

DAVID G. SPIVAK (SBN 179684)

david@spivaklaw.com

LAUREN R. DAVIS (SBN 294115)

lauren@spivaklaw.com

THE SPIVAK LAW FIRM

8605 Santa Monica Bl

PMB 42554

West Hollywood, CA 90069

Telephone: (213) 725-9094

Facsimile: (213) 634-2485

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

Attorneys for Plaintiff(s),

MELISSA SMITH, and all others similarly situated

(Additional attorneys for Plaintiff(s) on next page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

(UNLIMITED JURISDICTION)

MELISSA SMITH, on behalf of herself and all others similarly situated, the general public, and as an “aggrieved employee” on behalf of other “aggrieved employees” and the State of California under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

RUTH’S HOSPITALITY GROUP, INC., a Massachusetts corporation; RCSH MANAGEMENT, INC., a Massachusetts corporation; RCSH OPERATIONS, INC., a Massachusetts corporation; RCSH OPERATIONS, INC., a California corporation; RHG FISH MARKET, INC., a Florida corporation; RCSH Operations, LLC, a Florida limited liability company; RUTH’S CHRIS STEAK HOUSE BOSTON, LLC, a Massachusetts limited liability company; and DOES 1–50, inclusive,

Defendant(s).

Case No. 30-2023-01366486-CU-OE-CXC

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201, 202 and 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*; and
7. Civil Penalties (Lab. Code §§ 2698, *et seq.*)

JURY TRIAL DEMANDED



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 Plaintiff, Melissa Smith (hereafter “Plaintiff” or “Smith”), on behalf of herself and all
2 others similarly situated, the general public, and as an “aggrieved employee” on behalf of other
3 “aggrieved employees” and the State of California under the Labor Code Private Attorneys
4 General Act of 2004, complains and alleges as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants Ruth’s Hospitality
9 Group, Inc., a Massachusetts corporation, RCSH Management, Inc., a Massachusetts corporation,
10 RCSH Operations, Inc., a Massachusetts corporation, RCSH Operations, Inc., a California
11 corporation, RHG Fish Market, Inc., a Florida corporation, RCSH Operations, LLC, a Florida
12 limited liability company, Ruth’s Chris Steak House Boston, LLC, a Massachusetts limited
liability company, and Does 1 through 50, inclusive (collectively “Defendants”).

13 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
14 and other similarly situated workers for unpaid wages, statutory penalties, interest, and related
15 relief. These claims are based on Defendants’ failures to:

16 (A) Pay all wages, including minimum, regular, and overtime wages, earned
17 for all hours worked at the correct rates of pay;

18 (B) Provide all meal periods;

19 (C) Authorize and permit all rest breaks;

20 (D) Pay premium wages for unprovided meal periods;

21 (E) Pay premium wages for unprovided rest breaks;

22 (F) Issue only accurate and complete itemized wage statements; and

23 (G) Timely pay wages upon termination of employment

24 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
25 restitution, statutory and civil penalties, attorneys’ fees, costs, and related relief through this class
action.

26 **II. THE PARTIES**

27 3. Plaintiff Melissa Smith is a resident of California. At all relevant times, Plaintiff
28 was an “employee” within the meaning of Title 8 California Code of Regulations § 11050 and an



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 “aggrieved employee” within the meaning of Labor Code § 2699 (c).

2 4. Defendant Ruth’s Hospitality Group, Inc. is a corporation organized and existing
3 under the laws of Massachusetts and also a citizen of California based on Plaintiff’s information
4 and belief.

5 5. Defendant RCSH Management, Inc. is a corporation organized and existing under
6 the laws of Massachusetts and also a citizen of California based on Plaintiff’s information and
7 belief.

8 6. Defendant RCSH Operations, Inc. is a corporation organized and existing under
9 the laws of Massachusetts and also a citizen of California based on Plaintiff’s information and
10 belief.

11 7. Defendant RCSH Operations, Inc. is a corporation organized and existing under
12 the laws of California and also a citizen of California based on Plaintiff’s information and belief.

13 8. Defendant RHG Fish Market, Inc. is a corporation organized and existing under
14 the laws of Florida and also a citizen of California based on Plaintiff’s information and belief.

15 9. Defendant RCSH Operations, LLC is a limited liability company organized and
16 existing under the laws of Florida and also a citizen of California based on Plaintiff’s information
17 and belief.

18 10. Defendant Ruth’s Chris Steak House Boston, LLC is a limited liability company
19 organized and existing under the laws of Massachusetts and also a citizen of California based on
20 Plaintiff’s information and belief.

21 11. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
22 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
23 is informed and believes and thereon alleges that said Defendants are legally responsible for the
24 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
25 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
26 when ascertained.

27 12. Plaintiff is informed and believes and thereon alleges that, at all relevant times
28 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
within the course and scope of such agency, employment, direction and control, and with the
approval and ratification of each of the other Defendants.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 13. At all relevant times, in perpetrating the acts and omissions alleged herein,
2 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
3 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
4 Members or otherwise complying with their rights in accordance with applicable California labor
5 laws as alleged herein.

6 14. At all relevant times, in perpetrating the acts and omissions alleged herein,
7 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
8 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
described class in accordance with applicable laws as alleged herein.

9 **III. CLASS ALLEGATIONS**

10 15. This action has been brought and may be maintained as a class action pursuant to
11 California Code of Civil Procedure section 382 because there is a well-defined community of
12 interest among the persons who comprise the readily ascertainable class defined below and
13 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
14 a class action.

15 16. **Class Definition:** The Class is defined as follows: All persons Defendants
16 employed in California as non-exempt, hourly employees, including, but not limited to, “back of
17 the house” employees, “front of the house” employees, server assistants, bussers, food runners,
18 servers, and line cooks, individuals performing work comparable to the aforementioned,
19 compensated comparably to the aforementioned, individuals in similar positions, at any time
20 during the period beginning four years prior to the filing of this action and ending on the date that
final judgment is entered in this action (“Class” or “Class Members”).

21 17. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
22 right to amend or modify the class definition with greater specificity, by further division into
23 subclasses and/or by limitation to particular issues.

24 18. **Numerosity:** The Class Members are so numerous that the individual joinder of
25 each individual Class Member is impractical. While Plaintiff does not currently know the exact
26 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
minimum required for numerosity under California laws.

27 19. **Commonality and Predominance:** Common questions of law and fact exist as to
28 all Class Members and predominate over any questions which affect only individual Class



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

Members. These questions include, but are not limited to:

A. Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay, including minimum, regular, overtime, meal period premium, and rest period premium wages;

B. Whether Defendants failed to provide the Class Members with all meal periods in compliance with California law;

C. Whether Defendants failed to authorize and permit the Class Members to take all rest periods in compliance with California law;

D. Whether Defendants knowingly and intentionally failed to provide the class with accurate and complete itemized wage statements;

E. Whether Defendants willfully failed to provide the class with timely final wages;

F. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code sections 17200, et seq., with respect to the Class; and

G. Whether Class Members are entitled to restitution of money or property that Defendants may have acquired from them through alleged Labor Code violations.

20. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor Code, the Wage Order, and the Business and Professions Code.

21. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

22. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

23. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
2 and efficiently prosecute their common claims in a single forum without the unnecessary
3 duplication of effort and expense that numerous individual actions would entail. In addition, the
4 monetary amounts due to many individual Class Members are likely to be relatively small and
5 would thus make it difficult, if not impossible, for individual Class Members to both seek and
6 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
7 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
8 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

9 **IV. STATEMENT OF FACTS**

10 24. The Wage Order applies to “all persons employed in the public housekeeping
11 industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The
12 Wage Order defines “Public Housekeeping Industry” to mean

13 any industry, business, or establishment which provides meals, housing, or
14 maintenance services whether operated as a primary business or when incidental
15 to other operations in an establishment not covered by an industry order of the
16 Commission, and includes, but is not limited to the following:

- 17 (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters,
18 cafeterias, boarding houses, clubs, and all similar establishments where
19 food in either sold or liquid form is prepared and served to be consumed
20 on the premises;
- 21 (2) Catering, banquet, box lunch service, and similar establishments which
22 prepare food for consumption on or off the premises;
- 23 (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer
24 parks, office or loft buildings, and similar establishments offering rental
25 of living, business, or commercial quarters;
- 26 (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions,
27 homes for the aged, and similar establishments offering board or lodging
28 in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which
provide board or lodging in additional to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of
grounds; maintenance or cleaning of facilities and/or quarters of
commercial units and living units; and



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

(7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants, Smith, and all of the Class Members were covered by the Wage Order because the Defendants operated, and Smith, and all of the Class Members, worked for one or more restaurants. Accordingly, Smith and all of the other Class Members are entitled to the protections the Wage Order provides.

25. On approximately December 5, 2022, the Defendants began to employ Smith in Anaheim in the position of hourly, non-exempt food runner. The Defendants continuously employed her in that capacity until on or about April 18, 2023, when her employment ended.

26. At all relevant times, the Defendants issued wages to Smith and all of the other Class Members on a weekly basis and paid them by the hour. At all relevant times, the Defendants classified Smith and all of the other Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

27. At all relevant times, the Defendants failed to compensate Smith and all of the other Class Members for all hours worked at the applicable minimum or regular rates of pay. Due to chronic understaffing and the Defendants' customer service requirements, the Defendants denied Smith and all other Class Members their earned duty-free meal periods and rest breaks. The Defendants compelled Smith and all other Class Members to remain in their assigned work areas and available to receive work-related directions. The Defendants' managers directed Smith and all other Class Members to clock-out for meal periods and then immediately return to work without taking a duty-free meal period.

28. At all relevant times, the Defendants failed to compensate Smith and all of the other Class Members at the correct rates of pay for all hours worked over eight in a day. The Defendants at times required Smith and all of the other Class Members to work over eight hours in a day. Due to chronic understaffing and Defendants' customer service requirements, the Defendants denied Smith and all other Class Members their earned duty-free meal periods and rest breaks. The Defendants compelled Smith and all other Class Members to remain in their assigned work areas and available to receive work-related directions. The Defendants' managers directed Smith and all other Class Members to clock-out for meal periods and then immediately return to work without taking a duty-free meal period. In addition, the Defendants blended



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 mandatory gratuities earned by Smith and all other Class Members with the traditional voluntary
2 gratuities under the same earnings code, “Tips.” As such, it makes it impossible for Smith and all
3 other Class Members to understand their pay stubs, and which portions of their pay or non-
4 discretionary income that should factor into the overtime wage calculation.

5 29. At all relevant times, the Defendants failed to provide Smith and all of the other
6 Class Members with all timely 30-minute, off-duty meal periods. Due to chronic understaffing
7 and Defendants’ customer service requirements, the Defendants denied Smith and all other Class
8 Members their earned duty-free meal periods. The Defendants compelled Smith and all other
9 Class Members to remain in their assigned work areas and available to receive work-related
10 directions. The Defendants’ managers directed Smith and all other Class Members to clock-out
11 for meal periods and then immediately return to work without taking a duty-free meal period. The
12 Defendants also failed to pay premium wages for days on which they failed to provide Smith and
13 all of the other Class Members with meal periods as required by law.

14 30. At all relevant times, the Defendants failed to authorize and permit Smith and all
15 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
16 or major portion thereof. Due to chronic understaffing and Defendants’ customer service
17 requirements, the Defendants denied Smith and all other Class Members their earned duty-free
18 rest breaks. The Defendants compelled Smith and all other Class Members to remain in their
19 assigned work areas and available to receive work-related directions. The Defendants’ managers
20 disallowed Smith and all other Class Members any rest breaks. The Defendants also failed to pay
21 premium wages for days on which they failed to authorize and permit Smith and all of the other
22 Class Members to take rest breaks as required by law.

23 31. At all relevant times, the Defendants failed to issue to Smith and all of the other
24 Class Members complete and accurate wage statements that state all hours worked at the correct
25 rates of pay, and all wages earned, including, but not limited to, regular and overtime wages for
26 work they performed off-the-clock after clocking-out and for non-discretionary income from
27 mandatory gratuities that should factor into the overtime wage calculation (as described above).
28 The Defendants knowingly and intentionally failed to state on the wage statements they issued to
Smith and all of the other Class Members the unpaid wages discussed above. The wage statements
fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all
meal period premium wages earned, all rest break premium wages earned, all mandatory



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 gratuities, and related information.

2 32. At all relevant times, the Defendants also failed to timely pay Smith and all of the
3 other Class Members all earned wages as described above during and at the conclusion of
4 employment.

5 33. At all relevant times, the Defendants failed to maintain accurate employee records
6 of Smith and all of the other Class Members.

7 34. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
8 unlawful practices and policies, Plaintiff and the Class Members were:

- 9 A. Not provided with all off duty meal periods;
- 10 B. Not authorized and permitted to take all rest break periods;
- 11 C. Not paid one hour's pay for each workday in which Defendants failed to
12 authorize and permit them to take one or more timely rest periods;
- 13 D. Not paid one hour's pay for each workday in which Defendants failed to
14 provide them with one or more timely meal periods;
- 15 E. Not paid all wages earned, including, but not limited to, minimum, regular,
16 and overtime wages for work performed while clocked out;
- 17 F. Not indemnified for all necessary business expenditures incurred during
18 the discharge of their duties;
- 19 G. Not provided with accurate and complete wage statements; and
- 20 H. Not timely paid all earned and unpaid wages at the time their employment
21 ended.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE 24 CORRECT RATES**

25 **Lab. Code §§ 510, 1194, 1197, and 1198**

26 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

27 35. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

28 36. At all relevant times, Plaintiff and the Class Members have been non-exempt
employees entitled to the protections of both the Labor Code and the Wage Order.

A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 37. Section 2 of the Wage Order defines “hours worked” as “the time during which an
2 employee is subject to the control of an employer, and includes all the time the employee is
3 suffered or permitted to work, whether or not required to do so.”

4 38. Section 3 of the Wage Order states:

5 (A) Daily Overtime - General Provisions

6 (1) The following overtime provisions are applicable to
7 employees 18 years of age or over and to employees 16 or
8 17 years of age who are not required by law to attend
9 school and are not otherwise prohibited by law from
10 engaging in the subject work. Such employees shall not be
11 employed more than eight (8) hours in any workday or
12 more than 40 hours in any workweek unless the employee
13 receives one and one-half (1 ½) times such employee’s
14 regular rate of pay for all hours worked over 40 hours in
15 the workweek. Eight (8) hours of labor constitutes a day’s
16 work. Employment beyond eight (8) hours in any workday
17 or more than six (6) days in any workweek is permissible
18 provided the employee is compensated for such overtime
19 at not less than:

20 (a) One and one-half (1 ½) times the employee’s
21 regular rate of pay for all hours worked in excess of
22 eight (8) hours up to and including 12 hours in any
23 workday, and for the first eight (8) hours worked on
24 the seventh (7th) consecutive day of work in a
25 workweek.

26 (b) Double the employee’s regular rate of pay for all
27 hours worked in excess of 12 hours in any workday
28 and for all hours worked in excess of eight (8) hours
on the seventh (7th) consecutive day of work in a
workweek.

 (c) The overtime rate of compensation required to be
paid to a nonexempt full-time salaried employee
shall be computed by using the employee’s regular
hourly salary as one-fortieth (1/40) of the
employee’s weekly salary.

 39. Section 4 of the Wage Order requires an employer to pay non-exempt employees
at least the minimum wage set forth therein for all hours worked, which consists of all hours that



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

an employer has actual or constructive knowledge that employees are working.

40. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

41. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

42. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

43. Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

44. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (*See Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

45. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Class Members for all hours worked, including, but not limited to minimum, regular, and overtime wages for all minimum, regular, and overtime hours, respectively, that they worked at the correct rates of pay.

46. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate Plaintiff and the other Class Members for all hours worked at the correct rates of pay as required by California law.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7, 512, and 1198

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

47. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

48. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

49. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

50. In relevant part, In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

51. In relevant part, Section 11 of the Wage Order states:

Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employee and the employer. Unless the employee is



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 relieved of all duty during a 30 minute meal period, the
2 meal period shall be considered an 'on duty' meal period
3 and counted as time worked. An 'on duty' meal period shall
4 be permitted only when the nature of the work prevents an
5 employee from being relieved of all duty and when by
6 written agreement between the parties an on-the-job paid
7 meal period is agreed to. The written agreement shall state
8 that the employee may, in writing, revoke the agreement at
9 any time.

10 (B) If an employer fails to provide an employee a meal period
11 in accordance with the applicable provisions of this Order,
12 the employer shall pay the employee one (1) hour of pay at
13 the employee's regular rate of compensation for each work
14 day that the meal period is not provided.

15 52. In relevant part, California Labor Code § 226.7 states:

16 (b) An employer shall not require an employee to work during
17 a meal or rest period mandated pursuant to an applicable
18 statute, or applicable regulation, standard, or order of the
19 Industrial Welfare Commission, the Occupational Safety
20 and Health Standards Board, or the Division of
21 Occupational Safety and Health.

22 (c) If an employer fails to provide an employee a meal period
23 or rest period in accordance with a state law, including, but
24 not limited to, an applicable statute or applicable
25 regulation, standard, or order of the Industrial Welfare
26 Commission, the Occupational Safety and Health
27 Standards Board, or the Division of Occupational Safety
28 and Health, the employer shall pay the employee one
additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest
period is not provided.

53. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day
they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled
to a second 30-minute meal period when they worked more than 10 hours in a workday.

54. Defendants intentionally failed to provide Plaintiff and the Class Members with
all required 30-minute duty free meal periods in accordance with the Wage Order. Due to chronic
understaffing and Defendants' customer service requirements, the Defendants denied Smith and



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 all other Class Members their earned duty-free meal periods. The Defendants compelled Smith
2 and all other Class Members to remain in their assigned work areas and available to receive work-
3 related directions. The Defendants' managers directed Smith and all other Class Members to
4 clock-out for meal periods and then immediately return to work without taking a duty-free meal
5 period.

6 55. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
7 with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members
8 their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants
9 failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class
10 Members with timely meal periods.

11 56. Plaintiff is informed and believes and thereon alleges that, at all relevant times
12 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
13 which resulted in Defendants not providing Plaintiff and the Class Members with all off-duty
14 meal periods required by California law.

15 57. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
16 suffered damages in amounts subject to proof to the extent they were not paid additional wages
17 owed for all meal periods not provided to them.

18 58. By reason of the above, Plaintiff and the Class Members are entitled to premium
19 wages for workdays in which one or more meal periods were not provided to them pursuant to
20 California Labor Code § 226.7.

21 **THIRD CAUSE OF ACTION**

22 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

23 **Lab. Code §§ 226.7 and 1198**

24 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

25 59. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

26 60. At all relevant times during the applicable limitations period, Plaintiff and the
27 Class Members have been employees of Defendants and entitled to the benefits and protections
28 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

61. In relevant part, California Labor Code § 1198 states:



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

62. In relevant part, Section 12 of the Wage Order states:

Rest Periods

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

63. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 64. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
2 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period
3 of work, or major fraction thereof.

4 65. Defendants intentionally failed to authorize and permit Plaintiff and the Class
5 Members to take all 10-minute rest periods free from any work duties in accordance with the
6 Wage Order.

7 66. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
8 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
9 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
10 Plaintiff and the other Class Members to take timely rest periods.

11 67. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
12 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
13 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
14 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
15 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
16 to authorize and permit them to take 10-minute rest periods every four hours worked or major
fraction thereof.

17 68. Plaintiff is informed and believes and thereon alleges that, at all relevant times
18 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
19 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
20 take all rest breaks required by California law.

21 69. Defendants failed to provide Plaintiff with all required rest breaks in accordance
22 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
23 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
24 which resulted in Defendants not providing Plaintiff and the Class Members with all rest breaks
required by California law.

25 70. Defendants failed to pay Plaintiff the additional wages required by California
26 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and
27 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
28 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 Plaintiff and the Class Members with additional wages for all rest breaks not provided to them as
2 required by California Labor Code § 226.7.

3 71. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
4 suffered damages in amounts subject to proof to the extent they were not paid additional wages
5 owed for all rest breaks not provided to them.

6 72. By reason of the above, Plaintiff and the Class Members are entitled to premium
7 wages for workdays in which one or more rest breaks were not provided to them pursuant to
8 California Labor Code § 226.7.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

11 **Lab. Code § 226**

12 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

13 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE** 14 **STATEMENTS**

15 73. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

16 74. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
17 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
18 statement showing:

19 A. Gross wages earned;

20 B. Total hours worked by the employee, except for any employee whose
21 compensation is solely based on a salary and who is exempt from payment of overtime under
22 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

23 C. The number of piece rate units earned and any applicable piece rate if the
24 employee is paid on a piece-rate basis;

25 D. All deductions, provided that all deductions made on written orders of the
26 Employee may be aggregated and shown as one item;

27 E. Net wages earned;

28 F. The inclusive dates of the period for which the employee is paid;

G. The name of the employee and his or her social security number, except
that by January 1, 2008, only the last four digits of his or her social security number or an



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 employee identification number other than a social security number may be shown on the itemized
2 statement;

3 H. The name and address of the legal entity that is the employer; and

4 I. All applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate by the employee.

6 75. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
7 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
8 the employer fails to provide accurate and complete information as required by California Labor
9 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
10 alone one or more of the following:

11 A. The amount of the gross wages or net wages paid to the employee during
12 the pay period or any of the other information required to be provided on the itemized wage
13 statement pursuant to California Labor Code § 226(a);

14 B. Which deductions the employer made from gross wages to determine the
15 net wages paid to the employee during the pay period;

16 C. The name and address of the employer and, if the employer is a farm labor
17 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
18 and address of the legal entity that secured the services of the employer during the pay period;

19 D. The name of the employee and only the last four digits of his or her social
20 security number or an employee identification number other than a social security number; and

21 E. The number of piece-rate units earned and the piece rate.

22 76. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
23 means a reasonable person would be able to readily ascertain the information without reference
24 to other documents or information.

25 77. As alleged herein, at all relevant times during the applicable limitations period,
26 Defendants violated California Labor Code section 226 because they did not properly and
27 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
28 the corresponding number of hours worked at each rate by the employee and other requirements
of California Labor Code section 226. Defendants failed to state in the wage statements they
issued to Plaintiff and the other Class Members all their hours worked and wages earned,
including, but not limited to, regular and overtime wages for work they performed off-the-clock



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 after clocking-out and for non-discretionary income from mandatory gratuities that should factor
2 into the overtime wage calculation (as described above). Defendants knowingly and intentionally
3 did not issue either as a detachable part of the check, draft, or voucher paying the employee's
4 wages, or separately if wages are paid by personal check or cash, statements to Plaintiff and the
5 Class Members that state all minimum wages earned, all regular wages earned, all overtime wages
6 earned, all meal period premium wages earned, all rest break premium wages earned, and all
mandatory gratuities.

7 78. Defendants' failure to provide Plaintiff and the other Class Members with accurate
8 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
9 the other Class Members with accurate wage statements but intentionally provided wage
10 statements that Defendants knew were not accurate.

11 79. As a result of being provided with inaccurate wage statements by Defendants,
12 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
13 wage statements were violated and they were misled about the amount of wages they had actually
14 earned and were owed. In addition, the absence of accurate information on their wage statements
15 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
16 and mathematical computations to determine the amounts of wages owed, has caused difficulty
17 and expense in attempting to reconstruct time and pay records, and/or has led to the submission
18 of inaccurate information about wages to state and federal government agencies. Further, Plaintiff
19 and the other Class Members were not able to ascertain from the wage statements whether
Defendants complied with their obligations under California Labor Code section 226(a).

20 **FIFTH CAUSE OF ACTION**

21 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

22 **Lab. Code §§ 201, 202, and 203**

23 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

24 80. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 81. At all relevant times during the applicable limitations period, Plaintiff and the
26 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
of California Labor Code §§ 201, 202, and 203, and the Wage Order.

27 82. Labor Code § 201 provides that all earned and unpaid wages of an employee who
28 is discharged are due and payable immediately at the time of discharge.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 83. Labor Code § 202 provides that all earned and unpaid wages of an employee who
2 quits after providing at least 72-hours notice before quitting are due and payable at the time of
3 quitting and that all earned and unpaid wages of an employee who quits without providing at least
4 72-hours notice before quitting are due and payable within 72 hours.

5 84. The Defendants failed to pay Smith and all of the other Class Members whose
6 employment ended all of the earned but unpaid wages described above by the conclusion of their
7 employment with Smith, including minimum wages, regular wages, overtime wages, unprovided
8 meal period premium wages, unprovided rest break premium wages, other compensation.
9 Additionally, the Defendants failed to issue Smith and all of the other class Members whose
10 employment ended their final paychecks until the next regular pay day following the termination.

11 85. By failing to pay such earned wages to Plaintiff and the Class Members,
12 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
13 § 201 or § 202.

14 86. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
15 and the Class Members all of their earned and unpaid wages (described above) have been willful
16 in that, at all relevant times, Defendants have deliberately maintained policies and practices that
17 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,
18 they have had the ability to comply with those legal requirements.

19 87. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of
20 herself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties
21 for each Class Member.

22 **SIXTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION**

24 **Bus. & Prof. Code §§ 17200, *et seq.***

25 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

26 88. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

27 89. At all relevant times during the applicable limitations period, Plaintiff and the
28 Class Members have been employees of Defendants and entitled to the benefits and protections
of the Business and Professions Code §§ 17200, *et seq.*

90. The unlawful conduct of Defendants alleged herein amount to and constitutes
unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
2 gained a competitive advantage over other comparable companies doing business in California
3 that comply with their legal obligations to compensate employees for all earned wages.

4 91. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
5 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
6 Members were deprived of minimum wages, regular wages, overtime wages, meal period
premium wages, rest period premium wages, and comparable money and property.

7 92. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
8 Class Members are entitled to restitution of all monies rightfully belonging to them that
9 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
10 practices.

11 93. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
12 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
13 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

14 **SEVENTH CAUSE OF ACTION**

15 **CIVIL PENALTIES**

16 **Lab. Code §§ 2698, *et seq.***

17 **(By Plaintiff, on behalf of herself, the Aggrieved Employees, and the State of California,
18 against all Defendants)**

19 94. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

20 95. The "Aggrieved Employees" are all members of the Class defined above whom
21 Defendants employed during the period beginning December 8, 2022, and ending on the date that
22 final judgment is entered in this action.

23 96. Labor Code § 204 states

24 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
25 or 204.2, earned by any person in any employment are due and payable twice
26 during each calendar month, on days designated in advance by the employer as the
27 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any
calendar month shall be paid for between the 16th and the 26th day of the month
during which the labor was performed, and labor performed between the 16th and
the last day, inclusive, of any calendar month, shall be paid for between the 1st
and 10th day of the following month. ...

28 (b) (1) Notwithstanding any other provision of this section, all wages



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 earned for labor in excess of the normal work period shall be paid no later than the
2 payday for the next regular payroll period.

3 (2) An employer is in compliance with the requirements of subdivision (a) of
4 Section 226 relating to total hours worked by the employee, if hours worked in
5 excess of the normal work period during the current pay period are itemized as
6 corrections on the paystub for the next regular pay period. Any corrections set out
7 in a subsequently issued paystub shall state the inclusive dates of the pay period
8 for which the employer is correcting its initial report of hours worked.

9 (c) However, when employees are covered by a collective bargaining
10 agreement that provides different pay arrangements, those arrangements shall
11 apply to the covered employees.

12 (d) The requirements of this section shall be deemed satisfied by the payment
13 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
14 more than seven calendar days following the close of the payroll period.

15 97. Defendants paid wages to employees on regular intervals. Defendants, however,
16 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information
17 and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
18 intervals for all wages earned and all hours worked.

19 98. During the applicable time period, Defendants violated California Labor Code §§
20 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

21 99. California Labor Code §§ 2699(a) and (g) authorize aggrieved employees, on
22 behalf of themselves and other current or former employees, to bring a civil action to recover
23 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

24 100. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the
25 Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants'
26 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194,
27 1197, and 1198 during the applicable limitations period in the following amounts:

28 A. For violations of California Labor Code § 204, one hundred dollars
 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
 (\$200.00) for each Aggrieved Employee for each subsequent, willful, or intentional violation
 (penalty amounts established by California Labor Code § 210).

 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
 (\$250.00) for each Aggrieved Employee for each initial violation and one thousand dollars



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
2 established by California Labor Code § 226.3).

3 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
4 (\$50.00) for each Aggrieved Employee for each initial violation and one hundred dollars
5 (\$100.00) for each Aggrieved Employee for each subsequent violation, per pay period (penalty
6 amounts established by California Labor Code § 558).

7 D. For violations of California Labor Code § 1174, five hundred dollars
8 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty
9 amounts established by Labor Code § 1174.5).

10 E. For violations of California Labor Code § 1197, one hundred dollars
11 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
12 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
13 (regardless of whether the initial violations were intentionally committed) (penalty amounts
14 established by California Labor Code § 1197.1).

15 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, and
16 1198, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial
17 violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for
18 each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

19 101. Plaintiff has complied with the procedures for bringing suit specified in California
20 Labor Code § 2699.3. By letter dated December 8, 2023, Plaintiff filed written notice online with
21 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
22 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
23 violated, including the facts and theories to support the alleged violations. A true and correct
24 copy of the notice to the LWDA dated December 8, 2023, is attached as **Exhibit A**. Plaintiff
25 submitted her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take
26 action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates
27 that the LWDA will provide written notice to Plaintiff informing her that it does not intend to
28 investigate these allegations.

102. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in
connection with their claims for civil penalties.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

V. PRAYER FOR RELIEF

103. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for relief and judgment against Defendants as follows:

- A. An order that the action be certified as a class action with respect to Plaintiff's claims for violations of California law;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid wages, including minimum, regular, overtime, missed meal period, and missed rest period wages;
- E. Liquidated damages;
- F. Statutory penalties, including waiting time penalties;
- G. Civil penalties;
- H. Restitution;
- I. Declaratory relief;
- J. Actual damages;
- K. Pre-judgment interest;
- L. Costs of suit;
- M. Reasonable attorneys' fees; and
- N. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all other Class Members, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: February 13, 2024

By: 

DAVID G. SPIVAK and LAUREN R. DAVIS, Attorneys for Plaintiff, MELISSA SMITH, and all others similarly situated



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

EXHIBIT A



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

8605 Santa Monica Bl PMB 42554 West Hollywood CA 90069 Mail
1801 Century Park East 25th Fl Los Angeles CA 90067 Office
(213) 725-9094 Tel
(213) 634-2485 Fax
spivaklaw.com Web

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

December 8, 2023

Attn: PAGA Administrator
Labor and Workforce Development Agency
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Melissa Smith / Ruth's Chris Steak House

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Melissa Smith (hereafter "Smith" or "Complainant") provides notice that Ruth's Hospitality Group, Inc., RCSH Operations, Inc., RHG Fish Market, Inc., RCSH Operations, LLC, RCSH Management, Inc., Ruth's Chris Steak House Boston, LLC, and related entities (collectively "the Ruth's Chris Steak House Employers" or "the Employers") violated her rights and those of all other individuals the Ruth's Chris Steak House Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including but not limited to "back of the house" employees, "front of the house employees," server assistants, bussers, food runners, servers, and line cooks, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the "Aggrieved Employees") under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and other Labor Code statutes. On behalf of herself and all other Aggrieved Employees, Smith hereby provides this notice to the Labor & Workforce Development Agency and the Ruth's Chris Steak House Employers and their agents and representatives.

At all relevant times, the Ruth's Chris Steak House Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Smith and all of the other Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter "the Wage

Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately December 5, 2022, the Ruth's Chris Steak House Employers began to employ Smith in Anaheim in the position of hourly, non-exempt food runner. The Ruth's Chris Steak House Employers continuously employed her in that capacity until on or about April 18, 2023 when her employment ended.

At all relevant times, the Ruth's Chris Steak House Employers issued wages to Smith and all of the other Aggrieved Employees on a weekly basis and paid them by the hour. At all relevant times, the Ruth's Chris Steak House Employers classified Smith and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Ruth's Chris Steak House Employers failed to compensate Smith and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. Due to chronic understaffing and Ruth's Chris Steak House Employers' customer service requirements, the Ruth's Chris Steak House Employers denied Smith and all other Aggrieved Employees their earned duty-free meal periods and rest breaks. The Ruth's Chris Steak House Employers compelled Smith and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Ruth's Chris Steak House Employers' managers directed Smith and all other Aggrieved Employees to clock-out for meal periods and then immediately return to work without taking a duty-free meal period.

The Ruth's Chris Steak House Employers at times required Smith and all of the other Aggrieved Employees to work over eight hours in a day. The Ruth's Chris Steak House Employers failed to compensate Smith and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day. Due to chronic understaffing and Ruth's Chris Steak House Employers' customer service requirements, the Ruth's Chris Steak House Employers denied Smith and all other Aggrieved Employees their earned duty-free meal periods and rest breaks. The Ruth's Chris Steak House Employers compelled Smith and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Ruth's Chris Steak House Employers' managers directed Smith and all other Aggrieved Employees to clock-out for meal periods and then immediately return to work without

taking a duty-free meal period. In addition, the Ruth's Chris Steak House Employers blended mandatory gratuities earned by Smith and all other Aggrieved Employees with the traditional voluntary gratuities under the same earnings code, "Tips." As such, it makes it impossible for Smith and all other Aggrieved Employees to understand their pay stubs, and which portions of their pay or non-discretionary income that should factor into the overtime wage calculation.

At all relevant times, the Ruth's Chris Steak House Employers failed to provide Smith and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. Due to chronic understaffing and Ruth's Chris Steak House Employers' customer service requirements, the Ruth's Chris Steak House Employers denied Smith and all other Aggrieved Employees their earned duty-free meal periods. The Ruth's Chris Steak House Employers compelled Smith and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Ruth's Chris Steak House Employers' managers directed Smith and all other Aggrieved Employees to clock-out for meal periods and then immediately return to work without taking a duty-free meal period. The Ruth's Chris Steak House Employers also failed to pay premium wages for days on which they failed to provide Smith and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Ruth's Chris Steak House Employers failed to authorize and permit Smith and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. Due to chronic understaffing and Ruth's Chris Steak House Employers' customer service requirements, the Ruth's Chris Steak House Employers denied Smith and all other Aggrieved Employees their earned duty-free rest breaks. The Ruth's Chris Steak House Employers compelled Smith and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Ruth's Chris Steak House Employers' managers disallowed Smith and all other Aggrieved Employees any rest breaks. The Ruth's Chris Steak House Employers also failed to pay premium wages for days on which they failed to authorize and permit Smith and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Ruth's Chris Steak House Employers failed to issue to Smith and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Ruth's Chris Steak House Employers knowingly and intentionally failed to state on the wage

statements they issued to Smith and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information. In addition, the Ruth's Chris Steak House Employers blended mandatory gratuities earned by Smith and all other Aggrieved Employees with the traditional voluntary gratuities under the same earnings code, "Tips." As such, it makes it impossible for Smith and all other Aggrieved Employees to understand their pay stubs, and which portions of their pay or non-discretionary income that should factor into the overtime wage calculation.

The Ruth's Chris Steak House Employers also failed to timely pay Smith and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Ruth's Chris Steak House Employers failed to maintain accurate employee records of Smith and all of the other Aggrieved Employees.

For the reasons stated herein, Smith alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The Ruth's Chris Steak House Employers failed to pay Smith and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The Ruth's Chris Steak House Employers failed to provide Smith and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Ruth's Chris Steak House Employers failed to authorize and permit Smith and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Ruth's Chris Steak House Employers failed to compensate Smith and all of the other Aggrieved Employees at one hour's pay for each day in which the Ruth's Chris Steak House Employers failed to provide them with one or more meal periods as required by law;

- (e) The Ruth's Chris Steak House Employers failed to compensate Smith and all of the other Aggrieved Employees at one hour's pay for each day in which the Ruth's Chris Steak House Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Ruth's Chris Steak House Employers knowingly and intentionally failed to provide Smith and all of the other Aggrieved Employees with accurate wage statements;
- (g) The Ruth's Chris Steak House Employers willfully failed to timely pay Smith and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Ruth's Chris Steak House Employers and when their employment ended; and
- (h) The Ruth's Chris Steak House Employers failed to maintain accurate employment records pertaining to Smith and all of the other Aggrieved Employees.

Accordingly, Smith now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Ruth's Chris Steak House Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to mean

any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where

food in either solid or liquid form is prepared and served to be consumed on the premises;

- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Ruth's Chris Steak House Employers, Smith, and all of the Aggrieved Employees were covered by the Wage Order because the Ruth's Chris Steak House Employers operated, and Smith, and all of the Aggrieved Employees, worked for one or more restaurants. Accordingly, Smith and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

///

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 226, 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil 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.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

Due to chronic understaffing and Ruth's Chris Steak House Employers' customer service requirements, the Ruth's Chris Steak House Employers denied Smith and all other Aggrieved Employees their earned duty-free meal periods and rest breaks. The Ruth's Chris Steak House Employers compelled Smith and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Ruth's Chris Steak House Employers' managers directed Smith and all other Aggrieved Employees to clock-out for meal periods and then immediately return to work without taking a duty-free meal period. In addition, the Ruth's Chris Steak House Employers blended mandatory gratuities earned by Smith and all other Aggrieved Employees with the traditional voluntary gratuities under the same earnings code, "Tips." As such, it makes it impossible for Smith and all other Aggrieved Employees to understand their pay stubs, and which portions of their pay or non-discretionary income that should factor into the overtime wage calculation.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Ruth's Chris Steak House Employers, Smith and all of the other Aggrieved Employees earned rest period premium wages, meal period premium wages, and mandatory gratuities during pay periods in which they worked hours qualifying for overtime premium pay rates. However, the Ruth's Chris Steak House Employers failed to pay to Smith and all of the other Aggrieved Employees rest period premium wages, meal period premium wages, and mandatory gratuities overtime premium pay on such rest period premium wages, meal period premium wages, mandatory gratuities, and other non-discretionary compensation.

At all relevant times during the applicable limitations period, the Ruth's Chris Steak House Employers failed to compensate Smith and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, and overtime wages for all hours they worked at the correct rates of pay. Accordingly, Smith now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health

Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Ruth's Chris Steak House Employers failed to provide Smith and all of the other Aggrieved Employees with all timely meal periods. The Ruth's Chris Steak House Employers denied Smith and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Due to chronic understaffing and Ruth's Chris Steak House Employers' customer service requirements, the Ruth's Chris Steak House Employers denied Smith and all other Aggrieved Employees their earned duty-free meal periods. The Ruth's Chris Steak House Employers compelled Smith and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Ruth's Chris Steak House Employers' managers directed Smith and all other Aggrieved Employees to clock-out for meal periods and then immediately return to work without taking a duty-free meal period. Furthermore, the Ruth's Chris Steak House Employers failed to pay premium wages for days on which they failed to provide Smith and all of the other Aggrieved Employees with timely meal periods. Accordingly, Smith now seeks civil penalties for these Labor Code violations that the Ruth's Chris Steak House Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent

violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and

3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the

employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Ruth's Chris Steak House Employers failed to authorize and permit Smith and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Ruth's Chris Steak House Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Due to chronic understaffing and Ruth's Chris Steak House Employers' customer service requirements, the Ruth's Chris Steak House Employers denied Smith and all other Aggrieved Employees their earned duty-free rest breaks. The Ruth's Chris Steak House Employers compelled Smith and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Ruth's Chris Steak House Employers' managers disallowed Smith and all other Aggrieved Employees any rest breaks. Moreover, the Ruth's Chris Steak House Employers failed to pay Smith and all of the other Aggrieved Employees premium wages on workdays the Ruth's Chris Steak House Employers failed to provide Smith and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly,

Smith now seeks civil penalties for these Labor Code violations that the Ruth's Chris Steak House Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;

7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Ruth's Chris Steak House Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Ruth's Chris Steak House Employers failed to state in the wage statements they issued to Smith and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out and for non-discretionary income from mandatory gratuities that should factor into the overtime wage calculation (as described above). The Ruth's Chris Steak House Employers knowingly and intentionally failed to state on the wage statements they issued to Smith and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all mandatory gratuities, and other required information.

Accordingly, Smith seeks civil penalties for the Labor Code violations that the Ruth's Chris Steak House Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

///
///
///

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Ruth's Chris Steak House Employers failed to compensate Smith and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation, at the intervals stated above. As a result, the Ruth's Chris Steak House Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Smith now seeks civil penalties for the Labor Code violations that the Ruth's Chris Steak House Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so

requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Ruth's Chris Steak House Employers failed to pay Smith and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with the Ruth's Chris Steak House Employers, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation. Additionally, the Ruth's Chris Steak House Employers failed to issue to Smith and all of the other Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Smith and all of the other Aggrieved Employees as set forth above at the end of employment, the Ruth's Chris Steak House Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Smith seeks civil penalties from the Ruth's Chris Steak House Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200

for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Ruth's Chris Steak House Employers failed to compensate Smith and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and related compensation. As a result, the Ruth's Chris Steak House Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Smith and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly,

LWDA / The Ruth's Chris Steak House Employers
Re: Melissa Smith
December 8, 2023
Page 21 of 22

Smith seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Melissa Smith will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.
David@spivaklaw.com
cc: Melissa Smith

Ruth's Hospitality Group, Inc.
RCSH Operations, Inc.
RCSH Operations, LLC
RCSH Management, Inc.
RHG Fish Market, Inc.
Ruth's Chris Steak House Boston, LLC
c/o Allison Wiggins Esq.
Vice President Legal
1030 W. Canton Avenue, Ste 100
Winter Park, FL 32789
mlynch@ruthschris.com

LWDA / The Ruth's Chris Steak House Employers

Re: Melissa Smith

December 8, 2023

Page 22 of 22

Ruth's Hospitality Group, Inc.

RCSH Operations, Inc.

RCSH Operations, LLC

RCSH Management, Inc.

RHG Fish Market, Inc.

Ruth's Chris Steak House Boston, LLC

c/o Marcy Norwood Lynch Esq.

Senior Vice President, General Counsel, and Corporate Secretary

1030 W. Canton Avenue, Ste 100

Winter Park, FL 32789

mlynch@ruthschris.com