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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

JOSE HECTOR MARTINEZ, an
individual, on his own behalf and on
behalf of all others similarly situated,

Plaintiffs,

vs.

BUNGALOW RESTAURANT, LLC, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 30-2023-01367198-CU-OE-WJC

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PROVIDE REST PERIODS (Cal. *Labor Code* § 226.7; IWC Wage Order No. 5);**
- 2. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. *Labor Code* §226; IWC Wage Order No. 5;**
- 3. FAILURE TO PAY WAGES DUE UPON TERMINATION (Cal. *Labor Code* §§201-203);**
- 4. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. *Labor Code* §1198.5);**
- 5. UNFAIR COMPETITION (Cal. *Bus. & Prof. Code* §§17200 *et seq.*); and**
- 6. PRIVATE ATTORNEY GENERAL ACT (PAGA) (Cal. *Labor Code* §§2699 *et seq.*)**

DEMAND FOR A JURY TRIAL

All allegations in this First Amended Complaint are based upon information and belief except for those allegations which pertain to the Plaintiff named herein and his counsel. Each

1 allegation has evidentiary support or is likely to have evidentiary support after a reasonable op-
2 portunity for further investigation and discovery.

3 JOSE HECTOR MARTINEZ (“Plaintiff”) alleges the following:

4 1. This is a class action brought under California law by an individual who was
5 employed by (“Bungalow” or “Defendant”) (along with DOES 1 through 100, collectively
6 “Defendants”). Plaintiff brings this action on behalf of himself and others similarly situated to
7 recover wages from Defendant due to Defendant’s systematic failure to: provide rest breaks (or
8 pay the statutory compensation due), issue accurate wage statements, pay all wages upon
9 termination, and failure to allow inspection of employee records.

10 2. Plaintiffs have worked as cooks and other employees for Defendant in
11 California. While working, Plaintiffs have been forced to endure stressful and illegal workplace
12 conditions created by Defendant’s efforts to maximize profits and tightly control labor costs.

13 3. Plaintiff, like his co-workers whom Defendant also employed during the
14 applicable limitations period, spend their workdays as cooks and other employees, under illegal
15 and highly regimented circumstances. That regimen results from Defendant’s insistence to
16 strictly monitor and curtail labor costs, which Defendant accomplishes by not paying for all
17 labor costs, refusing to provide rest breaks, not paying the required extra hour for missed meal
18 and rest breaks, failing to issue accurate wage statements, failing to pay all wages on
19 termination, failing to allow inspection of employee records and by using other unlawful
20 stratagems to ensure that labor costs remain artificially low.

21 4. Plaintiff brings this class action to recover, among other things, wages and
22 penalties from unpaid wages earned and due, including but not limited to, late and missed rest
23 break wages, wages due to discharged or quitting employees, penalties for failure to provide
24 accurate itemized wage statements, penalties for failure to allow inspection of records, and
25 interest, attorneys’ fees, costs, and expenses.

26 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
27 himself and all members of the class, to compensate these workers for the unpaid wages and to
28

1 protect current and future workers of Defendant from being subjected to similar wage theft and
2 otherwise unlawful working conditions.

3 6. Plaintiff also brings an action seeking relief for Defendant's violations of
4 California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and
5 disgorgement of all compensation retained by Defendant as a result of its unlawful and unfair
6 business practices, as well as injunctive relief.

7 7. Plaintiff intends to amend this Complaint to add a cause of action pursuant to
8 PAGA under Labor Code §§2699 *et seq.*

9 JURISDICTION AND VENUE

10 8. This Court has jurisdiction over this Complaint under Code of Civil Procedure
11 §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business &*
12 *Professions Code* §§ 17200 *et seq.* Plaintiff Juan Hector Martinez brings this Complaint on his
13 own behalf and on behalf of all persons in the Class as defined in paragraph 17 below.

14 9. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
15 395.5, because the claims made, and the *Labor Code* violations as against the persons identified
16 herein, occurred in the County of Orange and because Defendant owned and operated their
17 businesses in the County of Orange.

18 THE PARTIES

19 PLAINTIFF

20 10. At all times relevant hereto, Plaintiff was:

- 21 (a) An individual over age 18 and a resident of Costa Mesa, California;
- 22 (b) Employed as an hourly employee for Defendant in Corona Del Mar,
23 California;
- 24 (c) Did not receive the rest periods required by *Labor Code* §266.7 and the
25 applicable Wage Orders;
- 26 (d) Did not receive accurate wage statements as mandated by *Labor Code*
27 §226;

- 1 (e) When terminated from his employment, did not receive his final
2 paycheck within the time limits prescribed by *Labor Code* §201; and
3 (f) Was not allowed to inspect his employment records as required by *Labor*
4 *Code* §1198.5. Each of these was a violation of the *Labor Code*.

5 **DEFENDANT**

6 11. Plaintiff is informed and believes, and based on that information and belief,
7 alleges, Defendant Bungalow is, and at all times mentioned herein was:

- 8 (a) A California limited liability company, with a principal place of business
9 at 2441 East Coast Hwy., Corona Del Mar, California 92625. Defendant
10 has been authorized to do business and has been doing business in the
11 County of Orange;
12 (b) The former employer of Plaintiff and the current and former employer of
13 the putative Class members;
14 (c) Paid Plaintiff and all Class Members on an hourly basis;
15 (d) Failed to provide Plaintiff and all putative Class members with rest
16 periods, failed to provide Plaintiff and all putative Class Members with
17 accurate itemized wage statements and failed to issue final paychecks
18 timely to Plaintiff and all putative Class Members; and
19 (e) Failed to allow Plaintiff and all putative Class Members to inspect
20 employment records. Each of these was a violation of the *Labor Code*.

21 12. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
23 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
24 *Civil Procedure* § 474. Plaintiff will seek leave to amend his Complaint to allege the true
25 names and capacities of DOES 1 through 100, inclusive, when they are ascertained.

26 13. Plaintiff is informed and believes, and based on that information and belief
27 alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which
28 reside in or are authorized to do, or are otherwise doing, business in the State of California.

1 Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and
2 conduct business in the County of Orange. Each of the Defendants DOES 1 through 100 was
3 the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator, alter
4 ego and/or representative of one or more of the other Defendants named herein, and acting with
5 permission, authorization, and/or ratification and consent of the other Defendants.

6 14. Plaintiff is informed and believes, and based on that information and belief
7 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
8 inclusive, are responsible in some manner for one or more of the events and happenings that
9 proximately caused the injuries and damages hereinafter alleged.

10 15. Plaintiff is informed and believes, and based on that information and belief
11 alleges, that Defendants named in this Complaint, including DOES 1 through 100, inclusive,
12 are, and at all times mentioned herein were, the agents, servants, and/or employees of each of
13 the other Defendants and that each Defendant was acting within the course and scope of his,
14 hers or its authority as the agent, servant and/or employee of each of the other Defendants.
15 Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the
16 Class, for the damages sustained as a proximate result of their conduct.

17 16. Plaintiff is informed and believes, and based on that information and belief
18 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
19 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
20 themselves and entered into a combination and systemized campaign of activity to *inter alia*
21 damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in
22 derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the
23 Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their
24 conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and
25 belief, and to all appearances, Defendants, and each of them, represented a unified body so that
26 the actions of one Defendant were accomplished in concert with, and with the knowledge,
27 ratification, authorization and approval of each of the other Defendants.

28 **CLASS ALLEGATIONS**

1 **A. The Definition of the Class**

2 17. The Class (“the Class”) is defined as follows:

3 (a) “All current and former employees who were hourly paid employees of
4 Defendant and worked for Defendant in California at any time during the period
5 commencing on the date that is four (4) years prior to the filing of this
6 Complaint and continuing through the present date (the “Class Period”).”

7 (b) “All persons who were hourly paid employees of Defendant and worked for
8 Defendant in California and left the employ of Defendant at any time during the
9 period commencing on the date that is within one (1) year prior to the filing of
10 this Complaint and continuing through the present date (the “Class Period”).”
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12 18. Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to
13 amend or modify the Class description with greater specificity or further division into
14 subclasses or limitation to particular issues.

15 19. Plaintiff will file notice with the Labor and Workforce Development Agency
16 and obtain authorization under the Private Attorney General Act. He will amend this Complaint
17 after the statutory time period has elapsed

18 **B. Maintenance of the Action**

19 20. Plaintiff brings this action individually and on behalf of himself and as
20 representative of all similarly situated persons under *Business & Professions Code* §§ 17203
21 and 17204 and *Code of Civil Procedure* § 382.

22 **C. The Class Requisites**

23 21. At all material times, Plaintiff was a member of the Class.

24 22. The Class action meets the statutory prerequisites for maintaining a class action
25 under Code of Civil Procedure § 382 in that:

26 (a) The persons who comprise the Class are so numerous that the joinder of all
27 those persons is impracticable and the disposition of their claims as a Class
28 will benefit the parties and the Court;

- 1 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
2 that are raised in this Complaint are common to the Class and will apply
3 uniformly to every Class member;
- 4 (c) The claims of the representative Plaintiff are typical of the claims of each
5 Class member. Plaintiff, like all Class members, has sustained damages
6 arising from Defendant's violations of the laws of the State of California.
7 Plaintiff, and the Class members, were and are similarly or identically
8 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
9 pattern of misconduct engaged in by the Defendant;
- 10 (d) The representative Plaintiff has, and will continue to, fairly and adequately
11 represent and protect the interests of the Class and has retained counsel
12 who are competent and experienced in class action litigation. There are no
13 material conflicts between the claims of the representative Plaintiff and the
14 Class members that would make class certification inappropriate. Counsel
15 for the Class will vigorously assert the claims of all Class members.

16 23. The persons who comprise the Class are so numerous that joining all of them is
17 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
18 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
19 will fairly and adequately protect the interests of the Class he seeks to represent. Plaintiff does
20 not have any interests that are antagonistic to the Class he seeks to represent. Counsel for
21 Plaintiff are experienced, qualified and generally able to conduct complex class action
22 litigation.

23 24. The Court should permit the action to be maintained as a class action under
24 *Code of Civil Procedure* § 382 because:

- 25 (a) The questions of law and fact common to the Class predominate over any
26 question affecting only individual members:
- 27 (b) A class action is superior to any other available method for fairly and
28 efficiently adjudicating the claims of the Class;

- 1 (c) The Class members are so numerous that it is impractical to bring all of
2 them before the Court;
- 3 (d) Plaintiff and other Class members will not be able to obtain effective and
4 economic legal redress unless the action is maintained as a class action;
- 5 (e) There is a community of interest in obtaining appropriate legal and
6 equitable relief for the statutory violations, and in obtaining adequate
7 compensation for the damages and injuries for which Defendant is
8 responsible in an amount sufficient to adequately compensate the Class
9 members;
- 10 (f) Without Class certification, the prosecution of separate actions by
11 individual Class members would create a risk of:
- 12 i. Inconsistent or varying adjudications for individual Class members
13 that would establish incompatible standards of conduct for
14 Defendant; and/or,
- 15 ii. Adjudication for individual Class members that would, as a
16 practical matter, dispose of other non-party members' interests, or
17 that would substantially impair or impede the non-parties' ability
18 to protect their interests, by, for example, potentially exhausting
19 the funds available from Defendant, and
- 20 (g) Defendant has acted or refused to act on grounds generally applicable to
21 the Classes, making final injunctive relief appropriate for the Class, as a
22 whole.

23 25. Plaintiff contemplates eventually issuing notice to the proposed Class Members
24 that would set forth the subject and nature of the action. The Defendant's own business records
25 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that
26 any further notices may be required, Plaintiff would contemplate using additional media and/or
27 mailing.
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GENERAL ALLEGATIONS

26. At all times material hereto, Defendant has been and is, a steakhouse restaurant operating in California.

27. Plaintiff and members of the Class were employed as Cooks and other employees in California at various times during the Class Period.

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THE CONDUCT

28. Plaintiff seeks relief from Defendant's uniform policies and practices of denying Plaintiff and members of the Class wages and compensation owed under California law.

29. Starting on or about April 7, 2014 and continuing to February 23, 2023, Defendant employed Plaintiff on an hourly basis as a Cook at Bungalow in Corona Del Mar, California.

30. While employed by Defendant as a Cook, Plaintiff was paid \$19.00 per hour.

31. The employment by Defendant of the Class Members, and each them, is governed by Industrial Welfare Commission Wage Order 5, which covers those persons employed in the Public Housekeeping industry.

32. Under California law, non-exempt employees as defined by Wage Order 5, are entitled to a 10-minute paid rest break for every four hours worked, or major fraction thereof. Non-exempt employees are also entitled to one hour pay at their regular pay rate for each day the requisite rest periods are not provided.

33. Plaintiff and Class members were never afforded any rest breaks.

34. As a result of Defendant's failure to afford rest breaks, the wage statements issued to the employees did not comply with *Labor Code* §226 and California Industrial Welfare Commission ("IWC") Wage Order 5 in that they did not accurately reflect all wages earned and due and owing.

35. As a further result of Defendant's failure to afford rest breaks, when the employees left their employ, they were not timely paid all wages due them, as required by *Labor Code* §§ 201, 202 and Wage Order 5. Further, it was the practice of Defendant to not pay

1 employees the final paychecks within the time periods mandated by *Labor Code* §§201, 202
2 and Wage Order 5.

3 36. Defendant failed to allow Plaintiff and Class members to inspect their personnel
4 records.

5 **FIRST CAUSE OF ACTION**
6 **FOR FAILURE TO PROVIDE REST PERIODS**
7 **(Labor Code § 226.7 and IWC Wage Order No. 5 By Plaintiffs Against Defendant and**
8 **Does 1 through 100)**

9 37. Plaintiff and the Class reallege and incorporate by reference all of the allegations
10 set forth in this Complaint.

11 38. Labor Code § 226.7 and the applicable Wage Order provide that employers shall
12 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
13 per four hours of work, or major fraction thereof.

14 39. Labor Code § 226.7 and the applicable Wage Order provide that if an employer
15 fails to provide an employee with rest periods in accordance with those provisions, the
16 employer shall pay the employee one hour of pay at the employee's regular rate of
17 compensation for each workday that the rest periods were not so provided.

18 40. Defendant has intentionally and improperly denied rest periods to Plaintiff and
19 the Class in violation of Labor Code § 226.7 and the applicable Wage Order.

20 41. At all times relevant hereto, Plaintiff and members of the Class have worked 8
21 or more hours daily.

22 42. At all times relevant hereto, Defendant failed to provide rest periods as required
23 by Labor Code § 226.7 and the applicable Wage Order. Plaintiff and Class members were not
24 afforded any rest breaks.

25 43. By virtue of Defendant's unlawful failure to provide rest periods to the Plaintiff
26 and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in
27 amounts which are presently unknown to Plaintiff and the Class, but which exceed the
28 jurisdictional limits of the Court and which will be ascertained according to proof at trial.

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SECOND CAUSE OF ACTION
FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE
ITEMIZED STATEMENTS

(Labor Code §226 By Plaintiffs Against Defendant and Does 1 through 100)

44. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

45. Pursuant to the applicable IWC Wage Orders, Defendant was the employer of Plaintiff and the Class.

46. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 5-2001 section 7, Defendant is required to maintain and provide accurate records relating to employee compensation including all formulas and production records used to calculate wages due.

47. Defendant is further required to provide, *inter alia*, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2) all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which the employee is being paid; (5) the name of the employee; and (6) the name and address of the legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

48. Section 226(e) provides that an employee is entitled to recover \$50 for the initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods in which the employer knowingly and intentionally failed to provide accurate itemized statements to the employee causing the employee to suffer injury.

49. Notwithstanding these provisions, Defendant has engaged in a uniform practice of refusing to maintain and provide the accurate records and wage statements required by California law.

50. Throughout the Class Period, Defendant intentionally and knowingly provided Plaintiff and other members of the Class with weekly itemized wage statements containing inaccurate information regarding the wages earned by Plaintiff and members of the Class in

1 that the payments owed to Plaintiff and the members of the Class for missed rest periods were
2 not included in gross wages earned by Plaintiff and members of the Class. Further, Defendant
3 failed to furnish Plaintiff and the Class, upon payment of wages, itemized statements accurately
4 showing the number of hours worked and the rates paid.

5 51. As a result, Plaintiff and members of the Class have been injured by having been
6 deprived of the true facts pertaining to their compensation and employment.

7 52. Plaintiff and members of the Class were damaged by these failures because,
8 among other things, the failures led them to believe that they were not entitled premium
9 payments for rest periods not provided, even though they were so entitled and these failures
10 hindered them from determining the amounts of wages owed to them.

11 53. Plaintiff and members of the Class are entitled to the amounts provided in Labor
12 Code §226(e), plus attorneys' fees and costs.

13 54. As result, Plaintiff seeks recovery of the penalties authorized by Labor Code
14 sections 226(e) and 558, and such other penalties and legal and equitable remedies as are
15 provided by law for Defendant's improper conduct.

16 **THIRD CAUSE OF ACTION**

17 **FOR FAILURE TO PAY WAGES UPON TERMINATION**

18 **(Labor Code §§201-203 By Plaintiffs Against Defendant and Does 1 through 100)**

19 55. Plaintiff and the Class reallege and incorporate by reference all of the allegations
20 set forth in this Complaint.

21 56. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
22 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns
23 from employment, unpaid wages are due and payable within 72 hours of resignation.

24 57. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
25 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
26 paid, not to exceed thirty days.

27 58. Plaintiff and the Class were discharged and/or resigned from Defendant's
28 employ and Defendant willfully failed to pay Plaintiff and the Class wages due them.

1 59. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one day's
2 wages for each day he or she was not timely paid, not to exceed 30 days' wages.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

5 ***(Labor Code §1198.5 By Plaintiffs against Defendant and Does 1 through 100)***

6 60. Plaintiff and the Class reallege and incorporate by reference all of the allegations
7 set forth in this Complaint.

8 61. California Labor Code Section 1198.5 provides:

9 (a) Every current and former employee, or his or her representative, has the
10 right to inspect and receive a copy of the personnel records that the
11 employer maintains relating to the employee's performance or to any
grievance concerning the employee.

12 (b) The employer shall make the contents of those personnel records available
13 for inspection to the current or former employee, or his or her
14 representative, at reasonable intervals and at reasonable times, but not later
15 than 30 calendar days from the date the employer receives a written request,
16 unless the current or former employee, or his or her representative, and the
17 employer agree in writing to a date beyond 30 calendar days to inspect the
18 records, and the agreed-upon date does not exceed 35 calendar days from
the employer's receipt of the written request to inspect the records. Upon a
written request from a current or former employee, or his or her
representative, the employer shall also provide a copy of the personnel
records,..... later than 30 calendar days from the date the employer receives
the request...

19 (k) If an employer fails to permit a current or former employee, or his or her
20 representative, to inspect or copy personnel records within the times specified I
21 this section... the current or former employee may recover a penalty of seven
hundred fifty dollars (\$750) from the employer.

22 (l) A current or former employee may also bring an action for injunctive relief
23 to obtain compliance with this section, and may recover costs and reasonable
24 attorney's fees in such an action.

25 62. Additionally, pursuant to Wage Order 5, at section 7 re: Records, employers are
26 required to keep accurate payroll records on each employee, and such records must be made
27 readily available for inspection by the employee upon reasonable request. The employer must
28 also maintain accurate production records.

63. On or about December 6, 2023, Plaintiff's counsel issued a written request to Defendant for copies of his personnel records. Defendant has failed to produce Plaintiff's personnel file.

64. Under California Labor Code Sections 226, 432 and 1198.5, such records were to include all records relating to Plaintiff's hours worked, wage statements and compensation. Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of his records.

65. As a direct result and consequence of Defendant's failure and refusal to permit Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or decree mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a result of Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of \$750 based upon Defendant's violation of §1198.

FIFTH CAUSE OF ACTION

UNFAIR COMPETITION

(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against Defendant and Does 1 through 100)

66. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

67. Pursuant to applicable IWC Wage Orders, Defendant was the employer of Plaintiff and the Class. Defendant is also a "person" as that term is defined in Business & Professions Code §17021.

68. The Business & Professions Code defines unfair competition as any unlawful, unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct described herein, Defendant has engaged in unfair and unlawful practices by failing to: (1) pay Plaintiff and the Class rest periods not provided, (2) furnish Plaintiff and the Class with accurate itemized wage statements, (3) pay Plaintiff and the Class wages due when leaving

1 their employ, and (4) allow inspection of employment records, all in violation of Business &
2 Professions Code §§ 17200 *et seq.*

3 69. By and through the unfair and unlawful business practices described herein,
4 Defendant has obtained valuable property, money and services from the Plaintiff and the Class
5 and has deprived them of valuable rights and benefits guaranteed by law all to the detriment of
6 Plaintiff and the Class.

7 70. All the acts described herein are violations of, among other things, the Labor
8 Code and applicable Industrial Commission Wage Orders, are unlawful and in violation of
9 public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and
10 thereby constitute unfair and unlawful business practices in violation of Business & Professions
11 Code §§ 17200 *et seq.*

12 71. Plaintiff and the Class are entitled to, and do, seek such relief as may be
13 necessary to restore to them the money and property which Defendant has acquired, or of
14 which Plaintiff and the Class have been deprived by means of the above-described unfair and
15 unlawful business practices.

16 72. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
17 above-described business practices are unfair and unlawful and that injunctive relief should be
18 issued restraining Defendant from engaging in any of the above described unfair and unlawful
19 business practices in the future.

20 73. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
21 redress the injuries which they have suffered as a consequence of the unfair and unlawful
22 business practices of Defendant. As a result of the unfair and unlawful business practices
23 described above, Plaintiff and the Class have suffered and will continue to suffer irreparable
24 harm unless Defendant is restrained from continuing to engage in these unfair and unlawful
25 business practices. In addition, Defendant should be required to disgorge the unpaid moneys to
26 Plaintiff and the Class.

27 **SIXTH CAUSE OF ACTION**
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(Damages Pursuant to Private Attorney General Act, Cal. Lab. Code §§ 2699 Against Defendant)

74. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

75. Plaintiff brings this action on his own behalf and on behalf of all current and former employees of Defendant who were employed in California for the previous four years seeking to recover unpaid wages, including but not limited to rest periods violations as set forth in this pleading.

76. On December 6, 2023, Plaintiff, pursuant to California Labor Code §§2699, et seq., by and through his attorneys, uploaded a Private Attorney General Act (“PAGA”) claim to the State of California Labor and Workforce Development Agency (“LWDA”) and sent a letter via Certified Mail Return Receipt Requested to the Defendant.

77. More than 65 days have passed since the above letter, and Plaintiff's counsel has not received any notice from the LWDA stating an intention to prosecute Plaintiff's PAGA claims.

78. Plaintiff has, therefore complied with the administrative exhaustion requirements of PAGA.

79. Plaintiff seeks Labor Code penalties, attorneys' fees, and costs, in an amount according to proof at trial, as provided by the Labor Code Private Attorney General Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor and against Defendant as follows:

1. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class Members for each workday that a rest period was not provided;

2. For an award of consequential damages in Plaintiff and Class Members' favor and against Defendant, in an amount to be proven at trial;

3. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

1 4. For payment to Plaintiff and Class Members of waiting time penalties pursuant
2 to *Cal. Lab. Code* §203, in an amount equal to his respective daily rates of pay at the time of
3 termination or layoff, multiplied by the total amount of days elapsed between the date of the
4 involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a
5 maximum of 30 days' pay, according to proof;

6 5. For specific relief enforcing waiting time penalties of 30 days of per diem wages
7 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

8 6. For statutory penalties pursuant to *Cal. Lab. Code* §§ 226.7, 558, 1198.5,
9 according to proof;

10 7. For reasonable costs, including attorneys' fees, in an amount according to proof
11 pursuant to, *inter alia*, *Cal. Labor Code* §§ 1198.5(1), 218.5, and/or *Cal. Code of Civ. Proc.*
12 §1021.5;

13 8. For reasonable costs, including attorneys' fees, in an amount according to proof
14 pursuant to *Cal. Labor Code* §2699(g);

15 9. For an award of restitution of wages to Plaintiff and Class Members in an
16 amount equal to the amount of wages owed and unpaid, according to proof;

17 10. For injunctive relief requiring Defendant to comply with *Labor Code*
18 1198.5(b)(1);

19 11. For injunctive relief ordering the continuing unfair business acts and practices to
20 cease, as the Court deems just and proper;

21 12. For other injunctive relief ordering Defendant to notify Plaintiff and Class
22 Members that they have not been paid the proper amounts in accordance with California law;

23 13. For punitive and exemplary damages in a sum to be determined at trial; and

24 14. For such other and further relief as the Court deems just and proper.

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26 **DEMAND FOR JURY TRIAL**

27 Plaintiff Jose Hector Martinez hereby respectfully requests a trial by jury for all claims
28 and issues raised in his Complaint that may be entitled to a jury trial.

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LIPELES LAW GROUP, APC

Date: April 9, 2024

By: Samuel R. Scherr
Samuel R. Scherr, Esq.
Attorneys for Plaintiff
JOSE HECTOR MARTINEZ

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18, and not a party to the within action. My business address is Lipeles Law Group APC, 880 Apollo Street, Suite 336, El Segundo, CA 90245. On the date below, I served the foregoing document(s) described as:

PLAINTIFF'S FIRST AMENDED COMPLAINT

By sending a true copy thereof to the address listed below:

SEE ATTACHED SERVICE LIST

- ☐ **By Messenger Service.** I served the documents by providing them to a professional messenger service for personal service.
- ☐ **By Overnight Delivery.** I deposited a sealed envelope containing a true and correct copy of the documents listed above for overnight delivery and with the postage fully prepaid.
- ☒ **By E-Mail or Electronic Transmission.** I caused the documents to be sent to the persons at the email address listed above in a PDF file, and the transmission appeared to be successful.
- ☐ **By United States Mail.** I deposited a sealed envelope containing a true and correct copy of the documents listed above with the United States Postal Service with the postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at El Segundo, California.
- ☐ **By Fax Transmission.** I faxed the documents to the persons at the fax number listed above, and the transmission appeared to be successful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 9, 2024 at El Segundo, California.

/s/ Loryt Salcedo
Loryt Salcedo

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*Counsel for Defendant Bungalow
Restaurant, LLC*