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16 and Austin Bruer-Jordan

17 SUPERIOR COURT OF CALIFORNIA

18 COUNTY OF LOS ANGELES

19 RODARRIAN MITCHELL and AUSTIN
20 BRUER-JORDAN, on behalf of themselves and
21 all others similarly situated,

22 Plaintiff,

23 v.

24 ANTELOPE VALLEY RESTAURANTS, INC.,
25 a California corporation; AV MANAGEMENT
26 47TH, INC., a California corporation; and DOES
27 1 to 100,

28 Defendants.

) CASE NO. 24STCV03122
) Hon. Kenneth R. Freeman
) Dept. 14

) CLASS ACTION

) **FIRST AMENDED COMPLAINT**

) 1. Violation of B&PC 17200
) 2. Meal Period Violations
) 3. Failure to Provide Rest Periods
) 4. Waiting Time Penalty
) 5. Wage Statement Penalty
) 6. PAGA Penalties

) DEMAND FOR JURY TRIAL

1 Plaintiffs, Rodarrian Mitchell and Austin Bruer-Jordan, on behalf of themselves and all
2 others similarly situated, hereby complain against ANTELOPE VALLEY RESTAURANTS, INC.,
3 a California corporation and AV MANAGEMENT 47TH, INC., a California corporation
4 (hereinafter collectively referred to as “Defendants”), and DOES 1 to 100, as follows:

5 **GENERAL ALLEGATIONS**

6 **JURISDICTION**

7 1. This is a civil action seeking recovery of unpaid wages under California Labor Code
8 §§ 203, 226, 226.7, and 512. The Plaintiffs for themselves and on behalf all others similarly
9 situated, bring an action for monetary damages for failure to pay wages as well as for injunctive
10 relief, declaratory relief and restitution for Defendants’ violations of Business and Professions
11 Code (B&PC) §17200, et seq., including full restitution of all compensation retained by
12 Defendants, as a result of its unlawful, fraudulent and unfair business practices. Plaintiffs seek all
13 available relief, including full damages, full restitution and/or disgorgement of all revenues,
14 earnings, profits, compensation and benefits retained by Defendant as a result of its unlawful,
15 unfair business practices.

16 **VENUE**

17 2. Venue as to the Defendants is proper in Los Angeles County pursuant to California
18 Code of Civil Procedure (CCP) §§ 395(a) and 395.5, as at least some of the acts complained of
19 herein occurred in the County of Los Angeles. Defendants either own or maintain offices, transact
20 business, have an agent or agents within the County of Los Angeles or otherwise is found within
21 the County of Los Angeles and Defendant is within the jurisdiction of this Court for purposes of
22 service of process.

23 **PARTIES**

24 3. Rodarrian Mitchell is an individual over the age of eighteen (18). At all relevant
25 times herein, Plaintiff Mitchell was and currently is a resident of the County of Los Angeles, State
26 of California.

1 4. Austin Bruer-Jordan is an individual over the age of eighteen (18). At all relevant
2 times herein, Plaintiff Bruer-Jordan was and currently is a resident of the County of Los Angeles,
3 State of California.

4 5. Plaintiffs are informed and believe and thereon allege that at all times mentioned
5 herein, Defendant ANTELOPE VALLEY RESTAURANTS, INC., is a California corporation.

6 6. Plaintiffs are informed and believe and thereon allege that at all times mentioned
7 herein, Defendant AV MANAGEMENT 47TH, INC., is a California corporation.

8 7. Plaintiffs are informed and believe and thereon allege that at all times mentioned
9 herein, Defendant and each of them listed herein are restaurants licensed to do business in
10 California.

11 8. Plaintiffs are informed and believe and thereon allege that at all relevant times each
12 Defendant was licensed to do business in the County of Los Angeles, with various locations in the
13 Antelope Valley. Defendants' principal place of business in Los Angeles County.

14 9. Further, Defendants are and were the employer of the Plaintiffs and Plaintiff Class
15 during the Class Period. During the liability period, Defendants employed Plaintiffs and similarly
16 situated non-exempt hourly employees and due to Defendants' uniform payroll practices, failed to
17 provide Plaintiffs and Plaintiff class with legally compliant meal and rest periods, and failed to pay
18 Plaintiffs and Plaintiff class premiums for missed rest and meal periods at the regular rate of pay,
19 and failed to provide accurate wage statements. On information and belief and based thereon,
20 Plaintiffs allege that Defendants are conducting business in good standing in California.

21 10. Plaintiffs are informed and believe and thereon alleges that Defendants and DOES 1
22 to 100, control and operate business and establishments in locations within the State of California,
23 including, but not limited to, the County of Los Angeles. Thus, each named Defendant and DOES
24 1 to 100 are subject to B&PC §17200, et seq. (Unfair Competition Law) and the Labor Code as
25 hereinafter alleged.

26 11. Plaintiffs do not know the true names or capacities, whether individual, partner, or
27 corporate, of Defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
28 Defendants are sued under such fictitious names, and Plaintiffs will seek from this Court leave to

1 amend this Complaint when such true names and capacities are discovered. Plaintiffs are informed
2 and believes and thereon alleges that each Defendant and each fictitious Defendant, whether
3 individual, partners, or corporate, was responsible in some manner for the circumstances alleged
4 herein, and proximately caused Plaintiffs and all others similarly situated hereinafter alleged and
5 the general public to be subjected to the unlawful employment practices, wrongs, injuries and
6 damages complained of herein.

7 12. On January 24, 2024, Plaintiff send Defendants an initial PAGA notice and
8 uploaded it to the LWDA portal. Plaintiffs intend to amend to request PAGA penalties after 65
9 days if the LWDA does not represent an intent to investigate the claims in the PAGA notice.

10 **CLASS REPRESENTATIVES**

11 13. The class representative Plaintiffs who worked in the position of non-exempt hourly
12 employee, while employed by Defendants within the State of California, are:

- 13 • Rodarrian Mitchell
- 14 • Austin Bruer-Jordan

15 **CLASS ACTION ALLEGATIONS**

16 14. Plaintiffs bring this action on behalf of themselves and all others similarly situated
17 as a class action pursuant to CCP §382. The Classes which Plaintiffs seek to represent are
18 composed of and defined as follows:

19 **Class Definition:**

20 All non-exempt hourly employees who worked for Defendants in California at least one (1)
21 day at any time from four (4) years preceding the filing of this Complaint through the date of the
22 class certification order.

23 **Class 1:**

24 All non-exempt hourly employees who worked for Defendants at least one (1) day in
25 California at any time from four (4) years preceding the filing of this Complaint through the date of
26 the class certification order, and who were not provided legally-compliant meal periods (“Meal
Break Class”).

27 **Sub-Class 1:**

28 All non-exempt hourly employees who worked for Defendants at least one (1) day in

1 California at any time from four (4) years preceding the filing of this Complaint through the date of
2 the class certification order, who were required to take on-duty, on-premises meal periods. ("On-
3 Duty Meal Period Class").

4 **Sub-Class 2:**

5 All non-exempt hourly employees who worked for Defendants at least one (1) day in
6 California at any time from four (4) years preceding the filing of this Complaint through the date of
7 the class certification order, who were not paid meal period violation penalties at the correct regular
8 rate. ("Regular Rate Meal Period Class")

9 **Class 2:**

10 All non-exempt hourly employees who worked for Defendants at least one (1) day in
11 California at any time from four (4) years preceding the filing of this Complaint through the date of
12 the class certification order, and who were not provided legally-compliant rest periods ("Rest Break
13 Class").

14 **Sub-Class 3:**

15 All non-exempt hourly employees who worked for Defendants at least one (1) day in
16 California at any time from four (4) years preceding the filing of this Complaint through the date of
17 the class certification order, who were required to take on-duty, on-premises rest periods. ("On-
18 Duty Rest Period Class").

19 **Sub-Class 4:**

20 All non-exempt hourly employees who worked for Defendants at least one (1) day in
21 California at any time from four (4) years preceding the filing of this Complaint through the date of
22 the class certification order, who were not paid rest period violation penalties at the correct regular
23 rate. ("Regular Rate Rest Period Class")

24 **Class 3:**

25 All non-exempt hourly employees who worked for Defendants at least one (1) day in
26 California at any time from three (3) years preceding the filing of this Complaint through the date
27 of the class certification order, who are no longer employed by Defendant and were not paid all
28 their earned wages. ("Waiting Time Penalty Class"). (This is a derivative class for all classes and
sub-classes).

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Class 4:

All non-exempt hourly employees who worked for Defendants at least one (1) day in California at any time from one (1) year preceding the filing of this Complaint through the date of the class certification order who were provided a paystub (a.k.a. wage statement) from Defendant ("Pay Stub Class"). (This is a stand-alone and derivative class for all classes and sub-classes).

The members of the classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the classes is unknown to Plaintiffs at this time; however, it is estimated that the classes number greater than 50 individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

15. There are common questions of law and fact as to Plaintiffs and all others similarly situated which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants improperly retained, appropriated or deprived Plaintiffs of the use of monies or sums to which Plaintiffs were legally entitled;
- ii. Whether Defendants engaged in unfair business practices;
- iii. Whether Defendants, and each of them, were participants in the alleged unlawful conduct;
- iv. Whether Defendants' conduct was willful or reckless;
- v. The effect upon and the extent of injuries suffered by Plaintiffs and all others similarly situated and the appropriate amount of compensation;
- vi. The appropriate amount of monetary penalties allowed by Labor Code §§201, et. seq. and 226;
- vii. Whether Defendant violated Labor Code §226 and relevant IWC Wage Orders;
- viii. Whether Defendant knowingly and intentionally failed to maintain records for Plaintiffs and members of the Plaintiff class as required by Labor Code § 1174 and §7 of the IWC Order 5-2001 and its successors;
- ix. Whether Defendant willfully violated provisions of the California Labor Code; and

x. Whether Defendant is subject to civil penalties pursuant to Labor Code §§2699, et seq.:

16. Plaintiffs' claims are typical of the claims of all members of the classes and subclasses mentioned herein. Plaintiffs, as representative parties, will fairly and adequately protect the interest of the classes by vigorously pursuing this suit through her attorneys who are skilled and experienced in handling matters of this type. Plaintiffs have no claims or interests that are antagonistic to any class member.

17. The nature of this action and the nature of laws available to the members of the classes identified herein make use of the class action format a particularly efficient and appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein. Further, this claim involves large employers, Defendants, and a large number of individual employees (Plaintiffs and all others similarly situated) with many relatively small claims with common issues of law and fact. If each employee were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual Plaintiffs with their vastly superior financial and legal resources. Requiring each class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to pursue an action against their present and/or former employer for an appreciable and justifiable fear of retaliation and permanent damage to their careers at present and/or subsequent employment. Proof of a common business practice or factual pattern, of which the named Plaintiffs experienced, is representative of the class mentioned herein and will establish the right of each of the members of the named class to recovery on the causes of action alleged herein.

18. The prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or (b) legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair

1 or impede the ability of the class members to protect their interests. Further, the claims of the
2 individual members of the class are not sufficiently large to warrant vigorous individual
3 prosecution considering all of the concomitant costs and expenses attending thereto.

4 19. Plaintiffs and all others similarly situated are entitled to the wages and other monies
5 unlawfully withheld.

6 **FIRST CAUSE OF ACTION**

7 **(Violation of B&PC §17200, et seq.)**

8 **Against All Defendants**

9 20. Plaintiffs re-allege and incorporates by reference herein the allegations of all
10 preceding paragraphs as though fully set forth herein.

11 21. Beginning on an exact date unknown to Plaintiffs, Defendants have engaged in a
12 pattern and practice of acts of unfair competition in violation of B&PC §17200, including the
13 practices alleged herein.

14 **VIOLATION OF MEAL PERIOD PROVISIONS**

15 22. Defendants' improper meal policies are in violation of California law including, but
16 not limited to Labor Code § 226.7, 512, and IWC Wage Order 5-2001. The Plaintiffs and the
17 members of the class are entitled to a half hour meal period for every five (5) hours of their shift
18 worked. Defendant violated the meal break provisions and did not provide Plaintiffs and the class
19 with compliant, timely, duty free off-premises meal periods. Plaintiffs and the class were entitled
20 to one (1) hour of pay for each meal break violation at their regular rate of pay. Plaintiffs believe
21 and thereon alleges that Defendant failed to pay Plaintiffs and the putative class members missed
22 meal period payments at the regular rate and had a policy and practice of requiring Plaintiffs and
23 the putative class members to take late, short, and/or on-duty, on-premises, or otherwise non-
24 compliant meal periods.

25 23. Defendant failed to provide, impeded and/or discouraged Plaintiffs and others from
26 taking timely meal breaks of not less than thirty (30) minutes as required by the Labor Code during
27 the relevant class period.

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1 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

2 24. Plaintiffs are informed and believe and thereon allege that as part of Defendants'
3 ongoing unfair business practices, Defendants, and each of them, fails to provide its employees
4 with proper and understandable itemized wage statement, as required by Labor Code § 226.

5 25. Plaintiffs are informed, and believe, and thereon alleges, that Defendants, and each
6 of them, fail to provide each employee with an itemized statement which states the actual regular
7 rate paid, the actual total hours worked by the employee, the net wages earned, and all applicable
8 hourly rates in effect during the pay period and the corresponding number of hours worked at each
9 hourly rate by the employee.

10 **VIOLATION OF LABOR CODE § 200, ET SEQ.**

11 26. Plaintiffs are informed and believe and thereon allege that as part of Defendants'
12 ongoing unfair business practices, Defendants failed to provide all hourly employees all wages at
13 the time of their separation in violation of Labor Code § 200, et. seq. This is a derivative claim in
14 that all hourly employees who are no longer employed by Defendants who establish liability on any
15 claim alleged in this action are entitled to recover under Labor Code §203.

16 27. Labor Code § 200, et seq. provides that an employer is required to pay an employee
17 all wages (including accrued vacation) within twenty-four (24) hours of the employee's involuntary
18 separation from employment; within twenty-four (24) hours of his or her voluntary separation if the
19 employee gave at least seventy-two (72) hours' notice, and within seventy-two (72) hours, if the
20 employee voluntarily separated, but did not give at least seventy-two (72) hours' notice.

21 28. Plaintiffs are informed and believe and thereon allege that all employees who have
22 been separated from Defendants did not timely receive a final paycheck detailing the proper
23 amount of wages from Defendants in violation of Labor Code § 200, et. seq.

24 29. Pursuant to Labor Code § 200, et seq. employees that no longer work for
25 Defendants, and who were not timely paid, are entitled to one (1) day of pay in penalties for each
26 day that he or she was paid late, until payment was made, up to a maximum of thirty (30) days.

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FAILURE TO PERMIT AND AUTHORIZE REST PERIOD BREAKS

30. Plaintiffs and other members of the Rest Period Class are entitled to the benefits of Labor Code § 226.7 and Order 5-2001 of the Industrial Welfare Commission. Pursuant to Labor Code § 226.7 and Wage Order 5-2001, Plaintiffs and the other members of the Rest Period Class were entitled to separate rest periods of at least 10 minutes for each four-hour period of work or major fraction thereof, and one hour of additional pay for every shift a rest period was not provided in conformance with this obligation.

31. Plaintiffs are informed and believe, and thereon allege that Defendants consistently compelled Plaintiffs and other members of the Rest Period Class employed for shifts of more than four (4) hours, to take only one (1) rest break during their shifts, instead of two (2) or three (3) rest breaks required depending on shift length. Further, Plaintiffs allege Defendants failed to provide duty-free rest periods and off-site rest periods to Plaintiffs and the class. Plaintiffs and the Class are entitled to wages at their regular rate of pay for each violation where Defendants violated the rest break provisions and failed to provide a compliant rest period due to non-compliant rest periods. Plaintiffs are entitled to one (1) hour of pay for each rest break violation at the correct regular rate of pay. Defendants have failed to pay rest break violations at the correct regular rate of pay.

32. Plaintiffs, and the class are entitled to and do seek such relief as may be necessary to restore to them the money and property which Defendants have acquired, or of which Plaintiffs and class members have been deprived by means of the herein described unfair, unlawful, and/or fraudulent business practices.

33. Plaintiffs, and the class are further entitled to and do seek a declaration that the above-described business practices are unfair, unlawful, and/or fraudulent, and injunctive relief restraining Defendants from engaging in any of the herein described unfair, unlawful, and/or fraudulent business practices at all times in the future.

34. Plaintiffs seek restitution and injunctive relief for all the aforementioned violations.

35. Defendants have engaged in unfair business practices in California by practicing, employing and utilizing the employment practices complained of herein. Defendants' use of such

1 practices constitutes an unfair business practice, unfair competition, and provides an unfair
2 advantage over Defendants' competitors. Plaintiffs and the putative class seek full restitution of
3 said monies, as necessary and according to proof, to restore any and all monies withheld and/or
4 acquired by Defendants by means of the unfair business practices complained of herein. Plaintiffs
5 seek, on behalf of all current and former employees of Defendants, restitution of said monies.
6 Plaintiffs further seek on behalf of the Plaintiffs and the putative class, the appointment of a
7 receiver, as necessary, to establish the total restitutionary relief from Defendants. The restitution
8 includes all wages withheld by Defendants as a result of the unfair business practices, including
9 interest thereon. Absent a statutory provision specifically governing the type of claim at issue, the
10 prejudgment interest rate is 7 percent, for meal and rest period violations. The acts complained of
11 herein occurred, at least in part, within the last four (4) years preceding the filing of the Complaint.

12 36. Plaintiffs are informed and believe and thereon allege that at all times herein
13 mentioned, Defendants have engaged in unlawful, deceptive, and unfair business practices
14 prohibited by California B&PC §17200, thereby depriving its employees and the putative class the
15 minimum working condition, standards and conditions due to them under the California labor laws
16 and Industrial Welfare Commission wage orders as specifically described herein. Plaintiffs seek an
17 order requiring Defendants to identify by full name, telephone number, and last known address
18 employees who worked or still work for Defendants from four (4) years preceding the filing of the
19 original Complaint through the date of judgment; Plaintiffs further seek an order requiring
20 Defendants to timely pay restitution to all current and former employees, including back wages,
21 and interest. The acts complained of herein occurred, at least in part, within the last four (4) years
22 preceding the filing of the original Complaint.

23 37. By and through its unfair, unlawful, and/or fraudulent business practices and acts
24 described herein, Defendants have obtained valuable services from Plaintiffs and all persons
25 similarly situated and, has deprived Plaintiffs and all persons similarly situated of valuable rights
26 and benefits guaranteed by law, all to their detriment.

27 38. Plaintiffs, and all persons similarly situated, and all persons in interest, are entitled
28 to and do seek such relief as may be necessary to restore to them the money and property which

1 Defendants have acquired, or of which Plaintiffs and class members have been deprived by means
2 of the herein described unfair, unlawful, and/or fraudulent business practices.

3 39. Plaintiffs, and all persons similarly situated, and all persons in interest, are further
4 entitled to and do seek a declaration that the above-described business practices are unfair,
5 unlawful, and/or fraudulent, and injunctive relief restraining Defendants from engaging in any of
6 the herein described unfair, unlawful, and/or fraudulent business practices at all times in the future.

7 40. Plaintiffs request attorney's fees and costs pursuant to Code of Civil Procedure
8 §1021.5 since this action is brought to vindicate important rights of a large class and the public.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PROVIDE MEAL BREAKS**

11 **Against All Defendants**

12 41. Plaintiffs incorporate by reference as if fully set forth herein, the allegations of
13 paragraphs above.

14 42. Labor Code §226.7 requires an employer to pay an additional hour of compensation
15 for each meal period the employer fails to provide. Plaintiffs allege that Defendants failed to
16 provide legally compliant meals in addition to impeding, discouraging and/or dissuading
17 employees from taking legally compliant meal periods. Employees are entitled to a meal period of
18 at least thirty (30) minutes per five (5) hour work period. Plaintiffs and the class consistently
19 worked over five (5) hour shifts without meal periods due to Defendants' policy of discouraging,
20 dissuading and/or impeding Plaintiffs and the class from taking meal periods. Plaintiffs and the
21 class were scheduled by Defendants in such a way that they were not able to take compliant meal
22 breaks and complete their tasks for the day. Additionally, Plaintiffs allege that they were regularly
23 interrupted during their meal periods and were not provided off-premises, duty-free meal periods.
24 Pursuant to the Code, Plaintiffs and the class are entitled to a meal period of not less than thirty
25 (30) minutes prior to exceeding five (5) hours of employment.

26 43. Defendants failed to provide, impeded and/or discouraged Plaintiffs and others from
27 taking timely meal breaks of not less than thirty (30) minutes as required by the Labor Code during
28

1 the relevant class period. Further, Defendants had a policy and practice of requiring Plaintiffs and
2 the putative class members to take on-duty on premises meal periods.

3 44. Pursuant to Labor Code §226.7, Plaintiffs are entitled to damages in an amount
4 equal to one (1) hour of wages at the employee's regular rate per missed meal break, in a sum to be
5 proven at trial.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO ALLOW REST BREAKS PURSUANT TO LABOR CODE §226.7**

8 **(Against All Defendants)**

9 45. Plaintiffs re-allege and incorporate by reference as if fully set forth herein, the
10 aforementioned allegations.

11 46. The Plaintiffs allege that Defendants have violated Labor Code §§226.7 & the
12 applicable Wage Order. Section 226.7 of the Labor Code requires an employer to pay an additional
13 hour (1) of compensation for each rest period the employer fails to provide. Hourly non-exempt
14 employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked or major
15 fraction thereof. The Defendants' policy discourages, dissuades, and prevents all hourly non-
16 exempt employees from taking a duty-free rest period break for any work period that is greater than
17 two (2) hours up to four (4) hours. Plaintiffs and the class consistently worked over four (4) hours
18 per shift with no duty-free, off-premises rest breaks, due to Defendants' policy of discouraging,
19 dissuading and/or preventing hourly employees from taking said breaks off-premises.

20 47. Further, even if rest premiums were paid, they were not paid at the correct regular
21 rate.

22 48. Pursuant to Labor Code §226.7, Plaintiffs and the class are entitled to damages in an
23 amount equal to one (1) hour of wages at the hourly non-exempt regular rate of pay per rest break
24 violation, in a sum to be proven at trial.

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FOURTH CAUSE OF ACTION
FAILURE TO PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES
WAITING TIME PENALTIES (Labor Code §§201-203)

Against All Defendants

49. Labor Code §201 states that an employer is required to provide an employee who is terminated all unpaid wages immediately upon termination.

50. Plaintiffs are informed and believe and thereon allege that Defendants failed to pay Plaintiffs all wages due and owing immediately upon termination, thereby violating Labor Code §201.

51. Labor Code §202 states, in pertinent part, that an employer is required to provide an employee who quits his or her employment all wages due and owing not later than 72 hours thereafter.

52. Plaintiffs are informed and believe and thereon allege that Defendants and each of them failed to pay Plaintiffs all wages due and owing upon voluntary resignation, thereby violating Labor Code §202.

53. Labor Code §203 states that if an employer willfully fails to pay an employee wages according to Labor Code §§201 and 202, these wages shall continue as a penalty for up to a maximum of 30 days.

54. Defendants willfully withheld paying Plaintiffs' wages thereby violating Labor Code §203. As such, Defendants are required to pay Plaintiffs a 30-day wage penalty in addition to all unpaid wages as described herein.

55. Accordingly, Plaintiffs and the Waiting Time Penalty Class members are entitled to attorneys' fees, and costs, pursuant to Labor Code § 203 and prejudgment interest.

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
PURSUANT TO LABOR CODE §226

Against All Defendants

56. Plaintiffs re-allege and incorporate by reference herein the allegations of all preceding paragraphs as though fully set forth herein. The applicable Wage Order provides:

1 Every employer shall semimonthly or at the time of each payment of wages furnish
2 each employee, either as a detachable part of the check, draft, or voucher paying the
3 employee's wages, or separately, an itemized statement in writing showing: (1) all
4 deductions; (2) the inclusive dates of the period for which the employee is paid; (3)
5 the name of the employee or the employee's social security number; and (4) the
6 name of the employer, provided all deductions made on written orders of the
7 employee may be aggregated and shown as one item. Subsection (e) provides:
8 "Any employee suffering injury as a result of a knowing and intentional failure by
9 an employer to comply with subdivision (a) shall be entitled to recover the greater of
10 all actual damages or fifty dollars (\$50) for the initial pay period in which a
11 violation occurs and one hundred dollars (\$100) per employee for each violation in a
12 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
13 (\$4,000), and shall be entitled to an award of costs and reasonable attorney's fees."

14 57. During the Class Period, Defendants knowingly and intentionally failed to provide
15 Plaintiffs and the class with timely and accurate wage statements showing gross wages earned, total
16 hours worked, all deductions made, net wages earned, the name and address of the legal entity
17 employing that Class Member, the inclusive dates of the period for which the employee is paid, and
18 all applicable hourly rates in effect during each pay period and the corresponding number of hours
19 worked at each hourly rate by that Class Member.

20 58. Defendants thus required Plaintiffs and the class to work under conditions
21 prohibited by order of the Industrial Welfare Commission, in violation of those orders.

22 59. The Class Members, including Plaintiffs, suffered injury as a result of Defendants'
23 knowing and intentional failure to provide the Class Members, including Plaintiffs, with the wage
24 and hour statements required by law, as Plaintiffs and the class were unable to tell from looking at
25 their pay stubs if they were being paid properly.

26 60. Based on Defendants' conduct as alleged herein, Defendants are liable for actual
27 damages, statutory damages and/or statutory penalties pursuant to Labor Code §226, attorney's fees
28 and costs.

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SIXTH CAUSE OF ACTION
CIVIL PENALTIES UNDER LABOR CODE §§ 2698-2699.8
Against All Defendants

61. Plaintiffs re allege and incorporate each and every one of the allegations of all preceding paragraphs contained in paragraphs, inclusive of this Complaint, as if fully set forth herein.

62. The Labor Code Private Attorney General Act of 2004, provides that if a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code, it may be recovered through a civil action by an aggrieved employee on behalf of himself or herself, and collectively on behalf of all other current or former aggrieved employees.

63. Whenever the LWDA, or any of its departments, divisions, commissions, boards agencies or employees, has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions to assess a civil penalty.

64. Plaintiffs, and all hourly non-exempt employees of Defendants are "aggrieved employees" as defined by Labor Code §2699, in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

65. Prior to filing this Complaint, Plaintiffs gave written notice to the LWDA on or about January 24, 2024, via mandatory online filing through the State of California LWDA/ Department of Industrial Relations website with a copy to the employer via certified mail, of the specific provisions of this code alleged to have been violated, including listing some facts and some theories to support the alleged violations as required by Labor Code §2699.3; A true and correct copy of the letter is attached hereto as **Exhibit 1**. At the date of filing this Complaint, the LWDA has not responded with any intention to investigate. Therefore Plaintiffs may now request PAGA penalties.

1 66. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of
2 themselves and other current or former employees, to bring a civil action to recover civil penalties
3 pursuant to the procedures specified in Labor Code § 2699.3.

4 67. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiffs and the aggrieved employees
5 are entitled to recover civil penalties for each of the Defendant's violations of Labor Code §§ 201,
6 202, 203, 204, 226, 226.7, 510, 512, and 1194, 1197, and 1198 during the applicable limitations
7 period in the following amounts:

8 a. For violations of California Labor Code § 204, one hundred dollars (\$100.00)
9 for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for
10 each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld
11 from each aggrieved employee for each subsequent, willful or intentional violation (penalty
12 amounts established by California Labor Code § 210).

13 b. For violations of Labor Code § 226(a), two hundred fifty dollars (\$250.00) per
14 employee for initial violation and one thousand dollars (\$1,000.00) per employee for each
15 subsequent violation (penalty amounts established by Labor Code § 226.3).

16 c. For violations of Labor Code § 512, fifty dollars (\$50.00) for each aggrieved
17 employee for each initial violation for pay period for which the employee was underpaid in
18 addition to an amount sufficient to recover unpaid wages and one hundred dollars (\$100.00)
19 for each underpaid employee for each pay period for which the employee was underpaid
20 (penalty amounts established by Labor Code § 558).

21 d. For violations of Labor Code § 1197, one hundred dollars (\$100.00) for each
22 aggrieved employee for each initial and intentional violation per pay period (regardless of
23 whether the initial violations were intentionally committed) and two hundred fifty dollars
24 (\$250.00) for each aggrieved employee for each subsequent violation per pay period
25 (regardless of whether the initial violations were intentionally committed), in addition to an
26 amount sufficient to recover unpaid wages, liquidated damages pursuant to Labor Code §
27 1194.2.

28 e. For violations of Labor Code §§ 201, 202, 203, and 226.7, one hundred dollars
(\$100.00) for each aggrieved employee per pay period for each initial violation and two

1 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
2 violation (penalty amounts established by Labor Code § 2699(f)(2)).

3 f. Penalties under Code of Regulations, Title 8 §11070 or other applicable Code
4 of Regulations in the amount of \$50 for each aggrieved employee per pay period for the initial
5 violation, and \$100 for each aggrieved employee per pay period for each subsequent
6 violation;

7 g. Penalties under Labor Code §210, in addition to and entirely independent
8 and apart from other penalty provided in the Labor Code, in the amount of \$100 for
9 each aggrieved employee per pay period for each violation, and \$200 for each aggrieved
10 employee per pay period for each subsequent violation, plus 25% of the wage wrongly
11 withheld;

12 h. Penalties under Labor Code §256, in addition to and entirely independent
13 and apart from other penalty provided in the Labor Code, including Labor Code
14 §2699, et seq., for any aggrieved employee who was discharged or quit, and was not paid all
15 earned wages at termination in accordance with Labor Code §§201, 201.1, 201.5, 202, and
16 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each day that
17 he or she was paid late, until payment was/is made, up to a maximum of thirty (30) days;

18 i. Penalties under Labor Code §558, in addition to and entirely independent
19 and apart from other penalty provided in the Labor Code, in the amount of \$50 for
20 each underpaid aggrieved employee for each pay period the aggrieved employee was
21 underpaid, and \$100 for each subsequent violation for each underpaid employee for each pay
22 period for which the employee was underpaid pursuant to Labor Code §558 provided to the
23 affected employees;

24 j. Penalties under Labor Code §226.3, in addition to and entirely independent
25 and apart from other penalty provided in the Labor Code, in the amount of \$250 for each
26 aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved
27 employee per pay period for each subsequent violation;

28 k. Any and all additional penalties and sums as provided by the Labor Code
and/or other statutes.

l. Penalties under Labor Code section 210 for the weekly pay violations.

68. Pursuant to Labor Code §2699(g), Plaintiffs and the aggrieved employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in connection with their claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

1. That the Court determine this action may be maintained as a class action;

As to the First Cause of Action:

2. For an order preliminarily and permanently enjoining Defendants from engaging in the practices challenged herein;

3. An order for full restitution of all monies, as necessary and according to proof, to restore any and all monies withheld by the Defendants by means of the unfair practice complained of herein. Plaintiffs seek, on behalf of the putative class, the appointment of a receiver, as necessary. The restitution includes all monies retained as wages, as defined in Labor Code §§ 200, et seq., 512, and interest, and attorneys' fees as a result of the unfair business practices or retained in violation of IWC Wage Order 5-2001;

4. For an order finding and declaring that Defendants' acts and practices as challenged herein are unlawful, and unfair and/or fraudulent;

5. For an accounting, under administration of Plaintiffs and subject to Court Review, to determine the amount to be returned by Defendants and the amounts to be refunded to members who are or were not paid all their wages due to Defendants' unfair business practices;

6. For the creation of an administrative process wherein each injured current and former employee receives his or her back wages in the form of overtime pay or alternatively that each current or former eligible employee may submit a claim in order to receive his/her money;

7. For an order requiring Defendants to make full restitution and payment pursuant to B&PC Sections 17200, et seq. for unfair business practices that violate Labor Code §§ 200, et seq.;

8. For reasonable attorneys' fees under Code of Civil Procedure §1021.5 all other appropriate declaratory and equitable relief;

1 9. For pre-judgment interest to the extent permitted by law;

2 10. For pre-judgment interest to the extent permitted by law and the California
3 Constitution;

4 11. For an order requiring Defendants to identify, by name, address and telephone
5 number of each person who worked as an hourly non-exempt employee for Defendants from four
6 (4) years before filing of the original complaint in this action through the time of judgment;

7 **As to the Second Cause of Action**

8 12. One (1) hour of pay at each of the employees' regular rate of compensation for each
9 workday that a meal break was not provided, impeded, discouraged and/or dissuaded and/or correct
10 pay for missed meal premiums at the correct regular rate;

11 **As to the Third Cause of Action:**

12 13. One (1) hour of pay at each of the employees' regular rate of compensation for each
13 workday that a rest break was not remitted or authorized, or was impeded, discouraged and/or
14 dissuaded.

15 **As to the Fourth Cause of Action:**

16 14. For waiting time penalties for all former employees not timely paid their last pay
17 check, including vacation pay;

18 15. For reasonable attorneys' fees and costs;

19 **As to the Fifth Cause of Action:**

20 16. For recovery as authorized by Labor Code §226(e);

21 17. For an award of costs and reasonable attorneys' fees pursuant to Labor Code§226(e)
22 and/or §226(g);

23 **As to the Sixth Cause of Action:**

24 18. On behalf of all current and former employees, for all civil penalties authorized by
25 Labor Code Private Attorney General Act of 2004 as specified in Labor Code §558 plus Labor
26 Code §1197.1 for former or current employees who are due wage payments;

27 19. For civil penalties per Labor Code §226.3 in the amount of \$250 for each aggrieved
28 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay
period for each subsequent violation;

1 20. For civil penalties per Labor Code §256 in the amount of one day of pay, at the
2 same rate, for each day that an aggrieved employee was paid late, at the time of termination, until
3 payment was/is made, up to a maximum of thirty (30) days;

4 21. For civil penalties, pursuant to Labor Code § 558 as follows:

5 (1) For any initial violation, fifty dollars (\$50) for each underpaid
6 employee for each pay period for which the employee was underpaid;

7 (2) For each subsequent violation, one hundred dollars (\$100) for each
8 underpaid employee for each pay period for which the employee was underpaid;

9 22. For civil penalties under Labor Code §210, in addition to and entirely independent
10 and apart from other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
11 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period
12 for each subsequent violation, plus 25% of the wage wrongly withheld;

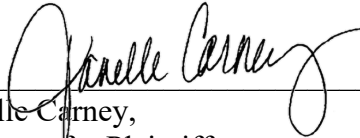
13 23. For civil penalties under Labor Code §2699(f), in addition to and entirely
14 independent and apart from other penalty provided in the Labor Code and for Labor Code
15 violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per
16 pay period for each violation, and \$200 for each aggrieved employee per pay period for each
17 subsequent violation.

18 **As to All Causes of Action:**

19 24. For such other and further relief as this Court may deem just and proper.

20 Date: March 29, 2024

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

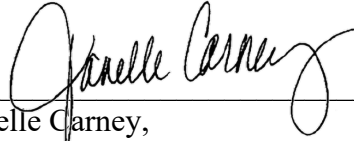
21 
22 Janelle Carney,
23 Attorney for Plaintiffs

JURY TRIAL DEMAND

Plaintiffs hereby demand a jury trial on all issues so triable.

Date: March 29, 2024

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

A handwritten signature in black ink, appearing to read "Janelle Carney", written over a horizontal line.

Janelle Carney,
Attorney for Plaintiffs

Exhibit 1



January 24, 2024

Via Online Filing

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

Via Certified Mail

Antelope Valley Restaurants, Inc.
1301 Glendale Blvd.
Los Angeles, CA 90026

AV Management 47th, Inc.
38137 47th St. E
Palmdale, CA 93552

Subject: *Mitchell, et al. v. Antelope Valley Restaurants, Inc. et al.*

Dear Representative:

This office along with Frontier Law Center represents Rodarrian Mitchell and Austin Bruer-Jordan in connection with Labor Code violation claims related to employment with Antelope Valley Restaurants, Inc. and/or AV Management 47th Inc. (Collectively referred to as “AVR”).

Mr. Bruer-Jordan and Mr. Mitchell intend to seek PAGA penalties on behalf of themselves and all other non-exempt employees of AVR in California who were subject to any of the Labor Code violations enumerated below during the PAGA Period (“Aggrieved Employees”). The PAGA Period begins one year prior to the date of this letter.

Meal Break Violations

Labor Code section 512 and the applicable Wage Order 5-01 provide that 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, or more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. Meal periods must be uninterrupted, and the employee must be relieved of all duty.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant meal period was not provided. Mr. Mitchell and Mr. Bruer-Jordan and the Aggrieved Employees could not take compliant meal periods; meal periods were short, late, or missed altogether. Mr. Mitchell and Mr. Bruer-Jordan were regularly interrupted on breaks, thus they should have received premium pay for each missed break. Nonetheless, no premium pay was paid, and as a result PAGA penalties apply. Further, Mr. Mitchell and Mr. Bruer-Jordan were required to remain on-premises for their meal breaks.

Mr. Mitchell and Mr. Bruer-Jordan are entitled to the PAGA penalties in LC § 558 and 2698, et seq.

Rest Break Violations

Wage Order 5-01 requires employers to authorize and permit employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net per four hours or major fraction thereof. Employees must be relieved of all duties during their rest breaks. Mr. Mitchell and Mr. Bruer-Jordan were regularly forced to forego their 10-minute breaks.

Labor Code section 226.7(c) further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant rest break was not provided. Further, an employer may not place restrictions on its employees during their rest breaks, such as requiring its employees to remain on the premises and subject to the employer's control. In fact, the Division of Labor Standards and Enforcement has provided the following guidance on its website:

Q. Can my employer require that I stay on the work premises during my rest period?

A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself. In *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the rest period requirement "obligates employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time." (citation omitted) As a practical matter, however, if an employee is provided a ten minute rest period, the employee can only travel five minutes from a work post before heading back to return in time.

Here, Mr. Mitchell and Mr. Bruer-Jordan and the Aggrieved Employees were always on call and as a result would have to respond to customers while on break. Further, Mr. Mitchell and Mr. Bruer-Jordan and the Aggrieved Employees were not allowed to leave the work premises unless clocked out. Thus, they were subject to Employer's control during the rest breaks. The Aggrieved Employees and Mr. Mitchell and Mr. Bruer-Jordan were not provided with compliant rest breaks and PAGA penalties apply.

Wage Statement Violations

Mr. Mitchell and Mr. Bruer-Jordan allege that AVR willfully failed to provide accurate itemized wage statements to her and other Aggrieved Employees pursuant to Labor Code § 226. Specifically, AVR wage statements failed to include accurate information and this violation is uniform for all employees. This is a derivative and stand-alone claim as AVR's pay stubs do not contain required elements of Labor Code §226, including the correct rates as there are no payments for missed meal or rest period violations.

Mr. Mitchell and Mr. Bruer-Jordan and other employees are entitled to recover civil penalties pursuant to section 226.3, which states in relevant part: "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of...(\$250) per employee per violation in an initial citation and...(\$1,000) per employee for each violation in a subsequent citation, for...fail[ing] to keep the records required in subdivision (a) of Section 226."

Waiting Time Penalties

The unpaid wages described above were still due when Mr. Mitchell and Mr. Bruer-Jordan and the Aggrieved Employees stopped working for AVR. Because Employer did not pay the Aggrieved Employees all wages owed during their employment, it follows that the Aggrieved Employees were willfully never paid these wages after the conclusion of their employment. Thus, AVR had an obligation to pay waiting time penalties, but intentionally failed to do so and did not pay waiting time penalties. Thus, PAGA penalties apply.

Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Mitchell and Mr. Bruer-Jordan become aware of additional compensation owed or losses incurred by Mr. Mitchell and Mr. Bruer-Jordan or by any other aggrieved employee, Mr. Mitchell and Mr. Bruer-Jordan expressly reserve the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Please advise the undersigned if the agency intends to investigate the alleged violations. If not, Mr. Mitchell and Mr. Bruer-Jordan intend to pursue their claims and those of the aggrieved employees under PAGA in a civil lawsuit. Please also consider this letter as providing notice on behalf of other aggrieved employees working for the employer that were subject to the same Labor Code violations described above.

Very truly yours,



Janelle Carney

JC/jw
Cc: Frontier Law Center