manner of
24 division. A finding that an alter ego relationship existed and exists is necessary to avoid unjust
25 enrichment without which PLAINTIFF will not be adequately compensated for her damages. There
26 is such unity of interest and ownership that the separate personalities of TUNG PHAM, and LEON
27 NGUYEN with PHO LOVERS, no longer exist and if the acts are treated as those of the corporation
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1 alone, an inequitable result will follow. DEFENDANTS, TUNG PHAM, and LEON NGUYEN are
2 owners and supervisors that exercised control over the wages, hours or working conditions of
3 PLAINTIFF. In addition, PHO LOVERS carried on business without retaining substantial capital in
4 such a way that it was and is likely to have no sufficient assets available to meet its debts to
5 PLAINTIFF, and it is inequitable that DEFENDANTS should be shielded under such an organization
6 to escape personal liability. The attempt to do corporate business without providing a sufficient basis
7 of financial responsibility is an abuse of the separate entity and ineffectual to exempt
8 DEFENDANTS, PHAM and LEON from corporate debts. . DEFENDANTS, PHAM and LEON in
9 all respects acted as the employer and/or joint employer of PLAINTIFF and its non-exempt
10 employees and exercised control over the wages, hours or working conditions of PLAINTIFF and
11 other employee and liable for unpaid wages pursuant to Labor Code § 558.

12 10. PLAINTIFF is informed and believes, and based thereon alleges, that each Defendant
13 acted in all respects pertinent to this action as the agent of the other DEFENDANT, carried out a joint
14 scheme, venture, business plan or policy in all respects pertinent hereto, and the acts of each
15 defendant are legally attributable to the other DEFENDANT. Furthermore, DEFENDANTS in all
16 respects acted as the employer and/or joint employer of PLAINTIFF.

17 11. The true names and capacities, whether individual, corporate, associate, or otherwise,
18 of DEFENDANTS sued herein as DOES 1 to 50, inclusive, are currently unknown to PLAINTIFFS,
19 who therefore sues DEFENDANTS by such fictitious names under California Code of Civil
20 Procedure § 474. PLAINTIFFS are informed and believes, and based thereon alleges, that each of the
21 DEFENDANTS designated herein as a DOE is legally responsible in some manner for the unlawful
22 acts referred to herein. PLAINTIFFS will seek leave of court to amend this Complaint to reflect the
23 true names and capacities of the DEFENDANTS designated hereinafter as DOES when such
24 identities become known.

25 12. Venue as to each Defendant is proper in this judicial district, pursuant to California
26 Code of Civil Procedure § 395. On information and belief, DEFENDANTS operate and is doing
27 business in Orange County, and each Defendant is within the jurisdiction of this Court for service of
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process purposes. The unlawful acts alleged herein have a direct effect on PLAINTIFF and those similarly situated within the State of California.

III. GENERAL ALLEGATIONS

13. PLAINTIFF, PHUONG HUYNH and other employees of DEFENDANTS are and were employed as non-exempt employees within the meaning of the California Labor Code and the implementing rules and regulations of IWC California Wage Orders. Upon information and belief, DEFENDANTS maintain a restaurant business that operates Monday – Sunday (9:00 a.m. – 9:00 p.m.).

14. PLAINTIFF and other employees were paid a straight daily rate of pay and was not properly paid at least minimum wage for all hours worked and not paid for hours worked when working more than eight (8) hours in any given day and/or more than forty (40) hours in any given week. DEFENDANTS did not maintain any timekeeping records of meal periods.

15. Upon information and belief, during the relevant time frame, DEFENDANTS maintained and enforced a restaurant schedule and policies that encouraged and required PLAINTIFF and other employees to be on duty and work. without being permitted to take lawful meal periods and rest breaks. DEFENDANTS' production demands often required PLAINTIFF and other employees to interrupt, shorten or miss their lawful meal periods of thirty (30) uninterrupted minutes and were not relieved of all duty.

16. PLAINTIFF never received a second meal period when she worked a shift that last longer than ten (10) hours, and did not receive one hour of pay since DEFENDANT never informed her of this law.

17. PLAINTIFF never signed a meal break waiver form.

18. DEFENDANTS failed to record meal periods as required by the Labor Code and Wage Orders.

19. PLAINTIFF never received a meal break premium for a missed, shortened or late meal period.

1 20. PLAINTIFF never received a rest break premium for a missed, shortened or late rest
2 period.

3 21. As a result of these illegal policies and practices, DEFENDANTS engaged in and
4 enforced the following additional unlawful practices and policies against PLAINTIFF:

5 (a) failing to pay PLAINTIFF who was discharged, in accordance with the
6 requirements of Labor Code §§ 201, 202, 203; and

7 (b) failing to maintain accurate records of PLAINTIFF's earned wages and work
8 periods in violation of Labor Code §§ 226 and 1174(d) and Section 7 of the
9 applicable IWC Wage Orders.

10 22. On information and belief, PLAINTIFF alleges that DEFENDANTS' actions as
11 described throughout this Complaint were willful.

12 23. DEFENDANTS have made it difficult to account with precision for the unlawfully
13 withheld meal and rest period compensation owed to PLAINTIFF, during the liability period,
14 because they did not implement and preserve a record-keeping method as required for non-exempt
15 employees by California Labor Code sections 226, 1174(d), and section 7 of the California Wage
16 Orders. DEFENDANTS have failed to comply with Labor Code section 226(a) by accurately
17 reporting total hours worked by PLAINTIFF. PLAINTIFF is therefore entitled to penalties not to
18 exceed \$4,000 pursuant to Labor Code section 226(b).

19 24. DEFENDANTS have failed to comply with section 7 of the California IWC Wage
20 Orders by failing to maintain time records showing when the employee begins and ends each work
21 period, meal periods, wages earned pursuant to Labor Code section 226.7, and total daily hours
22 worked by itemizing in wage statements all deductions from payment of wages and accurately
23 reporting total hours worked by PLAINTIFF.

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FIRST CAUSE OF ACTION
FOR FAILURE TO PAY OVERTIME WAGES
[CALIFORNIA LABOR CODE §§ 510, 1194 and 1198]
(Against All DEFENDANTS)

25. PLAINTIFF re-alleges and incorporates by reference, the paragraphs previously alleged in this Complaint.

26. Labor Code §§ 510, 1194 and 1198 provide that employees in California shall not be employed more than eight hours in any work day, and/or more than forty hours in any workweek, or work a seventh (7th) day in a work week unless they receive additional compensation beyond their regular wages in amounts specified by law.

27. Labor Code § 1194 provides that an employee who has not been paid overtime compensation as required by Section 1198 may recover the unpaid balance of the full amount of such overtime compensation, together with costs of suit, as well as liquidated damages in an amount equal to the overtime compensation unlawfully withheld, and interest thereon, in a civil action. The action may be maintained directly against the employer in his name without first filing a claim with the Department of Labor Standards and Enforcement.

28. At all times relevant hereto, IWC Wage Order No. 5-2001 applied, and applies, to PLAINTIFF's employment with DEFENDANTS.

29. At all times relevant hereto, IWC Wage Order No. 5-2001 (3)(A) provides for payment of overtime wages equal to one and one-half times an employee's regular rate of pay for all hours worked over 8 hours a day and/or forty (40) hours in a work week.

30. At all times relevant hereto, IWC Wage Order No. 5-2001 (3)(A) provides for payment of overtime wage equal to one and one-half (1 ½) times an employee's regular rate of pay for all hours worked over eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours on the seventh (7th) consecutive day of work in a work week.

31. At all times relevant hereto, IWC Wage Order No. 5-2001 (3)(A) provides for

1 payment of overtime wage equal to double the employee's regular rate of pay for all hours
2 worked over twelve (12) hours in any workday, and for all hours worked over eight (8) hours on
3 the seventh (7th) consecutive day of work in a work week.

4 32. DEFENDANTS, and each of them, have intentionally and improperly failed to pay
5 wages for all hours worked including off the clock work, failed to pay overtime wages, that
6 resulted in an underpayment of wages to PLAINTIFFS while benefiting DEFENDANTS and to
7 avoid payment of overtime wages and other benefits in violation of California Code of
8 Regulations and the guidelines set forth by the Division of Labor Standards and Enforcement.

9 33. At all times relevant hereto, from time to time, PLAINTIFF has worked more than
10 eight (8) hours in a workday, and/or more than forty (40) hours in a workweek, as an employee
11 of DEFENDANTS.

12 34. At all times relevant hereto, from time to time, PLAINTIFF has worked more than
13 twelve (12) hours in a workday, and/or more than eight (8) hours on the seventh (7th)
14 consecutive workday in a workweek.

15 35. At all times relevant hereto, the DEFENDANTS, and each of them, failed to pay
16 to PLAINTIFF overtime compensation for the hours she has worked in excess of the maximum
17 hours permissible by law as required by Labor Code §§ 1194, 1197 and 1198 and the provisions
18 of IWC order No. 5-2001, Cal. Code of Regulations Title 8 § 11050.

19 36. By virtue of the DEFENDANTS' unlawful failure to pay additional compensation
20 to PLAINTIFF for overtime hours, PLAINTIFF has suffered, damages in amounts which are
21 presently unknown to PLAINTIFF, but which exceed the jurisdictional limits of this Court and
22 which will be ascertained according to proof at trial.

23 37. DEFENDANTS, and each of them, acted intentionally, oppressively and
24 maliciously toward PLAINTIFF with a conscious disregard of the PLAINTIFF' rights, or the
25 consequences suffered by PLAINTIFF, with the intent of depriving PLAINTIFF of property and
26 legal rights and otherwise causing PLAINTIFF injury.

27 38. PLAINTIFF requests recovery of overtime compensation according to proof,
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1 interest, attorneys' fees and costs pursuant to Labor Code §§ 218.5 and 1194(a), as well as the
2 assessment of any statutory penalties against these DEFENDANTS, and each of them, and any
3 additional sums as provided by the Labor Code and/or other statutes.

4 39. Further, PLAINTIFF is entitled to seek and recover reasonable attorneys' fees and
5 costs pursuant to Labor Code §§ 210 and 1194.

6 **SECOND CAUSE OF ACTION**

7 **FOR FAILURE TO PAY MINIMUM WAGES**

8 **[CALIFORNIA LABOR CODE §§ 1182.11-1182.13, 1194(a), 1194.2, 1197, 1197.1 and**
9 **CALIFORNIA CODE OF REGULATION, Title 8, §11050]]**

10 **(Against All Defendants)**

11 40. PLAINTIFF incorporates by reference and re-allege as if fully stated herein the
12 material allegations set out in the paragraphs above.

13 41. At all relevant times, California Labor Code §§ 1182.11-1182.13, 1194, 1197, and
14 1197.1 provide that the minimum wage for employees fixed by the Industrial Welfare
15 Commission is the minimum wage to be paid to employees, and the payment of a lesser wage
16 than the minimum so fixed is unlawful.

17 42. During the relevant time period, PLAINTIFF was typically paid a flat rate,
18 generally \$75.00 per day, without regard to the amount of hours actually worked, and routinely
19 worked 14 hours a day, six days per week. This payment scheme resulted in a daily wage less
20 than the legal minimum wage and failed to compensate PLAINTIFF for daily overtime and
21 double-time to which she was entitled.

22 43. Defendants have failed to pay minimum wage to PLAINTIFF as required, pursuant
23 to California Labor Code §§ 1194, 1197, and 1197.1.

24 44. Defendants' failure to pay PLAINTIFF the minimum wage as required violates
25 California Labor Code §§ 1194, 1197, and 1197.1. Pursuant to those sections, PLAINTIFF is
26 entitled to recover the unpaid balance of her minimum wage compensation as well as interest,
27 costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully
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1 unpaid and interest thereon.

2 45. Pursuant to California Labor Code §§ 1197.1, PLAINTIFF is entitled to recover a
3 penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and
4 \$250.00 for each subsequent failure to pay each employee minimum wages.

5 46. Pursuant to California Labor Code § 1194.2, PLAINTIFF is entitled to recover
6 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

7 47. Finally, PLAINTIFF is entitled to seek and recover reasonable attorneys' fees and costs
8 pursuant to Labor Code §§ 218.5, 210 and 1194.

9 **THIRD CAUSE OF ACTION**

10 **FOR FAILURE TO PROVIDE MEAL PERIODS**

11 **[CALIFORNIA LABOR CODE §§ 226.7 and 512, and**

12 **CALIFORNIA CODE OF REGULATION, Title 8, §11050]**

13 **(Against All DEFENDANTS)**

14 48. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth
15 herein, the paragraphs previously alleged in this Complaint.

16 49. Labor Code §§ 226.7 and 512 and Cal. Code of Regulations, Title 8, §
17 11050(11)(A), provides that no employer shall employ any person for a work period of more than
18 five (5) hours without a meal period of not less than thirty (30) minutes.

19 50. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
20 period of more than five (5) hours without providing a meal break of not less than thirty (30)
21 minutes in which the employee is relieved of all of his or her duties. An employer may not
22 employ an employee for a work period of more than ten (10) hours per day without providing the
23 employee with a second meal period of not less than thirty (30) minutes, except that if the total
24 hours worked is no more than twelve (12) hours, the second meal period may be waived by
25 mutual consent of the employer and the employee only if the first meal period was not waived.

26 51. Despite said requirements of the IWC wage orders applicable to PLAINTIFF's
27 employment by DEFENDANTS and Labor Code § 512 and Labor Code § 226.7, PLAINTIFF was not
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1 authorized to have second meal periods and was not relieved of all duties during any meal periods she
2 did take.

3 52. During the relevant time period, DEFENDANTS failed to provide PLAINTIFF in her
4 role as a non-exempt cook, cashier, and waitress, first and second uninterrupted meal periods of not
5 less than thirty (30) minutes pursuant to the IWC wage orders applicable to her employment by
6 DEFENDANTS. DEFENDANTS implemented and enforced policies and practices which pressured or
7 required PLAINTIFF to work during her meal periods, to forego her meal periods, and/or to return to
8 work from meal periods prior to thirty (30) uninterrupted minutes. As a proximate result of the
9 violations, PLAINTIFF has been damaged in an amount according to proof at time of trial.

10 53. Labor Code § 226.7 and Cal. Code of Regulations, Title 8, § 11050(11)(B), provides
11 that if an employer fails to provide an employee a meal period in accordance with this section, the
12 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation
13 for each workday that the meal period is not provided.

14 54. DEFENDANTS, and each of them, have intentionally and improperly denied meal
15 periods to PLAINTIFF in violation of Labor Code §§ 226.7 and 512 and Cal. Code of Regulations,
16 Title 8, § 11050(11)(A) and other regulations and statutes.

17 55. At all times relevant hereto, PLAINTIFF has worked more than five (5) hours in a
18 workday.

19 56. At all times relevant hereto, the DEFENDANTS, and each of them, failed to
20 authorize and permit meal periods and prevented the taking of meal periods as required by Labor
21 Code §§ 226.7 and 512 and Cal. Code of Regulations, Title 8, §11050(11)(A).

22 57. By virtue of the DEFENDANTS' unlawful failure to provide meal periods and
23 prevention of same to PLAINTIFF, PLAINTIFF has suffered damages in amounts which are
24 presently unknown to PLAINTIFF but which exceed the jurisdictional limits of this Court and
25 which will be ascertained according to proof at trial.

26 58. PLAINTIFF requests recovery of meal period compensation pursuant to Labor Code §§
27 226.7 and Cal. Code of Regulations, Title 8, §11050(11)(D), as well as the assessment of any statutory
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1 penalties against these DEFENDANTS, and each of them, in a sum as provided by the Labor Code
2 and/or other statutes.

3 59. Defendants, TON and KIM have individual liability under Labor Code §558.1 as
4 the owner/officer/director/managing agent who caused the violation alleged herein.

5 **FOURTH CAUSE OF ACTION**
6 **FOR FAILURE TO PERMIT REST PERIODS**

7 **[CALIFORNIA LABOR CODE §§ 226.7 and 512]**

8 **(Against All DEFENDANTS)**

9 60. PLAINTIFF re-alleges and incorporates by reference the paragraphs previously
10 alleged in this Complaint.

11 61. Labor Code §§ 226.7 and Cal. Code of Regulations, Title 8, § 11050(12)(A),
12 provides that employers authorize and permit all employees to take rest periods at the rate of ten
13 (10) minutes net rest time per 3.5 hours worked.

14 62. Labor Code §§ 226.7 and Cal. Code of Regulations, Title 8, § 11050(12)(D),
15 provides that if an employer fails to provide an employee rest periods in accordance with this
16 section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate
17 of compensation for each workday that the rest period is not provided.

18 63. DEFENDANTS, and each of them, have intentionally and improperly denied rest
19 periods to PLAINTIFF in violation of Labor Code §§ 226.7 and 512 and Cal. Code of
20 Regulations, Title 8, § 11050(12)(A).

21 64. At all times relevant hereto, PLAINTIFF has worked more than four hours in a
22 workday.

23 65. At all times relevant hereto, the DEFENDANTS, and each of them, failed to
24 provide rest periods and actually prevented rest periods as required by Labor Code §§ 226.7 and
25 Cal. Code of Regulations, Title 8, § 11050(12)(A). DEFENDANTS failed to relieve PLAINTIFF
26 of her job duties and failed to relinquish control over how PLAINTIFF spent time during rest
27 breaks.

66. By virtue of the DEFENDANTS' unlawful failure to provide rest periods to the PLAINTIFF has suffered damages in amounts which are presently unknown to the PLAINTIFF but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

67. PLAINTIFF is informed and believes, and based upon that information and belief allege, that DEFENDANTS, and each of them, knew or should have known that PLAINTIFF was entitled to rest periods and purposely elected not to provide rest periods.

68. DEFENDANTS, and each of them, acted intentionally, oppressively and maliciously toward PLAINTIFF with a conscious disregard of his rights, or the consequences to PLAINTIFF, with the intent of depriving PLAINTIFF of property and legal rights and otherwise causing PLAINTIFF injury.

69. PLAINTIFF requests recovery of rest period compensation pursuant to Labor Code §§ 226.7 and Cal. Code of Regulations, Title 8, § 11050(12)(B), as well as the assessment of any statutory penalties against these DEFENDANTS, and each of them, in a sum as provided by the Labor Code and/or other statutes.

70. Defendants, TON and KIM have individual liability under Labor Code §558.1 as the owner/officer/director/managing agent who caused the violation alleged herein.

FIFTH CAUSE OF ACTION

FOR FAILURE TO FURNISH PROPER ITEMIZED STATEMENTS

[CALIFORNIA LABOR CODE § 226]

(Against All DEFENDANTS)

71. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

72. California Labor Code § 226(a) states that every employer shall, semi-monthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized statement in writing showing substantial detailed information, including but not limited to, gross and net wages earned, total hours worked, and all applicable hourly rates and the corresponding

1 number of hours worked at each hourly rate. IWC Wage Order 4 § 7(B) similarly requires
2 employers semimonthly or at the time of each payment of wages to furnish to each employee an
3 accurate itemized statement in writing. These required disclosures of information are essential to
4 enable employees to determine whether they have been paid in compliance with the law.

5 73. Labor Code § 226 requires employers to list on an itemized wage statement “all
6 amounts earned and now owing, not just those amounts actually paid.” *Naranjo v. Spectrum*
7 *Security Services, Inc.*, (2022) 13 Cal.5th 93.

8 74. The employer’s failure to list wages that an employee earned but was not paid
9 “deprives the employee of information needed to evaluate whether the payment is correct, and in
10 so doing results in injury under the terms of the statute.” Extra pay for missed breaks constitutes
11 “wages” that must be reported on statutorily required wage statements during employment and
12 paid within statutory deadlines when an employee leaves the job. *Naranjo v. Spectrum Security*
13 *Services, Inc.*, (2022) 13 Cal.5th 93, 120.

14 75. Throughout the liability period, DEFENDANTS intentionally failed to furnish to
15 PLAINTIFF, upon each payment of wages, proper and lawful itemized statements accurately
16 showing: the name of the employee, the name and address of the legal entity that is the
17 employer, total hours worked, the applicable hourly rates in effect during each pay period and
18 the corresponding hours worked at each hourly rate, amongst other statutory requirements of
19 Labor Code § 226 and the applicable Wage Orders.

20 76. As a result of DEFENDANTS’ conduct, PLAINTIFF has suffered injury in that,
21 among other things, the lack of the required information hindered her from determining the
22 accurate amount of wages owed to her and led her to believe she was not entitled to be paid
23 wages for overtime, missed meal and rest breaks, or for each hour of labor she performed,
24 although she was so entitled. The absence of accurate wage statements has prevented timely
25 challenges to DEFENDANTS’ unlawful pay practices, caused difficulty and expense in
26 attempting to reconstruct time and pay records, and resulted in the submission by Defendant of
27 inaccurate information about wages and deductions from wages to state and federal government
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1 agencies. PLAINTIFF's entitlement to state benefits is based upon the total amount of wages
2 earned and deductions from wages as reflected on his wage statements, and he is thereby injured
3 by the DEFENDANTS' failure to report the total amount of wages earned during each pay period
4 on each paycheck stub. As a result of DEFENDANTS' conduct, PLAINTIFF has suffered injury
5 because the legal right to receive accurate wage statements was violated and PLAINTIFF cannot
6 promptly and easily determine from the wage statements alone the correct gross wages, and
7 overtime wages.

8 77. Under Code section 226, subsection (e) and based on DEFENDANTS' conduct as
9 alleged herein, PLAINTIFF is entitled to fifty dollars (\$50) for the initial pay period in which a
10 wage and hour statement violation occurred, and one hundred dollars (\$100) per employee for
11 each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand
12 dollars (\$4,000); plus an award of costs and reasonable attorney's fees.

13 78. Defendants, TON and KIM have individual liability under Labor Code §558.1 as
14 the owner/officer/director/managing agent who caused the violation alleged herein.

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16 **SIXTH CAUSE OF ACTION**
17 **FOR FAILURE TO PAY ALL WAGES DUE UPON ENDING EMPLOYMENT**
18 **[CALIFORNIA LABOR CODE §§ 201-203]**
19 **(Against All DEFENDANTS)**

20 79. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth
21 herein, the paragraphs previously alleged in this Complaint.

22 80. Labor Code section 201 provides "If an employer discharges an employee, the
23 wages earned and unpaid at the time of discharge are due and payable immediately."

24 81. Labor Code section 202 provides "If an employee not having a written contract for
25 a definite period quits his or her employment, his or her wages shall become due and payable not
26 later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or
27 her intention to quit, in which case the employee is entitled to his or her wages at the time of
28

1 quitting.”

2 82. PLAINTIFF was discharged from or quit her employment with DEFENDANTS
3 within the applicable statute of limitations and Defendants failed and refused, and continue to
4 fail and refuse to pay the final wages due and owing to PLAINTIFF.

5 83. DEFENDANTS failed to pay PLAINTIFF without abatement, all wages as defined
6 by applicable California law. Among other things, PLAINTIFF was not paid any of the
7 minimum wage, overtime compensation, meal period and rest breaks premium referred to in this
8 Complaint. DEFENDANTS’ failure to pay said wages within the required time was willful
9 within the meaning of Labor Code §§ 201, 202, 203.

10 84. Extra pay for missed breaks constitutes “wages” that must be reported on
11 statutorily required wage statements during employment and paid within statutory deadlines
12 when an employee leaves the job. The extra pay is “designed to compensate for the unlawful
13 deprivation of a guaranteed break” but “also compensates for the work the employee performed
14 during the break period. *Naranjo v. Spectrum Security Services, Inc.*, (2022) 13 Cal.5th 93, 120.

15 85. Defendant, TON and KIM have individual liability under Labor Code §558.1 as
16 the owner/officer/director/managing agent who caused the violation alleged herein.

17 86. Therefore, PLAINTIFF is entitled to one day’s wages for each day she was not
18 timely paid all said wages due, up to a maximum of thirty (30) days’ wages for PLAINTIFF.
19 Because PLAINTIFF was never ever paid the minimum and overtime wages to which she was
20 entitled, referred to in this Complaint, PLAINTIFF is entitled to thirty (30) days of wages.

21 **SEVENTH CAUSE OF ACTION**

22 **FAILURE TO COMPLY WITH WRITTEN REQUEST TO RECEIVE COPY OF**
23 **PERSONNEL RECORDS**

24 **[CALIFORNIA LABOR CODE §1198.5]**

25 **(Against All DEFENDANTS)**

26 87. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein, the
27 paragraphs previously alleged in this Complaint.
28

1 88. Labor Code § 1198.5 provides that: “Every current and former employee, or his or
2 her representative, has the right to inspect and receive a copy of the personnel records that the
3 employer maintains relating to the employee’s performance or to any grievance concerning the
4 employee.” The employer must make the personnel file/performance documents available to the
5 worker or his or her representative within 30 days from the date it receives a written request.
6 Upon a written request from a current or former employee, or his or her representative, the
7 employer shall also provide a copy of the personnel records at a charge not to exceed the actual
8 cost of reproduction within 30 days from the date it receives the written request. (Labor Code §
9 1198.5(b)(1).)

10 89. If the employer fails to comply, the employee can recover a \$750 penalty from the
11 employer or bring an action for injunctive relief to obtain compliance and may recover costs and
12 reasonable attorney’s fees. (Labor Code § 1198.5(k)(1).)

13 90. On September 9, 2022, PLAINTIFFS’ counsel sent a written request to
14 DEFENDANTS requesting the documents pursuant to Labor Code § 1198.5. DEFENDANTS
15 have refused to provide the documents as requested and therefore are in violation of Labor Code
16 §1198.5.

17 91. PLAINTIFFS therefore seek recovery of damages arising out of the Defendants’
18 failure to comply with Labor Code §1198.5, as well as the monetary remedies provided for under
19 the statute, including by not limited to a \$750 penalty payable to each PLAINTIFF, as well as
20 attorney’s fees and costs.

21 **EIGHTH CAUSE OF ACTION**

22 **PENALTIES PURSUANT TO PRIVATE ATTORNEY GENERALS’ ACT**

23 **[Individual and Representative Claim via CALIFORNIA LABOR CODE §§ 2698 and 2699]**

24 **(Against All DEFENDANTS)**

25 92. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein, the
26 paragraphs previously alleged in this Complaint.
27
28

1 93. As a result of the acts previously alleged, including violations of the sections of the California
2 Labor Code alleged above, PLAINTIFF seek penalties under Labor Code §§ 2698 and 2699.

3 94. From at least April 12, 2018 through to the present, (the "Civil Penalty Period"),
4 DEFENDANTS violated Labor Code Sections 201, 202, 203, 204.11, 221, 224, 226, 226.2, 226.7, 226.8,
5 351, 432, 510, 558, 1174, 1194, 1197, 1198.5, and 2751 against PLAINTIFF and other former and current
6 employees in the State of California.

7 95. PLAINTIFF, as "aggrieved employees" within the meaning of California Labor Code
8 sections 2698 et seq., acting on behalf of themselves, and other former and current non-exempt employees of
9 DEFENDANTS, bring this action to recover the civil penalties provided for under the Labor Code Private
10 Attorney General Act of 2004 (hereafter, "PAGA")

11 96. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf of
12 themselves and other similarly aggrieved current or former employees, to bring a civil action to recover civil
13 penalties pursuant to the procedures specified in Labor Code Section 2699.3 without having to obtain a
14 formal class certification from the court.

15 97. As prescribed by the Labor Code, PLAINTIFF gave written notice by letter dated April 12,
16 2019, via certified U.S. Mail, to DEFENDANTS and to the LWDA via online submission of PLAINTIFFS'
17 allegations of DEFENDANTS' violations of the Labor Code. (See Lab. Code § 2699.3(a)(1).) It has been
18 more than 65 days since notice was provided to the LWDA and PLAINTIFFS have not been notified that the
19 LWDA intends to investigate this matter. Therefore, PLAINTIFF may proceed and may include in the
20 Complaint a claim for penalties pursuant to Labor Code §§ 2699, et seq.

21 98. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFFs are entitled to recover civil
22 penalties for DEFENDANTS' violations of Labor Code Sections 201, 202, 203, 204.11, 221, 224, 226,
23 226.2, 226.7, 226.8, 351, 432, 510, 558, 1174, 1194, 1197, 1198.5, and 2751 in the following amounts:
24

25 99. For violation of Labor Code Sections 1197, one hundred dollars (\$100) for each underpaid
26 employee for each pay period the employee was underpaid, and two hundred fifty dollars (\$250) for each
27
28

subsequent violation for each underpaid employee for each pay period [penalty amounts established by Labor Code Section 1197.1]

100. For violation of Labor Code Sections 510 and 1194, fifty dollars (\$50) for each underpaid employee for each pay period the employee was underpaid, and one hundred dollars (\$100) for each subsequent violation for each underpaid employee for each pay period [penalty amounts established by Labor Code Section 558].

101. For violation of Labor Code Section 204.11, 226.2, 226.7, one hundred dollars (\$100) for each underpaid employee for each pay period the employee was underpaid, and two hundred dollars (\$200) for each subsequent violation for each underpaid employee for each pay period [penalty amounts established by Labor Code Section 2699(f)(2)].

102. For violation of Labor Code Section 2751, one hundred dollars (\$100) for each underpaid employee for each pay period the employee was underpaid, and two hundred dollars (\$200) for each subsequent violation for each underpaid employee for each pay period [penalty amounts established by Labor Code Section 2699(f)(2)].

103. For violation of Labor Code Section 226(a), two hundred fifty dollars (\$250) for each employee per pay period for the initial violation and one thousand dollars (\$1,000) per employee in a subsequent violation [penalty amounts established by Labor Code Section 226.3].

104. For violation of Labor Code section 201, 202, and 203 one hundred dollars (\$100) for each underpaid employee for each pay period the employee was underpaid, and two hundred dollars (\$200) for each subsequent violation for each underpaid employee for each pay period [penalty amounts established by Labor Code Section 2699(f)(2)].

105. PLAINTIFF further demands reasonable attorney's fees, costs of suit, and interest pursuant to California Labor Code §§ 2699(g)(1).

106. As Labor Code § 558 authorizes the award of a civil penalty for violating Labor Code §§ 500-556 (which includes both meal and rest period premiums and overtime) that include "an amount

1 sufficient to recover underpaid wage,” PLAINTIFF other former and current employees are entitled to
2 recover these wages as a penalty in a private lawsuit under PAGA in addition to civil penalties.

3 107. PLAINTIFF further demands reasonable attorney’s fees, costs of suit, and interest pursuant to
4 California Labor Code §§ 2699(g)(1).

5 108. WHEREFORE, PLAINTIFF requests relief as described herein and below and as deemed
6 just. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein, the paragraphs
7 previously alleged in this Complaint.
8

9 **PRAYER**

10 WHEREFORE, the PLAINTIFF DEMANDS a JURY TRIAL and prays for judgment as
11 follows:

12 **ON THE FIRST CAUSE OF ACTION:**

- 13 (a) For compensatory damages in the amount of \$91,554;
14 (b) For interest from January 13, 2017 on any compensatory damages;
15 (c) For statutory penalties and attorneys fees; and
16 (d) Waiting period wages and penalties.

17 **ON THE SECOND CAUSE OF ACTION:**

- 18 (a) For compensatory damages in the amount of \$75,951;
19 (b) For liquidated damages in the amount of \$75,951;
20 (c) For interest from January 13, 2017 on any compensatory damages;
21 (d) For statutory penalties and attorneys fees; and
22 (e) Waiting period wages and penalties.

23 **ON THE THIRD CAUSE OF ACTION:**

- 24 (a) For statutory penalties, including one hour of pay for each workday that a
25 meal period was not provided in the amount of \$9,408;
26 (b) For interest from January 13, 2017 on any compensatory damages;
27 (c) For interest of 7% on any compensatory damages for unpaid premium
28

1 wages owed under Labor Code § 226.7. *Naranjo v. Spectrum Security*
2 *Services, Inc.* (2022) 13 Cal.5th 93;

3 (d) For attorneys' fees and costs as allowed by the Court.

4 ON THE FOURTH CAUSE OF ACTION:

5 (a) For statutory penalties, including one hour of pay for each workday in
6 which a legally compliant rest period was not provided in the amount of
7 \$9,408;

8 (b) For interest from January 13, 2017 on any compensatory damages;

9 (c) For interest of 7% on any compensatory damages for unpaid premium
10 wages owed under Labor Code § 226.7. *Naranjo v. Spectrum Security*
11 *Services, Inc.* (2022) 13 Cal.5th 93;

12 (d) For attorneys' fees and costs as allowed by the Court.

13 ON THE FIFTH CAUSE OF ACTION:

14 (a) For statutory penalties in the amount of \$4,000;

15 (b) For interest on any compensatory damages;

16 (c) For attorneys' fees and costs. *Betancourt v. OS Restaurant Services, LLC*
17 (2022) 83 Cal.App.5th 132

18 ON THE SIXTH CAUSE OF ACTION:

19 (a) For compensatory damages in the amount of \$5,400;

20 (b) For interest on any compensatory damages;

21 (c) For statutory penalties and attorneys' fees; *Betancourt v. OS Restaurant*
22 *Services, LLC* (2022) 83 Cal.App.5th 132 and;

23 (d) Waiting period wages and penalties.

24 ON THE SEVENTH CAUSE OF ACTION:

25 (a) For compensatory damages according to proof;

26 (b) For interest on any compensatory damages;

27 (c) For statutory penalty of \$750
28

1 (d) For attorneys' fees and costs.

2 ON THE EIGHTH CAUSE OF ACTION:

3 (a) That DEFENDANTS be ordered to pay civil penalties pursuant to violations
4 of Labor Code §§ 2698 and 2699, in the amount of \$100 for the first
5 violation per employee per pay period, and \$200 for subsequent violations
6 per employee per pay period to be allocated 75% to the LWDA and 25% to
7 the affected employees.

8 (b) That DEFENDANTS be ordered to pay civil penalties pursuant to violations
9 of Labor Code §§ 500-556 (which includes both meal and rest period
10 premiums and overtime) that include an amount sufficient to recover
11 underpaid wages to the affected employees.

12 ON ALL CAUSES OF ACTION:

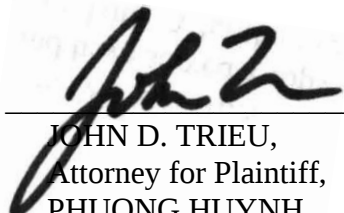
13 (a) For reasonable attorneys' fees;

14 (b) For costs of suit and,

15 (c) For such other and further relief as this Court may deem just and proper.
16

17 Dated: February 15, 2024

LAW OFFICES OF JOHN D. TRIEU, APC

18
19 By:  _____

20 JOHN D. TRIEU,
21 Attorney for Plaintiff,
22 PHUONG HUYNH

23 **DEMAND FOR JURY TRIAL**

24 PLAINTIFF hereby demands trial of the claims by jury to the extent authorized by law.
25
26
27
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