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MACHUCA, on behalf of himself and others
similarly situated

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

JONATHAN MACHUCA, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

BUFFALO WILD WINGS, INC., a Minnesota
Corporation; BWW RESOURCES, LLC, a
Delaware Limited Liability Company; INSPIRE
BRANDS, INC., a Georgia Corporation; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO. 24STCV01594

[Assigned to Hon. Judge Lawrence P. Riff, Dept. 7]

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. **Failure to Pay Overtime Wages in Violation of Labor Code §§ 510 and 1198;**
2. **Failure to pay all Wages and Minimum Wages in Violation of Labor Code §§ 221, 223, 1182, 1194, 1197, and 1198;**
3. **Failure to Provide Compliant Meal Periods in Violation of Labor Code §§ 226.7, 512, 516 and 1198;**
4. **Failure to Provide Compliant Rest Periods in Violation of Labor Code §§ 226.7, 516, and 1198;**
5. **Failure to Furnish Accurate, Itemized Wage Statements in Violation of Labor Code § 226(a) and Failure to Maintain Accurate Records in Violation of Labor Code § 1174.5;**
6. **Failure to Timely Pay Wages During Employment in Violation of Labor Code § 204;**
7. **Failure to Reimburse Business Expenses in Violation of Labor Code § 2802;**
8. **Violations of Business & Professions Code § 17200 et seq.**
9. **Failure to Provide Sick Pay at the Regular Rate in Violation of Labor Code § 246;**

- 10. Failure to Retain Gratuities in Violation of Labor Code § 351;**
- 11. Failure to Provide Adequate Sanitation Facilities in Violation of Labor Code § 8397.4**
- 12. Failure by Preventing Lawful Conduct During Non-Work Hours in Violation of Labor Code § 96(k);**
- 13. Failure to Make Proper Disclosures in Violation of 15 U.S.C. §1681b(b)(2)(A)(i) (Fair Credit Reporting Act);**
- 14. Violations of Business & Professions Code § 16600 et seq.**
- 15. PAGA Penalties for Violations of the Wage Theft Protection Act of 2011, (i.e. Labor Code 2810.5);**
- 16. Civil Penalties Pursuant to PAGA Labor Code §§ 2698 et seq.**

Complaint Filed: January 19, 2024

DEMAND FOR JURY TRIAL

1 Plaintiff, JONATHAN MACHUCA (hereinafter “Plaintiff”) hereby submits his Complaint against
2 Defendants BUFFALO WILD WINGS, INC.; BWW RESOURCES, LLC; and INSPIRE BRANDS,
3 INC.; and DOES 1 to 10, inclusive, (hereinafter referred to as “Defendants”) on behalf of himself and the
4 class of all other similarly situated current and former employees of Defendants as follows:

5 **NATURE OF THE CASE**

6 1. This is a class and representative action brought pursuant to California *Code of Civil*
7 *Procedure* § 382, challenging Defendants’ systemic illegal employment practices resulting in violations
8 of California Labor Code §§ 201, 202, 203, 204, 221, 223, 226, 226.7, 227.3, 246, 351, 432, 510, 512,
9 516, 1174, 1182, 1194, 1197, 1198, 1198.5, 2802, 2810.5 8397.4; California *Business and Professions*
10 *Code* § 17200, et seq. (“Unfair Competition Law”); and the applicable Industrial Welfare Commission
11 Wage Order.

12 2. Plaintiff seeks relief on behalf of himself and the members of the Plaintiff Class as a result
13 of employment policies, practices and procedures more specifically described below, which violate the
14 California *Labor Code*, and the orders and standards promulgated by the California Department of
15 Industrial Relations, Industrial Welfare Commission, and Division of Labor Standards, and which have
16 resulted in the failure of Defendants to pay Plaintiff and members of the Plaintiff Class all wages due to
17 them, and to provide lawful working conditions. Said employment policies, practices and procedures are
18 generally described as follows:

- 19 a. Failure to Pay Employees for All Overtime;
20 b. Failure to Pay Employees for All Hours Worked;
21 c. Failure to Provide Employees with Compliant Meal Periods;
22 d. Failure to Provide Employees with Compliant Rest Periods;
23 e. Failure to Provide Employees and Aggrieved Employees with Accurate, Itemized Wage
24 Statements and Failed to Maintain Accurate Records;
25 f. Failure to Timely Pay Wages During Employment;
26 g. Failure to Reimburse Employees’ Business Expenses;
27 h. Failure to Provide Sick Pay at Regular Rate;
28 i. Failure to Comply with the Wage Theft Protection Act of 2011, pursuant to PAGA (i.e.

Labor Code § 2810.5);

j. Failure to Retain Gratuities;

k. Failure to Provide Adequate Sanitation Facilities; and,

l. Failure by Preventing Lawful Conduct During Non-Work Hours;

3. At all times relevant herein, on information and belief, Defendants have operated in California as proprietors and/or operators of restaurant(s) known as Buffalo Wild Wings.

4. At all relevant times, Defendants issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Plaintiff and others similarly situated, regardless of their location or position.

5. Defendants have maintained policies and practices across its locations which have failed and continue to fail to pay Plaintiff and other non-exempt employees all wages, as well as overtime wages earned.

6. Further, Defendants failed to provide Plaintiff and other non-exempt employees with compliant meal breaks, as the result of, *inter alia*, frequently interruptions or ongoing work duties.

7. Additionally, Defendants failed to provide compliant rest breaks; or any rest breaks whatsoever. No premiums were paid in lieu of the non-compliant rest breaks.

8. In light of the foregoing, Defendants failed to provide Plaintiff and other non-exempt employees with compliant wage statements.

9. Moreover, Defendants failed to reimburse Plaintiff and other non-exempt employees for business expenses, such as, for example, use of their personal cell phones for work-related purposes.

10. Plaintiff is informed and believes, and based thereon alleges, that Defendants have engaged in, among other things a system of willful violations of the Labor Code and the applicable IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny employees the above stated rights and benefits.

11. The policies, practices and customs of Defendants described above and below have resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the structures of the California *Labor Code*, and California *Business and Professions Code*.

12. This matter is brought as a class action pursuant to California *Code of Civil Procedure* §

382, on behalf of Plaintiff and the Plaintiff Class, which is defined more specifically below, but which is comprised, generally, of all former and current employees of Defendants who hold or held the job positions which Defendants classified as “non-exempt” at any of Defendants’ facilities in California.

13. The California Plaintiff “Class Period” is defined as the period from four years prior to the filing of this action through and including the date judgment is rendered in this matter. Plaintiff herein reserves the right to amend this Complaint to reflect a different Class Period as discovery in this matter proceeds.

14. Plaintiff brings Cause of Action Twelve as a proxy of the State of California on behalf of other aggrieved employees for penalties under the Private Attorneys General Act (“PAGA”). PAGA provides that any civil penalty assessed and collected by the Labor and Workforce Development Agency (“LWDA”) for violations of applicable provisions of the California *Labor Code* may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California *Labor Code* § 2699.3. PAGA also provides that an aggrieved employee can bring a civil action on behalf of other aggrieved employees for violation of any other *Labor Code* provision that does not itself contain a civil penalty, in which case the civil penalties are assessed at \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

15. On January 19, 2024, Plaintiff provided written notice to the LWDA and by certified mail to Defendant of the specific provisions of the California *Labor Code* alleged to have been violated, including the facts and theories to support the alleged violations. More than 65 calendar days have passed since the date notice was provided to the LWDA and Defendant. Accordingly, Plaintiff has satisfied the administrative prerequisites under California *Labor Code* § 2699.3(a) to recover civil penalties against Defendant for violations of California *Labor Code* identified in this complaint.

PARTIES

16. The plaintiff is a resident of Downey, California. He has been employed by Defendants from approximately 2016 through the present. Plaintiff works as a Server at Defendants’ Buffalo Wild Wings restaurant in Cerritos, California.

17. Plaintiff is informed and believes, and based thereon alleges that BUFFALO WILD

1 WINGS, INC., is a Minnesota Corporation authorized to do business in California; that BWW
2 RESOURCES, LLC, is a Delaware Limited Liability Company authorized to do business in California;
3 that INSPIRE BRANDS, INC., is a Georgia Corporation authorized to do business in California.

4 18. At all times relevant herein, on information and belief, Defendants have operated in
5 California as proprietors and/or operators of restaurant(s) known as Buffalo Wild Wings.

6 19. Plaintiff does not know the true names or capacities, whether individual, partner or
7 corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said
8 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint
9 when the true names and capacities are known. Plaintiff is informed and believes, and based thereon
10 alleges, that each of said fictitious Defendants were responsible in some way for the matters alleged herein
11 and proximately caused Plaintiff and members of the general public and class to be subject to the illegal
12 employment practices, wrongs and injuries complained of herein.

13 20. At all times herein mentioned, Defendants participated in the doing of the acts hereinafter
14 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them,
15 were the agents, servants and employees of each of the other Defendants, as well as the agents of all
16 Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and
17 employment.

18 21. Plaintiff is informed and believes, and based thereon alleges, that at all times material
19 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint venturer of,
20 or working in concert with each of the other co-Defendants and were acting within the course and scope
21 of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and
22 omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and
23 ratified said acts, conduct, and omissions of the acting Defendants.

24 22. At all times herein mentioned, Defendants, and each of them, were members of, and
25 engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope
26 of, and in pursuance of, said joint venture, partnership and common enterprise.

27 23. At all times herein mentioned, the acts and omissions of various Defendants, and each of
28 them, concurred and contributed to the various acts and omissions of each and all of the other Defendants

1 in proximately causing the injuries and damages as herein alleged. At all times herein mentioned,
2 Defendants, and each of them, ratified each and every act or omission complained of herein. At all times
3 herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and
4 all of the other Defendants in proximately causing the damages as herein alleged.

5 24. The members of the Plaintiff Class, including the representative Plaintiff named herein,
6 have been employed during the Class Period in California. The practices and policies which are
7 complained of by way of this Complaint are enforced throughout the State of California.

8 **JURISDICTION AND VENUE**

9 25. The Court has jurisdiction over this class action pursuant to Article 6, Section 10 of the
10 California Constitution and *Code of Civil Procedure* § 410.10.

11 26. Additionally, this Court has jurisdiction over Plaintiff's and the Class's claims for
12 injunctive relief, including restitution of earned wages, arising from Defendant's unfair competition under
13 *Business & Professions Code* § 17203 and 17204. The Court also has jurisdiction over Plaintiff's and the
14 Class's claims pursuant to the applicable provisions.

15 27. The Court also has jurisdiction over Plaintiff's and the Aggrieved Employees' claims for
16 penalties pursuant to the Private Attorneys General Act of 2004, *Labor Code* §§ 2698, et seq.

17 28. The Court has jurisdiction over Defendant because they are authorized to do business in
18 the State of California and are registered with the California Secretary of State. Defendant does sufficient
19 business with sufficient minimum contacts in California, and/or otherwise intentionally avails themselves
20 of the California market through the advertising, marketing and sale of goods and services, to render the
21 exercise of jurisdiction over Defendant by the California court consistent with traditional notions of fair
22 play and substantial justice.

23 29. Venue is proper in Los Angeles County because the acts which give rise to this litigation
24 occurred in this county and because Defendant has employed Class Members in this county and transact
25 business in this county.

26 **FACTUAL ALLEGATIONS**

27 30. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

28 31. Plaintiff and the members of the Plaintiff Class seek compensation from Defendants for

the relevant time period because Defendants:

- a. Failed to compensate Plaintiff and the Plaintiff Class for overtime wages due;
- b. Failed to compensate Plaintiff and the Plaintiff Class for all hours worked;
- c. Failed to provide Plaintiff and the Plaintiff Class with compliant meal breaks, rest breaks, and/or recovery periods, or premium payments in lieu thereof;
- d. Failed to provide accurate itemized wage statements;
- e. Failed to Comply with the Wage Theft Protection Act of 2011, pursuant to PAGA (i.e. *Labor Code* § 2810.5);
- f. Failed to timely pay wages during employment; and,
- g. Failed to reimburse business expenses.

32. Defendants have engaged in, and continue to engage in, unfair business practices in California by practicing, employing and utilizing the employment practices and policies outlined above.

33. Defendants' utilization of such unfair business practices deprives Plaintiff and Class members of the general minimum working standards and entitlements due to them under California law and the Industrial Welfare Commission wage orders as described herein.

34. As a direct result of the wage and hour violations herein alleged, Plaintiff and members of the Plaintiff Class have suffered and have incurred expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligations under state law, all to Plaintiff's respective damage in amounts according to proof at the time of trial.

Time Spent "Off-the-Clock"

35. Defendants did not compensate their hourly non-exempt employees for all minutes that they worked as described above, including but not limited to the time that the employees were subject to the control and direction of Defendants; and/or the time that the employees were suffered or permitted to work.

36. For example, Defendants have frequently required Plaintiff and the members of the Class to engage in discussions with managerial employees off-the-clock.

37. This resulted in, *inter alia*, Defendants' underpayment of minimum and overtime wages, and failure to provide compliant meal breaks, rest breaks, and/or recovery periods and/or premiums in lieu

thereof.

Defendant's Failure to Pay Overtime Wages

38. Because Plaintiff and members of the Class worked shifts of eight (8) hours a day or more and/or forty (40) hours a week or more, and/or shifts of twelve (12) hours a day or more, some of the above off-the-clock work qualified for overtime premium pay.

39. Defendants did not compensate their hourly non-exempt employees for overtime premium pay that accrued as a result of off-the-clock work mandated by Defendants, for Defendants' sole benefit.

Defendant's Failure to Pay all Wages and Minimum Wages

40. As stated above, during the relevant time period, as a result of, *inter alia*, Defendants' policy of off-the-clock work, whereby Defendants maintained control over employees before and/or after their scheduled shift times, and/or before, after, or during meal periods, Plaintiff and the Plaintiff Class were forced to work off-the-clock.

41. Thus, Defendants did not pay at least minimum wages for all hours worked by Plaintiff and the Plaintiff Class. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock.

Defendant's Failure to Provide Compliant Meal Periods

42. As stated above, during the relevant time period, Defendants failed to provide Plaintiff and other non-exempt employees with compliant, uninterrupted meal breaks, as required by law. Premium payments were not paid as the result of the violations described herein.

Defendant's Failure to Provide Compliant Rest Periods

43. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and the Plaintiff Class to take a full ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. In fact, Plaintiff and the Plaintiff Class were frequently not afforded rest periods at all. Premium payments were not paid as the result of the above-described violations.

Defendant's Failure to Timely Pay Wages During Employment

44. California *Labor Code* § 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month

1 during which the labor was performed, and that all wages earned by any person in any employment
2 between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon
3 termination of an employee, are due and payable between the 1st and the 10th day of the following month.

4 45. *Labor Code* § 204 also requires that all wages earned for labor in excess of the normal
5 work period shall be paid no later than the payday for the next regular payroll period. Alternatively, *Labor*
6 *Code* § 204 provides that the requirements of this section are deemed satisfied by the payment of wages
7 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days
8 following the close of the payroll period.

9 46. At all times relevant hereto, Defendants willfully failed to pay Plaintiff and the Plaintiff
10 Class all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest
11 period premiums, including compensation required for time spent “off-the-clock,” within the time periods
12 specified by *Labor Code* § 204.

13 ***Defendant’s Failure to Reimburse Business Expenses***

14 47. At all times relevant hereto, Defendants had company-wide policies and/or practices
15 whereby non-exempt employees were required to undertake expenses on Defendants’ behalf. These
16 expenses include, but are not limited to, the following: personal cell phone usage for business purposes
17 on multiple occasions, including, but not limited to, calls and texts from managerial employees.

18 48. Defendants failed to reimburse Plaintiff and the other non-exempt employees for these
19 costs, instead passing these operating costs off onto Plaintiff and the other members of the Class.

20 ***Defendant’s Failure to Provide Compliant Wage Statements***

21 49. During the relevant time period, Defendants have knowingly and intentionally provided
22 Plaintiff and members of the Classes with uniform, incomplete, and inaccurate wage statements. For
23 example, Defendants issued uniform wage statements to Plaintiff and the Plaintiff Class that fail to
24 correctly list: employer’s name; gross wages earned; total hours worked; net wages earned; meal and rest
25 premiums; and all applicable hourly rates in effect during the pay period, and the corresponding number
26 of hours worked at each hourly rate.

27 50. Because Defendants did not record the time Plaintiff and the Plaintiff Class spent working
28 off-the-clock, Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff

and members of the Classes in compliance with *Labor Code* §§ 226(a)(1) and 226(a)(5), respectively.

51. For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and the Plaintiff Class and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate.

52. As a result of the above, Plaintiff and the Plaintiff Class have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Plaintiff and the Plaintiff Class have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Defendants' Failure to Provide Sick Pay

53. Sick pay must be compensated at the employee's regular rate of pay, for the workweek in which the paid leave was taken, or at a rate determined by averaging over 90-days. (*Lab. Code* § 246(1)).

54. Defendants failed to pay Plaintiff and aggrieved employees sick pay at the correct rate. Plaintiff received compensation in addition to hourly wages, but those additional amounts were not included when calculating sick pay wages.

Defendants' Failure to Retain Gratuities

55. California *Labor Code* § 351 states that no employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer.

56. Defendants failed to properly retain and provide Plaintiff and the Class Members with their earned gratuities as required by California *Labor Code* § 351.

Defendants' Failure to Provide Adequate Sanitation Facilities

57. California *Labor Code* § 8397.4 provides that employers, 1) "provide adequate and readily accessible sanitation facilities; and 2) establish and implement a schedule for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary, and serviceable condition."

58. Defendants failed to comply with *Labor Code* § 8397.4 by not providing Plaintiff and members of the Class with adequate and accessible sanitation facilities while working. Thus, Defendants

1 willfully violated *Labor Code* § 8397.4.

2 ***Defendants' Prevention of Plaintiff and Class from Lawful Conduct During Non-Work Hours***

3 59. California *Labor Code* § 96(k) provides that the Labor Commissioner and the deputies and
4 representatives authorized by the commissioner in writing shall take assignments of claims for loss of
5 wages as the result of demotion, suspension, or discharge from employment for lawful conduct occurring
6 during nonworking hours away from the employer's premises.

7 60. Plaintiff is informed and believed, and based thereon alleges, that Defendants demoted,
8 discharged, or suspended its non-exempt employees for lawful conduct occurring during nonworking
9 hours away from the employer's premises.

10 ***Defendants' Violation of FCRA***

11 61. Plaintiff alleges that Defendants failed to have a stand-alone document for the background
12 report and failed to comply with "clear and conspicuous" requirements of the Federal Credit Reporting
13 Act

14 ***Defendants' Violation of Business & Professions Code § 16600***

15 62. *Business & Professions Code* § 16600 provides that every contract by which anyone is
16 restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.

17 63. Defendants required Plaintiff and the other non-exempt employees to sign noncompete
18 agreements that unlawfully restrain their trade. Thus, Defendants violated Business & Professions Code
19 § 16600 by requiring these non-compete agreements be signed by Plaintiff and the Class Members.

20 ***Defendant's Failure to Comply with Provisions of the Wage Theft Protection Act of 2011***

21 64. *Labor Code* § 2810.5 requires California employers to notify employees of certain
22 information that must be disclosed at the time of their hiring. Such information includes 1) the rate or rates
23 of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or
24 otherwise, including any rates for overtime, as applicable; 2) allowances, if any, claimed as part of the
25 minimum wage, including meal or lodging allowances; 3) the regular payday designated by the employer
26 in accordance with the requirements of this code; 4) the name of the employer, including any "doing
27 business as" names used by the employer; 5) the physical address of the employer's main office or
28 principal place of business, and a mailing address, if different; 6) the telephone number of the employer;

1 7) the name, address, and telephone number of the employer's workers' compensation insurance carrier;
2 and, 8) any other information the Labor Commissioner deems material and necessary.

3 65. Plaintiff alleges that Defendant failed to comply with certain provisions of the Wage Theft
4 Protection Act by not disclosing the above information to him at the time of his hiring.

5 ***Facts Regarding Willfulness***

6 66. Plaintiff is informed and believes, and based thereon alleges, that Defendants are and were
7 advised by skilled lawyers, other professionals, employees with human resources background and advisors
8 with knowledge of the requirements of California wage and hour laws.

9 67. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times,
10 Defendants knew or should have known that the Plaintiff Class Members, including Plaintiff, were entitled
11 to, *inter alia*: complete, proper, and timely compensation for all hours and overtime worked; complete
12 and compliant meal, rest, and recovery periods, or premiums in lieu thereof; accurate, itemized wage
13 statements; and reimbursement of business expenses.

14 ***Unfair Business Practices***

15 68. Defendant has further engaged in, and continues to engage in, unfair business practices in
16 California by practicing, employing and utilizing the unlawful employment practices and policies outlined
17 above.

18 69. Defendant's utilization of such unfair business practices constitutes unfair competition and
19 provides an unfair advantage over Defendant's competitors.

20 70. Defendant's utilization of such unfair business practices deprives Plaintiff and the Plaintiff
21 Class of the general minimum working standards and entitlements due them under California law and the
22 Industrial Welfare Commission wage orders as described herein.

23 71. As a direct result of the wage and hour violations herein alleged, Plaintiff and members of
24 the Plaintiff Class have suffered, and continue to suffer substantial losses related to the use and enjoyment
25 of wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendant
26 to perform their obligations under state law, all to Plaintiff's and the Plaintiff Class members' respective
27 damage in amounts according to proof at the time of trial.
28

1 ***Plaintiff's Exhaustion of Administrative Remedies***

2 72. Plaintiff has complied with the procedures for bringing suit for civil penalties under the
3 Private Attorneys General Act ("PAGA") codified in *Labor Code* §§ 2698, *et seq.*

4 73. Pursuant to the requirements for bringing suit under PAGA enumerated in *Labor Code* §
5 2699.3, Plaintiff provided notice to the LWDA and Defendant, by letter dated January 19, 2024, of the
6 specific provisions of the *Labor Code* alleged to have been violated, including the facts and theories to
7 support the alleged violations.

8 74. More than sixty-five (65) days have passed since the date the notice was mailed to
9 Defendant and the LWDA, and Plaintiff has received no response from the LWDA indicating that it plans
10 to investigate.

11 75. Accordingly, Plaintiff has satisfied the administrative prerequisites under California *Labor*
12 *Code* § 2699.3(a) to recover civil penalties against defendant for violations of California *Labor Code*
13 identified in this Complaint.

14 **CLASS ACTION ALLEGATIONS**

15 76. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

16 77. Pursuant to *Code of Civil Procedure* § 382, this action is brought and may be properly
17 maintained as a class action. This action satisfies the ascertainability, numerosity, commonality, typicality,
18 adequacy, predominance, and superiority requirements of those provisions.

19 78. The classes which Plaintiff seeks to represent are composed of, and defined as follows:

20 a. **Plaintiff Class**: All persons who have been, or currently are, employed by Defendant and
21 who held, or hold, job positions which Defendant has classified as "non-exempt"
22 employees in the State of California, at any time since four years prior to filing this action,
23 through the date judgment is rendered in this action.

24 b. (Collectively, "Plaintiff Class" or "Class Members")

25 79. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that during the
26 class period hundreds of Class Members have been employed by Defendant as non-exempt employees in
27 the State of California. Because so many persons have been employed by Defendant in this capacity, the
28 members of the Plaintiff Class are so numerous that joinder of all members is impossible and/or

1 impracticable.

2 80. Common Questions of Law and/or Fact: Common questions of law and fact exist as to all
3 members of the Plaintiff Class and predominate over any questions affecting solely individual members
4 of the Plaintiff Class. Among the questions of law and fact, that are relevant to the adjudication of Class
5 Members' claims are as follows:

- 6 a. Whether Plaintiff and members of the Plaintiff Class are subject to and entitled to the
7 benefits of California wage and hour statutes;
- 8 b. Whether Defendants failed to pay Plaintiff and Class Members for all hours worked;
- 9 c. Whether Defendants failed to pay Plaintiff and Class Members all overtime;
- 10 d. Whether Defendants had a standard policy of not providing compliant meal breaks and
11 premiums to Plaintiff and members of the Plaintiff Class;
- 12 e. Whether Defendants had a standard policy of not providing compliant rest breaks and
13 premiums to Plaintiff and members of the Plaintiff Class;
- 14 f. Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and members
15 of the Plaintiff Class with true and proper wage statements upon payment of wages, in
16 violation of *Labor Code* § 226;
- 17 g. Whether Defendants maintained accurate records of the hours worked by employees;
- 18 h. Whether Defendants failed to timely pay wages to Plaintiff and members of the Plaintiff
19 Class during their employment;
- 20 i. Whether Defendants failed to Provide Plaintiff and Class Members with their sick pay at
21 the regular rate;
- 22 j. Whether Defendants failed to retain Plaintiff and Class Members' gratuities in violation of
23 *Labor Code* § 351;
- 24 k. Whether Defendants failed to provide Plaintiff and the Class Members with adequate
25 sanitation facilities;
- 26 l. Whether Defendants violated *Labor Code* 96(k) by preventing Plaintiff and the Class
27 Members from doing any lawful conduct during non-work hours.
- 28 m. Whether Defendants reimbursed business expenses;

n. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so, the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief; and,

o. Whether Defendants' conduct as alleged herein violates the Unfair Business Practices Act of California (*Bus. & Prof. Code*, § 17200, *et seq.*)

81. Typicality: The claims of the named Plaintiff are typical of the claims of the members of the Plaintiff Class. Defendant's common course of conduct in failing to provide their non-exempt employees with meal and rest periods and all wages in compliance with the applicable wage order, or premium compensation at the regular rate in lieu thereof, failing to provide them with proper wages and overtime, and failing to provide them with compliant wage statements has caused Plaintiff and the proposed Class to sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the proposed Class. Plaintiff and the proposed Class sustained the same or similar injuries and damages arising from Defendant's common policies, practices, procedures, protocols, routines, and rules which were applied to other Class Members as well as Plaintiff. Plaintiff seeks recovery for the same type of losses, injuries, and damages as were suffered by other members of the proposed class.

82. Adequacy of Representation: Plaintiff is an adequate representative of the proposed Class because he is a member of the class, and his interests do not conflict with the interests of the members he seeks to represent. Plaintiff has retained competent counsel, experienced in the prosecution of complex class actions, and together Plaintiff and his counsel intend to prosecute this action vigorously for the benefit of the Class. The interests of the Class Members will fairly and adequately be protected by Plaintiff and his attorneys.

83. Superiority of Class Action: A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of the claims of all Class Members is impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an individual basis, because this would potentially result in hundreds of individual, repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or contradictory judgments, and the prospect of a "race to the courthouse," and an inequitable allocation of recovery among those with equally

meritorious claims. By contrast, the class action device presents far fewer management difficulties, and provides the benefit of a single adjudication, economics of scale, and comprehensive supervision by a single court.

84. The various claims asserted in this action are additionally or alternatively certifiable under the provisions of California *Code of Civil Procedure* § 382 because:

- a. The prosecution of separate actions by hundreds of individual class members would create a risk of varying adjudications with respect to individual class members, thus establishing incompatible standards of conduct for Defendant, and,
- b. The prosecution of separate actions by individual class members would also create the risk of adjudications with respect to them that, as a practical matter, would be dispositive of the interest of the other class members who are not a party to such adjudications and would substantially impair or impede the ability of such non-party class members to protect their interests.

FIRST CAUSE OF ACTION

Failure to Pay All Overtime Wages

California Labor Code §§ 510, 1198, and Applicable IWC Wage Orders

(By Plaintiff and Members of the Putative Class Against Defendant)

85. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

86. At all times relevant herein, which comprise of the time period not less than four (4) years preceding the filing of this action, Defendants were required to compensate their hourly employees for all overtime hours worked.

87. California *Labor Code* §§ 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) wage order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of one-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC wage order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate

1 of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf
2 of, the employee, including nondiscretionary bonuses and incentive pay.

3 88. Defendants willfully failed to pay all overtime wages owed to Plaintiff and the Plaintiff
4 Class. During the relevant time period, Plaintiff and members of the Classes were not paid overtime
5 premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
6 hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not
7 recorded.

8 89. Defendants knew or should have known that as a result of company-wide practices and/or
9 policies, requiring Plaintiff and members of the Classes to work off-the-clock, as well as all other hours
10 worked, Plaintiff and members of the Classes were suffered or permitted to perform work for which they
11 were not paid. Because Plaintiff and members of the Classes worked shifts of eight (8) hours a day or
12 more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium
13 pay. Therefore, Plaintiff and members of the Classes were not paid overtime wages for all of the overtime
14 hours they actually worked.

15 90. Defendants' failure to pay Plaintiff and members of the Classes the balance of overtime
16 compensation, as required by California law, violates the provisions of *Labor Code* §§ 510 and 1198.
17 Plaintiff and members of the Classes are entitled to recover civil penalties, attorney's fees, costs, and
18 interest thereon.

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20 **SECOND CAUSE OF ACTION**

21 **Failure to Pay All Wages and Minimum Wages**

22 **Labor Code §§ 221, 223, 1182, 1194, 1197, and 1198, and Applicable IWC Wage Orders**

23 **(By Plaintiff and Members of the Putative Class Against Defendant)**

24 91. Plaintiff incorporates herein by reference the allegations set forth above.

25 92. At all times relevant herein, which comprise the time period not less than four (4) years
26 preceding the filing of this action, Defendant were required to compensate their hourly employees for all
27 hours worked.

28 93. For at least the four (4) years preceding the filing of this action, Defendant failed to

1 compensate employees for all hours worked. Defendant implemented policies that actively prevented
2 employees from being compensated for all time worked by subjecting Plaintiff and members of the Class
3 to work off-the-clock as mentioned above as a result of late or missed meal and rest breaks.

4 94. Under the applicable wage order and state regulations, Plaintiff and the Plaintiff Class are
5 entitled to recover compensation for all hours worked, but not paid, for the four (4) years preceding the
6 filing of this action, in addition to reasonable attorney's fees and costs of suit in accordance with *Labor*
7 *Code* § 218.5, and penalties pursuant to *Labor Code* §§ 203 and 206.

8 95. The applicable IWC wage order section 2(G) defines “hours worked” to mean “the time
9 during which an employee is subject to the control of an employer and includes all the time the employee
10 is suffered or permitted to work, whether or not required to do so.”

11 96. Defendant suffered or permitted Plaintiff and members of the Class to work portions of the
12 day for which Defendant failed to compensate them. This includes time spent under Defendant’s control
13 prior to clocking in and during meal periods as described above.

14 97. *Labor Code* § 1194(a) provides in relevant part: “Notwithstanding any agreement to work
15 for a lesser wage, any employee receiving less than the legal minimum wage ... is entitled to recover in a
16 civil action the unpaid balance of the full amount of this minimum wage ... including interest thereon,
17 reasonable attorney’s fees, and costs of suit.”

18 98. *Labor Code* § 1194.2(a) provides in relevant part: “In any action under § 1193.6 or § 1194
19 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the
20 commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages
21 unlawfully unpaid and interest thereon.”

22 99. *Labor Code* § 1197 provides: “The minimum wage for employees fixed by the commission
23 is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed
24 is unlawful.”

25 100. Plaintiff is informed and believes, and therefore alleges, that Defendant’s compensation
26 schemes do not fairly compensate Plaintiff and other Class Members for all hours spent performing their
27 job duties.

28 101. The failure to pay at least minimum wages to Plaintiff and members of the Plaintiff Class

1 for each and every hour worked violates *Labor Code* §§ 1182.11-1182.12, 1194, 1194.2, and 1197; the
2 applicable IWC wage order section 4; and *Business & Professions Code*.

3 102. The failure to pay designated wages to Plaintiff and members of the Plaintiff Class for each
4 and every hour worked violates *Labor Code* § 221 and 223; the applicable IWC wage order section 3; and
5 *Business & Professions Code*.

6 103. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff Class
7 have been damaged in an amount according to proof at time of trial.

8 **THIRD CAUSE OF ACTION**

9 **Failure to Provide Compliant Meal Breaks or Premiums in Lieu Thereof**

10 **Labor Codes §§ 226.7, 512, 516, 1198 and Applicable IWC Wage Orders**

11 **(By Plaintiff and Members of the Putative Class Against Defendant)**

12 104. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
13 herein.

14 105. For at least the four (4) years preceding the filing of this action, Defendants failed to
15 provide meal breaks as required by law.

16 106. California *Labor Code* § 226.7(a) provides that: “No employer shall require any employee
17 to work during any meal or rest period mandated by an applicable order of the Industrial Welfare
18 Commission.”

19 107. California *Labor Code* § 512 provides that: “An employer may not employ an employee
20 for a work period of more than five hours per day without providing the employee with a meal period of
21 not less than 30 minutes, except that if the total work period per day of the employee is no more than six
22 hours, the meal period may be waived by mutual consent of both the employer and employee.”

23 108. The applicable Wage Order Section 11(D) states “If an employer fails to provide an
24 employee a meal period in the applicable provisions of this order, the employer shall pay the employee
25 one (1) hour of pay at the employee’s regular rate of compensation each day that the meal period is not
26 provided.”

27 109. Throughout the Class Period, Plaintiff and the members of the Plaintiff Class consistently
28 worked over five (5) hours per work period, and therefore, were entitled to a meal period of not less than

thirty (30) minutes prior to exceeding five (5) hours of employment.

110. Defendants failed to provide Plaintiff and members of the Plaintiff Class with timely and uninterrupted meal breaks.

111. Defendants failed to pay Plaintiff and the Class members the full statutory penalty for all non-complaint meal breaks.

112. At all times relevant to this Complaint, each Defendant failed, and has continued to fail, to provide Plaintiff and the members of the Plaintiff Class with complete and uninterrupted meal periods.

113. Thus, throughout the Class Period, Defendants regularly:

- a. Failed to provide timely, 30-minute uninterrupted meal periods during which Plaintiff and the members of the Plaintiff Class were relieved of all duty for each five (5) hours of work;
- b. Failed to pay Plaintiff and the members of the Plaintiff Class one (1) hour of pay at their regular rate of compensation for each workday that a meal period was not permitted;
- c. Failed to provide Plaintiff and the members of the Plaintiff Class with a second meal period of not less than thirty (30) minutes during which they are relieved of all duty before working more than ten (10) hours per day; and,
- d. Failed to accurately record all meal periods.

114. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiff and the members of the Plaintiff Class have been deprived of meal period wages due in amounts to be determined at trial.

115. Defendants' conduct described herein violates the Industrial Welfare Commission Order and California *Labor Code* §§ 226, 226.7, 512, 516, and 1198.

FOURTH CAUSE OF ACTION

Failure to Provide Compliant Rest Periods or Premiums in Lieu Thereof

Labor Code §§ 226.7, 516, 1198 and Applicable IWC Wage Orders

(By Plaintiff and Members of the Putative Class Against Defendant)

116. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

117. *Labor Code* §§ 226.7, 516, and 1198, and the applicable IWC wage order require

1 employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's
2 regular rate for each work day that a meal or rest period is not provided. *Labor Code* § 226.7 provides that
3 no employer shall require an employee to work during any rest period mandated by an applicable order of
4 the IWC. The applicable IWC wage order provides that "[e]very employer shall authorize and permit all
5 employees to take rest periods, which insofar as practicable shall be in the middle of each work period"
6 and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes
7 net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three
8 and one-half (3 ½) hours.

9 118. Plaintiff is informed and believes, and thereon allege, that Plaintiff and Class Members
10 were entitled to a paid rest period of not less than ten (10) minutes without duty for each and every four
11 (4) hours or major fraction thereof worked during the workday.

12 119. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendant
13 routinely failed to provide Plaintiff and the members of the Plaintiff Class with such paid rest periods
14 without duty, notwithstanding the fact that Plaintiff and the members of the Plaintiff Class had not waived
15 their right to the same. Thus, Defendant failed to provide Plaintiff and Class Members with rest periods
16 required by *Labor Code* §§ 226.7, 512, and 516, IWC wage order section 11 and categorically failed to
17 pay any and all rest period wages due.

18 120. Plaintiff and Class Members seek damages pursuant to *Labor Code* § 226.7(b) and the
19 applicable IWC wage order section 11(D), in the amount of one additional hour of pay at the regular rate
20 for each work day that the rest period is/was not provided or provided late to Plaintiff and any member of
21 the Class, the cumulative sum of which is to be determined at trial.

22 121. Therefore, Plaintiff and members of the Plaintiff Class are entitled to compensation for
23 Defendant's failure to provide rest periods, plus interest, attorneys' fees, expenses, and costs of suit
24 pursuant to *Labor Code* § 226.7(b) and the applicable wage order.

25 **FIFTH CAUSE OF ACTION**

26 **Failure to Furnish Accurate Itemized Wage Statements and Maintain Accurate Records**

27 **Labor Code §§ 226, 1174.5 and Applicable IWC Wage Orders**

28 **(By Plaintiff and Members of the Putative Class Against Defendant)**

1 122. Plaintiff hereby incorporates by reference each and every one of the allegations contained
2 in the preceding paragraphs as if the same were fully set forth herein.

3 123. *Labor Code* § 226(a) and the applicable IWC wage order section 6(B) requires employers
4 to furnish each employee with a statement itemizing, among other things, the total hours worked by the
5 employee, on a semi-monthly basis or at the time of each payment of wages.

6 124. *Labor Code* § 226(e) provides that if an employer fails to comply with providing an
7 employee with properly itemized wage statements as set forth in section 226(a), then the employee is
8 entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation
9 occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further,
10 *Labor Code* § 226.3 provides that any employer who violates § 226(a) shall be subject to a civil penalty
11 in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each
12 violation in a subsequent citation, for which the employer fails to provide the employee a wage statement
13 or fails to keep the required records pursuant to § 226(a).

14 125. Defendants knowingly and intentionally failed to furnish Plaintiff and the members of the
15 Classes with timely, itemized statements in compliance with *Labor Code* § 226(a) and the applicable IWC
16 Wage order section 6(B).

17 126. Plaintiff is informed and believes, and thereon alleges, that Defendants knowingly and
18 intentionally failed to furnish Plaintiff and members of the Classes with timely, accurate, itemized
19 statements showing (a) employer name; (b) total hours, (c) gross wages earned, (d) all deductions, and/or
20 (e) all applicable hourly rates in effect during each respective pay period and the corresponding number
21 of hours worked at each hourly rate by each respective individual.

22 127. Plaintiff is informed and believes, and thereon alleges, that Defendants did not maintain
23 accurate business records pertaining to the total hours worked for Defendants by Plaintiff and the members
24 of the Classes as required under *Labor Code* § 1174.5. This is a result of missing hours worked, and
25 missed and/or incorrect overtime, meal and rest-break premiums, as illustrated above.

26 128. As a result of not having kept accurate records, Plaintiff and the Class Members suffered
27 injuries in the form of confusion over whether they received all wages owed to them, and difficulty and
28 expense in reconstructing pay records in addition to other injuries which may come to light during the

1 discovery process.

2 129. *Labor Code* § 1198 provides that the maximum hours of work and the standard conditions
3 of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC wage
4 order. *Labor Code* § 1198 further provides that “[t]he employment of any employees for longer hours than
5 those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the
6 applicable IWC Wage order, employers are required to keep accurate time records showing when the
7 employee begins and ends each work period and meal period.

8 130. During the relevant time period, Defendants failed, on a company-wide basis, to keep
9 accurate records of work and meal period start and stop times for Plaintiff and members of the Classes, in
10 violation of *Labor Code* § 1198.

11 131. Plaintiff and the members of the Classes herein seek damages and penalties pursuant to
12 *Labor Code* § 226(e) for Defendants’ violations of *Labor Code* § 226(a).

13 132. Plaintiff and Class Members also seek preliminary and permanent injunctive relief and an
14 award of reasonable attorneys’ fees and costs pursuant to *Labor Code* § 226(h).

15 **SIXTH CAUSE OF ACTION**

16 **Failure to Timely Pay Wages During Employment**

17 **Labor Code § 204 and Applicable IWC Wage Orders**

18 **(By Plaintiff and Members of the Putative Class Against Defendants)**

19 133. Plaintiff hereby incorporates by reference each and every one of the allegations contained
20 in the preceding paragraphs as if the same were fully set forth herein.

21 134. *Labor Code* § 204 requires that all wages earned by any person in any employment between
22 the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination
23 of an employee, are due and payable between the 16th and the 26th day of the month during which the
24 labor was performed, and that all wages earned by any person in any employment between the 16th and
25 the last day, inclusive, of any calendar month, other than those wages due upon termination of an
26 employee, are due and payable between the 1st and the 10th day of the following month.

27 135. *Labor Code* § 204 also requires that all wages earned for labor in excess of the normal
28 work period shall be paid no later than the payday for the next regular payroll period. Alternatively, *Labor*

1 *Code* § 204 provides that the requirements of this section are deemed satisfied by the payment of wages
2 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days
3 following the close of the payroll period.

4 136. During the class period, Defendants willfully failed to pay Plaintiff and members of the
5 Classes all wages due including, but not limited to, all wages, overtime wages, and/or meal and rest period
6 premiums, within the time periods specified by *Labor Code* § 204.

7 137. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff Class
8 have been damaged in an amount according to proof at time of trial.

9 **SEVENTH CAUSE OF ACTION**

10 **Failure to Reimburse Business Expenses**

11 **Labor Code § 2802 and Applicable Wage Orders**

12 **(By Plaintiff and the Members of the Plaintiff Class Against Defendant)**

13 138. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
14 herein.

15 139. California *Labor Code* § 2802 requires employers to pay for all necessary expenditures and
16 losses incurred by the employee in the performance of his or her job. The purpose of *Labor Code* § 2802
17 is to prevent employers from passing off their cost of doing business and operating expenses on to their
18 employees. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144.)

19 140. At all times relevant hereto, Defendants had company-wide policies and/or practices
20 whereby non-exempt employees were required to undertake expenses on Defendants' behalf. These
21 expenses include, but are not limited to, the following: cell phone usage for business purposes on multiple
22 occasions.

23 141. Defendants failed to reimburse Plaintiff and the other non-exempt employees for these
24 costs; instead, Defendants passed these operating costs off onto Plaintiff and the other members of the
25 Class. Thus, Defendants had, and continues to have, a company-wide policy and/or practice of not
26 reimbursing employees for expenses necessarily incurred in violation of *Labor Code* § 2802.

27 142. Plaintiff and members of the Classes are entitled to recover civil penalties, attorney's fees,
28 costs, and interest thereon.

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EIGHTH CAUSE OF ACTION

Business & Professions Code § 17200 et seq.

(By Plaintiff and the Members of the Plaintiff Class Against Defendant)

143. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

144. Section 17200 of the California *Business and Professions Code* prohibits any unlawful, unfair or fraudulent business act or practice.

145. Plaintiff brings this cause of action in a representative capacity on behalf of the general public and the persons affected by the unlawful and unfair conduct described herein. Plaintiff and members of the Plaintiff Class have suffered, and continue to suffer, injury in fact and monetary damages because of Defendants' actions.

146. The actions by Defendants as herein alleged amount to conduct which is unlawful and a violation of law. As such, said conduct amounts to unfair business practices in violation of California *Business and Professions Code* § 17200, *et seq.*

147. Defendants' conduct as herein alleged has damaged Plaintiff and the members of the Plaintiff Class by denying them wages due and payable. Defendants' actions are thus substantially injurious to Plaintiff and the members of the Plaintiff Class, causing them injury in fact and loss of money.

148. Because of such conduct, Defendants have unlawfully and unfairly obtained monies due to the Plaintiff and the members of the Plaintiff Class.

149. All members of the Plaintiff Class can be identified by reference to payroll and related records in the possession of the Defendant. The amount of wages due to Plaintiff and members of the Plaintiff Class can be readily determined from Defendants' records. The Class Members are entitled to restitution of monies due and obtained by Defendants during the Class Period as a result of Defendants' unlawful and unfair conduct.

150. During the Class Period, Defendants committed, and continue to commit, acts of unfair competition as defined by § 17200, *et seq.*, of the *Business and Professions Code*, by and among other things, engaging in the acts and practices described above.

151. Defendants' course of conduct, acts, and practices in violation of the California law as mentioned in each paragraph above constitutes a separate and independent violation of § 17200, etc., of the *Business and Professions Code* in that it is fraudulent, improper and unfair.

152. The harm to Plaintiff and the members of the Plaintiff Class of being wrongfully denied lawfully earned and unpaid wages outweighs the utility, if any, of Defendants' policies and practices and therefore, Defendants' actions described herein constitute an unfair business practice or act within the meaning of *Business and Professions Code* § 17200.

153. Defendants' conduct described herein threatens an incipient violation of California's wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise significantly threatens or harms competition.

154. Defendants' course of conduct described herein further violates California *Business and Professions Code* § 17200 in that it is fraudulent, improper, and unfair.

155. The unlawful, unfair, and fraudulent business practices and acts of Defendants as described herein-above have injured Plaintiff and members of the Plaintiff Class in that they were wrongfully denied the timely and full payment of wages due to them.

NINTH CAUSE OF ACTION

Failure to Provide Sick Pay at the Regular Rate

Labor Code § 246 and Applicable IWC Wage Orders

(By Plaintiff and the Members of the Plaintiff Class Against Defendant)

156. Plaintiff re-alleges and incorporates all preceding paragraphs a though fully set forth herein.

157. Sick pay must be compensated at the employee's regular rate of pay, for the workweek in which the paid leave was taken, or at a rate determined by dividing total wages, excluding overtime premium pay, by the employee's total hours in pay periods of the prior 90 days of employment. (*Labor Code* § 246(1)(1-2).)

158. Defendants failed to pay Plaintiff and members of the Class sick pay at the correct rate. Plaintiff received compensation in addition to hourly wages, including but not limited to incentive pay, but those additional amounts were not included when calculating sick pay wages. By failing to pay

1 Plaintiff and Class Members for sick pay at the regular rate of pay, Defendants willfully violated *Labor*
2 *Code* § 246.

3 159. Additionally, in viewing Plaintiff's past paystubs, calculating on the year-to-date payout,
4 it shows that Plaintiff's sick pay is paid at a base rate despite Plaintiff having earned significant non-
5 discretionary bonuses throughout the year.

6 160. Defendants' unlawful acts deprived Plaintiff and the Class of all wages. Plaintiff and
7 members of the Classes seek damages for sick pay in amounts to be determined at trial, and are entitled
8 to recover these amounts with interest, attorneys' fees, and costs.

9 **TENTH CAUSE OF ACTION**

10 **Failure to Retain Gratuities**

11 **Labor Code § 351 and Applicable IWC Wage Orders**

12 **(By Plaintiff and the Members of the Plaintiff Class Against Defendant)**

13 161. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
14 herein.

15 162. California *Labor Code* § 351 states, "no employer or agent shall collect, take, or receive
16 any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any
17 amount from wages due an employee on account of a gratuity, or require an employee to credit the amount,
18 or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer.

19 163. *Labor Code* § 351 further states "every gratuity is hereby declared to be the sole property
20 of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons
21 to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron
22 indicated on the credit card slip, without any deductions for any credit card payment processing fees or
23 costs that may be charged to the employer by the credit card company.

24 164. Defendants failed to comply with *Labor Code* § 351 by not giving Plaintiff and members
25 of the Class all the gratuity payments they earned. By failing to provide Plaintiff and Class Members with
26 their gratuity pay, Defendants willfully violated *Labor Code* § 351.

27 **ELEVENTH CAUSE OF ACTION**

28 **Failure to Provide Adequate Sanitation Facilities**

1 **Labor Code § 8397.4 and Applicable IWC Wage Orders**

2 **(By Plaintiff and the Members of the Plaintiff Class Against Defendant)**

3 165. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
4 herein.

5 166. California *Labor Code* § 8397.4 provides that employers, 1) “provide adequate and readily
6 accessible sanitation facilities; and 2) establish and implement a schedule for servicing, cleaning, and
7 supplying each facility to ensure it is maintained in a clean, sanitary, and serviceable condition.”

8 167. Defendants failed to comply with *Labor Code* § 8397.4 by not providing Plaintiff and
9 members of the Class with adequate and accessible sanitation facilities while working. Thus, Defendants
10 willfully violated *Labor Code* § 8397.4.

11 **TWELFTH CAUSE OF ACTION**

12 **Failure to Not Prevent Lawful Conduct During Non-Work Hours**

13 **Labor Code § 96(k) and Applicable IWC Wage Orders**

14 **(By Plaintiff and the Members of the Plaintiff Class Against Defendant)**

15 168. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
16 herein.

17 169. California *Labor Code* § 96(k) provides that the Labor Commissioner and the deputies and
18 representatives authorized by the commissioner in writing shall take assignments of claims for loss of
19 wages as the result of demotion, suspension, or discharge from employment for lawful conduct occurring
20 during nonworking hours away from the employer’s premises.

21 170. Plaintiff is informed and believed, and based thereon alleges, that Defendants demoted,
22 discharged, or suspended its non-exempt employees for lawful conduct occurring during nonworking
23 hours away from the employer’s premises.

24 **THIRTEENTH CAUSE OF ACTION**

25 **Violations of Federal Credit Reporting Act (FCRA)**

26 **Labor Code § 96(k) and Applicable IWC Wage Orders**

27 **(By Plaintiff and the Members of the Plaintiff Class Against Defendant)**

28 171. Plaintiff alleges that Defendants failed to have a stand-alone document for the background

1 report and fails to comply with “clear and conspicuous” requirements.

2 172. Defendants’ FCRA disclosure contained extraneous information such as state disclosures
3 in violation of 15 U.S.C. § 1681b(b)(2)(A)(i)’s so-called “standalone” disclosure and “clear and
4 conspicuous” requirements. *Gilberg*, 913 F.3d at 1175-76.

5 173. Accordingly, Plaintiff was confused regarding the nature of his rights under the FCRA and
6 did not give valid authorization for Defendants to procure a consumer report in violation of 15 U.S.C §
7 1681b(b)(2)(A)(ii).

8 174. Nevertheless, Defendants procured or caused to be procured Plaintiff’s consumer report.

9 175. Defendants’ failure to provide a compliant disclosure, and failure to obtain proper
10 authorization, deprived Plaintiff and other similarly situated of the right to information and the right to
11 privacy guaranteed by 15 U.S.C § 1681b(b)(2)(A). *Syed*, M-1, LLC, 853 F.3d 492,499 (9th Cir. 2017).

12 176. By including extraneous information in this standard FCRA disclosure, Defendants’
13 conduct is contrary to the plain language stature, case law, and unambiguous regulatory guidance form
14 the Federal Trade Commission (“FTC”).

15 177. Thus, Defendants “willfully” violated the FCRA, and Defendant knew that its standard
16 FCRA disclosure must not contain surplus or extraneous information related to state disclosures and must
17 be clear and not likely to confuse a reasonable reader.

18 178. Defendants violated Section 1786.16(a)(2)(B) of the ICRAA by failing to provide a clear
19 and conspicuous disclosure in writing to Plaintiff and the members of the ICRAA Class before an
20 investigative report was procured. As stated above, the disclosures contain extra information that is not
21 clear and unambiguous disclosures in stand-alone documents as required.

22 179. The inclusion of extra information and the release in the disclosure documents makes the
23 documents not “clear and conspicuous” as required and therefore Defendants willfully violated
24 §§1786(a)(2)(B) and 1786.16(a)(2)(B) of the ICRAA.

25 **FOURTEENTH CAUSE OF ACTION**

26 **Business & Professions Code § 16600 et seq.**

27 **(By Plaintiff and the Members of the Plaintiff Class Against Defendant)**

28 180. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth

1 therein.

2 181. Business & Professions Code § 16600 provides the following:

- 3 a. “. . . every contract by which anyone is restrained from engaging in a lawful profession,
4 trade, or business of any kind is to that extent void.
- 5 b. (1) This section shall be read broadly, in accordance with *Edwards v. Arthur Andersen,*
6 *LLP* (2008) 44 Cal.4th 937, to void the application of any noncompete agreement in an
7 employment context, or any noncompete clause in an employment contract, no matter how
8 narrowly tailored, that does not satisfy an exception in this chapter. (2) This subdivision
9 does not constitute a change in, but is declaratory of, existing law.
- 10 c. This section shall not be limited to contracts where the person being restrained from
11 engaging in a lawful profession, trade, or business is a party to the contract.

12 182. Defendants required Plaintiff and the other non-exempt employees to sign noncompete
13 agreements that unlawfully restrain their trade. Thus, Defendants violated Business & Professions Code
14 § 16600 by requiring these non-compete agreements be signed by Plaintiff and the Class Members.

15 **FIFTEENTH CAUSE OF ACTION**

16 **Violations of the Wage Theft Protection Act of 2011, (i.e. Labor Code 2810.5):**

17 **(On Behalf of All Aggrieved Employees Against Defendants)**

18 183. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
19 herein.

20 184. *Labor Code* § 2810.5 requires California employers to notify employees of certain
21 information that must be disclosed at the time of their hiring. Such information includes 1) the rate or rates
22 of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or
23 otherwise, including any rates for overtime, as applicable; 2) allowances, if any, claimed as part of the
24 minimum wage, including meal or lodging allowances; 3) the regular payday designated by the employer
25 in accordance with the requirements of this code; 4) the name of the employer, including any “doing
26 business as” names used by the employer; 5) the physical address of the employer’s main office or
27 principal place of business, and a mailing address, if different; 6) the telephone number of the employer;
28 7) the name, address, and telephone number of the employer’s workers’ compensation insurance carrier;

and, 8) any other information the Labor Commissioner deems material and necessary.

185. Plaintiff is informed and believed, and based thereon alleges, that Defendant failed to comply with certain provisions of the Wage Theft Protection Act by not disclosing all of the above information to him at the time of hiring. Thus, pursuant to PAGA, Defendant owes Plaintiff and Aggrieved Employees penalties due to its violation of *Labor Code* § 2810.5.

SIXTEENTH CAUSE OF ACTION

Civil Penalties Pursuant to PAGA (Labor Code § 2698, et seq.)

(On Behalf of All Aggrieved Employees Against Defendants)

186. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

187. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA, California *Labor Code* §§ 2698-99) applied to Defendants' employment of Plaintiff and the proposed Class Members.

188. At all times set forth herein, California *Labor Code* § 2699(a) has provided that any provision of law under the California *Labor Code* that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California *Labor Code* may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California *Labor Code* § 2699.3.

189. At all times set forth herein, the PAGA has also provided that for the violation of any *Labor Code* provision that does not itself contain a civil penalty, there are established civil penalties of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation. Cal. *Lab. Code* § 2699(f)

190. A civil action under PAGA may be brought by an "aggrieved employee," any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

191. Defendants has been committing, and continue to commit, violations of the California *Labor Code*, including, but not limited to:

- a. violations of *Labor Code* §§ 510, 1198;

- b. violations of *Labor Code* §§ 221, 223, 1182, 1194, 1197, 1198;
- c. violations of *Labor Code* §§ 226.7, 512, 516 and 1198;
- d. violations of *Labor Code* §§ 226.7, 516 and 1198;
- e. violations of *Labor Code* §§ 226(a) and 1174;
- f. violations of *Labor Code* §§ 201-203;
- g. violations of *Labor Code* § 2802;
- h. violations of *Labor Code* § 246;
- i. violations of *Labor Code* § 2810.5;
- j. violations of *Labor Code* § 351; and,
- k. violations of *Labor Code* § 8397.4.

192. Plaintiff was employed by Defendants and the alleged violations have been committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and other employees are “aggrieved employees” as defined by California *Labor Code* §2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

193. Pursuant to California *Labor Code* § 2699.3, aggrieved employees, including Plaintiff, may pursue a civil action arising under the PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice (hereinafter “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the California *Labor Code* alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violations sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California *Labor Code* § 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

194. On January 19, 2024, Plaintiff provided written notice to the LWDA and by certified mail

1 to Defendants of the specific provisions of the California *Labor Code* alleged to have been violated,
2 including the facts and theories to support the alleged violations.

3 195. More than 65 calendar days have passed since the date notice was provided to the LWDA
4 and Defendants. Accordingly, Plaintiff has satisfied the administrative prerequisites under California
5 *Labor Code* § 2699.3(a) to recover civil penalties against Defendants for violations of California *Labor*
6 *Code* identified in this Complaint.

7 196. Plaintiff and the other aggrieved employees are entitled to and seek to recover civil
8 penalties for Defendants' violation of the *Labor Code* during the applicable limitations period.

9 197. Pursuant to California *Labor Code* § 2699(g), Plaintiff, on behalf of himself and other
10 aggrieved employees, is entitled to an award of reasonable attorneys' fees and costs.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, Aggrieved Employees, and the Class Members pray for judgment as
13 follows:

- 14 1. For an order certifying the proposed Plaintiff and Terminated Sub-Class;
- 15 2. For an order that counsel for Plaintiff be appointed class counsel;
- 16 3. Designation of Plaintiff as the class representative of the Plaintiff and Terminated Sub-
17 Class;
- 18 4. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class and
19 disgorgement of all profits from the unlawful business practices of Defendants;
- 20 5. Prejudgment and post judgment interest on all sums awarded;
- 21 6. For compensatory damages;
- 22 7. For penalties pursuant to *Labor Code* §§ 210, 226, 226.7;
- 23 8. For interest accrued to date;
- 24 9. For costs of suit and expenses incurred herein pursuant to *Labor Code* §§ 226 and 1194;
- 25 10. For reasonable attorneys' fees pursuant to *Labor Code* § 226 and *Code of Civil*
26 *Procedure* § 1021.5, and/or other applicable law; and,
- 27 11. A declaratory judgment that Defendant has knowingly and intentionally violated the
28 following provisions of law:

- a. California *Labor Code* §§ 510, 1198 for failing to pay overtime;
- b. California *Labor Code* §§ 221, 223, 1182, 1194, 1197, and 1198 for failing to pay all wages;
- c. California *Labor Code* §§ 226.7, 512, 516, and 1198 for failing to provide compliant meal and rest breaks;
- d. California *Labor Code* §§ 226(a) and 1174 for failing to provide accurate, itemized wage statements and failing to maintain accurate records;
- e. California *Labor Code* § 204 for failing to timely pay wages during employment;
- f. California *Labor Code* § 2802 for failing to reimburse business expenses;
- g. California *Labor Code* § 246 for failing to pay sick pay at regular rate;
- h. California *Labor Code* § 2810.5 for failing to comply with the provisions of the Wage Theft Protection Act of 2011;
- i. California *Labor Code* §§ 351 for failing to retain gratuities;
- j. California *Labor Code* §§ 8397.4 for failing to provide adequate sanitation facilities;
- k. California *Labor Code* § 96(k) for preventing employees from lawful conduct while in non-work hours;
- l. *Business & Professions Code* §§ 17200-08 for violating the provisions set forth herein above; and,
- m. *Business & Professions Code* §§ 16600 for violating the provisions set forth herein above.

12. For all such other and further relief that the Court may deem just and proper.

DATED: July 14, 2025

BRADLEY/GROMBACHER, LLP

By: Marcus J. Bradley
Marcus J. Bradley, Esq.
Kiley L. Grombacher, Esq.
Attorneys for Plaintiff and others similarly
situated

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands trial of Plaintiff's, and the Class Members' claims by jury to the extent
3 authorized by law.

4
5 DATED: July 14, 2025

BRADLEY/GROMBACHER, LLP

6 By: Marcus J. Bradley
7 Marcus J. Bradley, Esq.
8 Kiley L. Grombacher, Esq.
9 Attorneys for Plaintiff and others similarly
situated

1 PROOF OF SERVICE
2 VIA CASE ANYWHERE

3 STATE OF CALIFORNIA)
4) ss.
5 COUNTY OF LOS ANGELES)

6 I am employed in the County of Los Angeles, State of California. I am over the age of 18
7 and not a party to the within action. My business address is 31365 Oak Crest Drive, Suite 240,
8 Westlake Village, CA 91361.

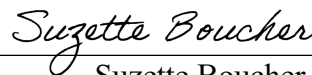
9 On July 14, 2025, I served the foregoing document described as:

10 **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**
11 on all interested parties in said action:

12 SEE ATTACHED SERVICE LIST

13 Pursuant to the Court's Order Authorizing Electronic Service, the above-named
14 document has been electronically served on counsel of record by transmission through the Case
15 Anywhere system on the date below. The transmission of this document to Case Anywhere
16 system was reported as complete and a copy of the Case Anywhere Transaction Receipt will be
17 maintained along with the original document and proof of service in our office.

18 Executed on July 14, 2025 at Westlake Village, California.

19 
20 Suzette Boucher

Machuca v. Buffalo Wild Wings
Los Angeles County Superior Court Case No. 24STCV01594

Service List

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