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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MICHAEL C. MIGLIORANZA,

Plaintiff,

v.

IL FORNAIO (AMERICA) LLC, and DOES
1 through 100, inclusive,

Defendants.

CASE NO.: **24STCV08111**
[Unlimited Jurisdiction]

**PLAINTIFF'S COMPLAINT FOR
DAMAGES FOR:**

1. Violation of Cal. Labor Code §§ 226.2, 510, 558, 558.1, 1194, and 1198 (Unpaid Overtime)
2. Violation of Cal. Labor Code §§ 226.7, 512(a), 558, and 558.1 (Unpaid Meal Period Premiums)
3. Violation of Cal. Labor Code §§ 226.7, 558, and 558.1 (Unpaid Rest Period Premiums)
4. Violation of Cal. Labor Code §§ 226.2, 558, 558.1, 1194, 1197 and 1197.1 (Unpaid Minimum Wages)
5. Violation of Cal. Labor Code § 204 (Wages Not Timely Paid During Employment)
6. Violation of Cal. Labor Code §§ 201, 202, 203, 558, and 558.1 (Final Wages Not Timely Paid)
7. Violation of Cal. Labor Code §§ 558, 558.1, 2800 and 2802 (Failure to Reimburse Necessary Business Expenses)
8. Violation of Cal. Labor Code §§ 226(a), 226.2, 558, and 558.1 (Failure to Provide Accurate Wage Statements)

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9. Violation of Cal. Labor Code §§ 226 and 246(i) (Failure to Provide Written Notice of Paid Sick Leave and Supplemental Paid Sick Leave)
10. Conversion (Tips Unlawfully Withheld)
11. Violation Of Cal. Labor Code § 2699, et seq. (Private Attorneys General Act)

DEMAND FOR JURY TRIAL

Plaintiff Michael C. Miglioranza (“Plaintiff”), on behalf of himself and other aggrieved employees pursuant to the Private Attorneys General Act, alleges as follows on knowledge as to himself and his own acts/interactions, and on information and belief as to all other matters:

PARTIES

1. Plaintiff, at all times relevant herein, is a resident of the State of California and County of Los Angeles.

2. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

3. Plaintiff is informed and believes that Defendant is, and was, a Delaware Limited Liability Company authorized to transact, and transacting, business in the State of California and County of Los Angeles. Plaintiff is informed and believes, and thereon alleges that, at all relevant times herein, Defendant had its principal place of business at 770 Tamalpais Drive, Suite 208, Corte Madera, CA 94925.

4. The true names and capacities of the Defendants named herein as DOES 1 through 100, inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who therefore sues such Defendants by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff is informed and believes that all of the DOE Defendants are California residents. Plaintiff will amend this Complaint to show such true names and capacities when they have been determined.

5. Plaintiff is informed and believes that at all times relevant herein, each Defendant designated, including DOES 1 through 100, was the agent, managing agent, principal, owner, partner, joint venturer, representative, manager, servant, employee and/or co-conspirator of each of the other Defendants, and was at all times mentioned herein acting within the course and scope of said agency and employment, and that all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and consent of each Defendant designated herein.

JURISDICTION & VENUE

6. This Court has personal jurisdiction over each of the Defendants because they are residents of, and/or are doing business in the State of California.

7. Under California Code of Civil Procedure section 395(a), venue is proper in this county because the Defendants, or some of them, reside in Los Angeles County; and/or the injuries (the adverse actions suffered by Plaintiff) occurred in Los Angeles County.

FACTUAL ALLEGATIONS

8. Defendant is a limited liability company engaged in the business of operating restaurants named the “Il Fornaio Cucina Italiana.” Defendant operates or operated over a dozen “Il Fornaio Cucina Italiana” locations throughout the State of California, including a location in Pasadena, CA.

9. Plaintiff worked for Defendant from approximately July 7, 2022, to July 23, 2023 at its location in Pasadena, CA. Defendant employed Plaintiff as a Server.

10. In exchange for performing his services as a Server, Plaintiff was paid a wage of \$16.93 per hour.

11. As detailed below, Defendant violated several of California’s wage and hour laws during Plaintiff’s employment, including, but not limited to, violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 246, 351, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the Industrial Welfare Commission Wage Orders (“IWC Wage Orders”).

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1 12. Throughout the time period involved in this case, Defendant implemented
2 policies and/or practices which failed to provide Plaintiff and the Aggrieved Employees with
3 timely and duty-free meal periods. Defendant routinely failed to relieve Plaintiff and the
4 Aggrieved Employees of all duties during their meal periods, regularly failed to relinquish
5 control over Plaintiff and the Aggrieved Employees during their meal periods, regularly failed
6 to permit Plaintiff and the Aggrieved Employees a reasonable opportunity to take their meal
7 periods, and regularly impeded or discouraged Plaintiff and the Aggrieved Employees from
8 taking thirty (30) minute uninterrupted meal breaks no later than the end of the fifth hour of
9 work and/or from taking a second thirty (30) minute uninterrupted meal break no later than the
10 tenth hour of work for shifts lasting more than ten (10) hours. Defendant also failed to maintain
11 accurate records of the meal periods taken by Plaintiff and the Aggrieved Employees.

12 13. Throughout the time period involved in this case, Defendant did not adequately
13 inform Plaintiff and the Aggrieved Employees of their right to take uninterrupted meal periods
14 under California law. Moreover, Defendant systematically disregarded its own written policies
15 regarding the provision and timing of meal periods for Plaintiff and the Aggrieved Employees;
16 instead, Defendant's actual policy and practice was to schedule Plaintiff and the Aggrieved
17 Employees' work in a way that prohibited them from taking timely and duty-free meal periods,
18 and to require Plaintiff and the Aggrieved Employees to work through their meal periods, for
19 which they were not compensated.

20 14. Throughout the time period involved in this case, Defendant failed to pay
21 Plaintiff and the Aggrieved Employees premium wages for meal periods that were missed, late,
22 interrupted, or shortened in violation of California law. Defendant knew or should have known
23 that Plaintiff and the Aggrieved Employees were entitled to receive all meal periods or payment
24 of one additional hour of pay at their regular rate of pay when a meal period was missed, short,
25 late, and/or interrupted. Notwithstanding this knowledge, Defendant routinely failed to provide
26 legally compliant meal periods to Plaintiff and the Aggrieved Employees and routinely failed
27 to pay one additional hour of pay to Plaintiff and the Aggrieved Employees at their regular rate
28 of pay when a meal period was missed, short, late, and/or interrupted.

1 15. Throughout the time period involved in this case, Defendant implemented
2 policies and practices which prohibited Plaintiff and the Aggrieved Employees from taking
3 duty-free rest periods. Defendant regularly failed to provide, authorize, and permit Plaintiff and
4 the Aggrieved Employees to take full, uninterrupted, off-duty rest periods for every shift lasting
5 three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest periods for
6 every shift lasting six (6) to ten (10) hours, and failed to make a good faith effort to authorize,
7 permit, and provide such rest breaks in the middle of each work period.

8 16. Throughout the period involved in this case, Defendant did not adequately
9 inform Plaintiff and the Aggrieved Employees of their right to take rest periods under
10 California law. Moreover, Defendant systematically disregarded its own written policies
11 regarding the provision and timing of rest periods. Instead, Defendant's actual policy and
12 practice was to schedule Plaintiff and the Aggrieved Employees in a way that regularly
13 prohibited them from taking timely and duty-free rest periods, and to regularly require Plaintiff
14 and the Aggrieved Employees to work through their rest periods.

15 17. Throughout the time period involved in this case, Defendant failed to pay
16 Plaintiff and the Aggrieved Employees premium wages for rest periods that were missed, late,
17 interrupted, or shortened in violation of California law. Defendant knew or should have known
18 that Plaintiff and the Aggrieved Employees were entitled to receive all rest periods or payment
19 of one additional hour of pay at his regular rate of pay when a rest period was missed, short,
20 late, and/or interrupted. Notwithstanding this knowledge, Defendant routinely failed to
21 authorize and permit Plaintiff and the Aggrieved Employees to take duty-free rest periods, and
22 failed to pay one additional hour of pay to Plaintiff and the Aggrieved Employees at their
23 regular rate of pay when a rest period was missed, short, late and/or interrupted.

24 18. Throughout the time period involved in this case, Defendant implemented
25 policies that prohibited Plaintiff and the Aggrieved Employees from accurately recording the
26 actual time that they worked, resulting in a failure to pay Plaintiff all wages owed.

27 19. Throughout the time period involved in this case, Plaintiff and the Aggrieved
28 Employees frequently worked more than eight (8) hours in a day, and/or forty (40) hours in a

1 week.

2 20. Throughout the time period involved in this case, Defendant regularly failed to
3 pay all overtime compensation owed to Plaintiff and the Aggrieved Employees when they
4 worked in excess of eight (8) hours in a single workday and/or forty (40) hours in a single work
5 week, or in excess of twelve (12) hours in a single workday and/or eighty (80) hours in a single
6 work week. Defendant knew or should have known that Plaintiff and the Aggrieved Employees
7 were entitled to receive certain wages for overtime compensation and that they were not
8 receiving these wages for overtime compensation.

9 21. Throughout the time period involved in this case, Defendants failed to pay
10 overtime to Plaintiff and the Aggrieved Employees for all overtime hours worked based on
11 regular rates of pay correctly calculated to include all applicable remuneration.

12 22. Throughout the time period involved in this case, Defendant regularly failed to
13 pay Plaintiff and the Aggrieved Employees at least the minimum legally permitted wage for all
14 hours worked. Defendants knew or should have known that Plaintiff and the Aggrieved
15 Employees were entitled to receive at least minimum wages for all hours worked and that they
16 were not receiving at least minimum wage for all hours worked. Defendant's failure to pay
17 minimum wages included, *inter alia*, failing to pay Plaintiff and the Aggrieved Employees at
18 the required minimum wage pursuant to California law.

19 23. Throughout the time period involved in this case, Defendant regularly failed to
20 pay Plaintiff and the Aggrieved Employees all wages owed to them upon discharge or
21 resignation. Defendant knew or should have known that Plaintiff and the Aggrieved Employees
22 were entitled to receive all wages owed to them upon termination within the time permissible
23 under California Labor Code section 202. Plaintiff and the Aggrieved Employees did not
24 receive payment of all final wages owed to them upon discharge or resignation, including
25 overtime compensation and minimum wages, within any time permissible under California
26 Labor Code section 202.

27 24. Throughout the time period involved in this case, Defendant regularly failed to
28 pay Plaintiff and the Aggrieved Employees all wages within any time permissible under

1 California law, including, *inter alia*, California Labor Code section 204. Defendant knew or
2 should have known that Plaintiff and the Aggrieved Employees were entitled to timely receive
3 all wages owed to them during their employment; however, Plaintiff and the Aggrieved
4 Employees did not receive timely payment of all wages, including overtime compensation,
5 minimum wages, and meal and rest period premiums.

6 25. Throughout the time period involved in this case, Defendant regularly failed to
7 provide complete or accurate wage statements to Plaintiff and the Aggrieved Employees.
8 Defendant knew or should have known that Plaintiff and the Aggrieved Employees were
9 entitled to receive complete and accurate wage statements in accordance with California law,
10 but, in fact, they did not receive complete and accurate wage statements from Defendant. The
11 deficiencies included, *inter alia*, the failure to include the total number of hours worked, the
12 actual gross wages earned, the correct rates of pay, the sick leave accrued and the address of
13 the legal entity of the employer.

14 26. Throughout the time period involved in this case, Defendant regularly failed to
15 keep complete or accurate payroll records. Defendant knew or should have known that it was
16 required to keep complete and accurate payroll records for Plaintiff and the Aggrieved
17 Employees in accordance with California law, but, in fact, did not keep complete and accurate
18 payroll records. In addition, Defendant regularly failed to maintain accurate records relating to
19 Plaintiff and the Aggrieved Employees' work periods, meal periods, total daily hours, hours
20 per pay period, and applicable pay rates.

21 27. Throughout the time period involved in this case, Defendant failed to reimburse
22 Plaintiff and the Aggrieved Employees for all necessary business-related expenses, including
23 but not limited to cell phone usage, internet usage and automobile storage/operation costs.
24 Defendant knew or should have known that it was required to reimburse Plaintiff and the
25 Aggrieved Employees for all necessary business-related expenses and costs, but failed to do so
26 in violation of California law.

27 28. Throughout the time period involved in this case, Defendant knew or should
28 have known that it had a duty to compensate Plaintiff and the Aggrieved Employees pursuant

1 to California law. Defendant had the financial ability to pay such compensation, but willfully,
2 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and the
3 Aggrieved Employees that they paid all wages owed to them, all in order to increase profits.

4 29. Plaintiff was left gratuities by patrons which they never received due to the fact
5 that Defendant collected said gratuities for itself in order to cover a 3% surcharge it
6 alternatively labeled as an “inflation surcharge” or as an “employee health & benefits
7 surcharge.” In the event that patrons refused to pay such a surcharge, this surcharge was simply
8 deducted from the payment of gratuities. Moreover, Plaintiff was never actually provided with
9 such benefits, which only further encouraged patrons to either refuse to pay the surcharge or to
10 reduce the gratuities left for Plaintiff.

11 30. On January 18, 2024, Plaintiff, through his counsel of record, by online filing
12 with the Labor and Workforce Development Agency (“LWDA”) and by certified mail to the
13 Defendant, notified Defendant and the LWDA of the specific provisions of the Labor Code and
14 IWC Wage Orders that Defendant had violated, including the facts and theories to support the
15 violations, and of Plaintiff’s intent to bring a claim for civil penalties under PAGA.

16 31. California Labor Code section 218 states that nothing in Article 1 of the Labor
17 Code shall limit the right of any wage claimant to “sue directly ... for any wages or penalty due
18 to him [or her] under this article.”

19 **FIRST CAUSE OF ACTION**

20 **Violation of Cal. Labor Code §§ 226.2, 510, 558, 558.1, 1194, and 1198**

21 **(Unpaid Overtime)**

22 **(Against All Defendants)**

23 32. Plaintiff incorporates by reference and re-allege as if fully stated herein each
24 and every allegation set forth above.

25 33. California Labor Code section 1198 and the applicable Industrial Welfare
26 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
27 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
28 rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

1 34. Specifically, the applicable IWC Wage Order provides that Defendant is and
2 was required to pay persons it employed working more than eight (8) hours in a day or more
3 than forty (40) hours in a workweek at the rate of time-and-one-half for all hours worked in
4 excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

5 35. The applicable IWC Wage Order further provides that Defendant is and was
6 required to pay Plaintiff overtime compensation at a rate of two times his regular rate of pay
7 for all hours worked in excess of twelve (12) hours in a day and for all hours worked in excess
8 of eight (8) hours on the seventh day of work in a workweek.

9 36. California Labor Code section 510 codifies the right to overtime compensation
10 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
11 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
12 of work, and no overtime compensation at twice the regular hourly rate for hours worked in
13 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
14 of work.

15 37. During the relevant time period, Plaintiff regularly worked in excess of eight (8)
16 hours in a day, and/or in excess of forty (40) hours in a week.

17 38. Defendant failed to properly calculate the regular rate of pay for Plaintiff by not
18 taking into account all of time which Plaintiff worked. This resulted in time during each
19 workday which Plaintiff was under the control of Defendants but was not compensated at the
20 proper overtime rate of pay when they worked more than eight hours in a day or 40 hours in a
21 week, in violation of Labor Code sections 510, 1194, and 1198.

22 39. During the relevant time period, Defendant intentionally and willfully failed to
23 pay overtime wages owed to Plaintiff.

24 40. Defendant's failure to pay Plaintiffs and the other Class Members the unpaid
25 balance of overtime compensation, as required by California law, violates the provisions of
26 California Labor Code sections 510 and 1198, and is therefore unlawful.

27 41. Pursuant to California Labor Code section 1194, Plaintiff is entitled to recover
28 unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

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48. During the relevant time period, Plaintiff was required to work for periods longer than ten (10) hours without a second uninterrupted meal period of not less than thirty (30) minutes.

49. During the relevant time period, Defendant intentionally and willfully required Plaintiff to miss his meal periods and/or to take meal periods that were late, shortened, or interrupted, and failed to compensate Plaintiff the full meal period premium for these missed, shortened, late, or interrupted meal periods.

50. During the relevant time period, Defendants failed to pay Plaintiff the full meal period premiums due pursuant to California Labor Code section 226.7.

51. Defendant's conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

52. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff is entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided.

THIRD CAUSE OF ACTION

Violation of Cal. Labor Code §§ 226.7, 558, and 558.1

(Unpaid Rest Period Premiums)

(Against All Defendants)

53. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

54. The applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff's employment by Defendant.

55. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

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56. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof unless the total daily work time is less than three and one-half (3.5) hours.”

57. During the relevant time period, Defendant required Plaintiff to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

58. During the relevant time period, Defendants willfully required Plaintiff to work during rest periods, failed to allow Plaintiff to take any rest period and/or failed to authorize and permit Plaintiff to take uninterrupted, duty-free rest breaks.

59. During the relevant time period, Defendant failed to pay Plaintiff the full rest period premium due pursuant to California Labor Code section 226.7 for work performed during rest periods, and/or for failure to authorize and permit Plaintiff to take uninterrupted rest periods.

60. Defendant's conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

61. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiff is entitled to recover from Defendant one additional hour of pay at the employee's regular hourly rate of compensation for each workday that the rest period was not provided.

FOURTH CAUSE OF ACTION

Violation of Cal. Labor Code §§ 226.2, 558, 558.1, 1194, 1197 and 1197.1

(Unpaid Minimum Wages)

(Against All Defendants)

62. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

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63. California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees and the payment of a lesser wage than the minimum so fixed is unlawful.

64. During the relevant time period, Defendant regularly failed to pay minimum wage to Plaintiff as required pursuant to California Labor Code sections 226.2, 1194, 1197, and 1197.1.

65. Defendant's failure to pay Plaintiff the minimum wage as required violates California Labor Code sections 226.2, 1194, 1197, and 1197.1. Pursuant to those sections, Plaintiff is entitled to recover the unpaid balance of his minimum wage compensation as well as interest, costs, and attorneys' fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

66. Pursuant to California Labor Code section 1194.2, Plaintiff is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

Violation of Cal. Labor Code § 204

(Wages Not Timely Paid During Employment)

(Against All Defendants)

67. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

68. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 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 during which the labor was performed.

69. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

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1 70. At all times herein set forth, California Labor Code section 204 provided that all
2 wages earned for labor in excess of the normal work period shall be paid no later than the
3 payday for the next regular payroll period.

4 71. During the relevant time period, Defendant intentionally and willfully failed to
5 pay Plaintiff all wages due to them within any time period permissible under California Labor
6 Code section 204.

7 72. Plaintiff is entitled to recover all remedies available for violations of California
8 Labor Code section 204.

9 **SIXTH CAUSE OF ACTION**

10 **Violation of Cal. Labor Code §§ 201, 202, 203, 558, and 558.1**

11 **(Final Wages Not Timely Paid)**

12 **(Against All Defendants)**

13 73. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
14 and every allegation set forth above.

15 74. California Labor Code sections 201 and 202 provide that if an employer
16 discharges an employee, the wages earned and unpaid at the time of discharge are due and
17 payable immediately, and if an employee quits his or her employment, his or her wages shall
18 become due and payable not later seventy-two (72) hours thereafter, unless the employee has
19 given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee
20 is entitled to his or her wages at the time of quitting.

21 75. During the relevant time period, Plaintiff's employment with Defendants ended,
22 *i.e.* was terminated by quitting or discharge. Defendant intentionally and willfully failed to pay
23 Plaintiff all wages, earned and unpaid, including but not limited to minimum wages, straight
24 time wages, and overtime wages, within seventy-two (72) hours of leaving Defendant's
25 employ.

26 76. Defendant's failure to pay Plaintiff his wages, earned and unpaid, within
27 seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor
28 Code sections 201 and 202.

77. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

78. Plaintiff is entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SEVENTH CAUSE OF ACTION

Violation of Cal. Labor Code §§ 558, 558.1, 2800 and 2802

(Failure to Reimburse Necessary Business Expenses)

(Against All Defendants)

79. Plaintiffs incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

80. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

81. Plaintiff incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including, but not limited to, cell phone costs, internet access fees and automobile related costs.

82. Defendant has intentionally and willfully failed to reimburse Plaintiff for all necessary business-related expenses and costs. Plaintiff is entitled to recover from Defendant his business-related expenses and costs incurred during the course and scope of his employment, plus interest accrued from the date on which Plaintiff incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

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87. More specifically, Plaintiff has been injured by Defendant's intentional and willful violation of California Labor Code section 226(a) because he was denied both his legal right to receive, and his protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

88. Plaintiff is entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars.

89. Plaintiff is also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g).

NINTH CAUSE OF ACTION

Violation of Cal. Labor Code §§ 226 and 246(i)

(Failure to Provide Written Notice of Paid Sick Leave and Supplemental Paid Sick Leave)

(Against All Defendants)

90. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

91. At all material times set forth herein, California Labor Code section 246(i) stated that an “employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement as described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.”

92. Defendant knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiff in accordance with Labor Code sections 226(a) and 246(i), and to keep accurate records as required by Section 1174(d). The wage statements provided to Plaintiff, and the records maintained by the Defendant, have not accurately reflected the amounts of available paid sick leave, vacation, or paid time off. Such failures caused injury to Plaintiff and the Class, by, among other things, depriving him of the rights afforded to him by the 2021 COVID-19 Supplemental Paid Sick Leave law and by impeding

1 him from knowing the accurate amounts of available paid sick leave, vacation, or paid time
2 off.

3 93. Defendant has intentionally and willfully failed to provide Plaintiff with
4 complete and accurate wage statements. The deficiencies include, but are not limited to, failure
5 to provide paystubs, and/or the failure list the total number of hours worked, the actual gross
6 wages earned, the correct rates of pay, and the address of the legal entity of the employer.

7 94. Because of Defendant's violation of California Labor Code section 226(a),
8 Plaintiff has suffered injury and damage to his statutorily protected rights.

9 95. More specifically, Plaintiff has been injured by Defendant's intentional and
10 willful violation of California Labor Code section 226(a) because he was denied both his legal
11 right to receive, and their protected interest in receiving, accurate and itemized wage statements
12 pursuant to California Labor Code section 226(a).

13 96. Plaintiff is entitled to recover from Defendant the greater of their actual
14 damages caused by Defendant's failure to comply with California Labor Code section 226(a),
15 or an aggregate penalty not exceeding four thousand dollars per employee.

16 97. Plaintiff is also entitled to injunctive relief to ensure compliance with this
17 section, pursuant to California Labor Code section 226(g).

18 **TENTH CAUSE OF ACTION**

19 **Conversion**

20 **(Tips Unlawfully Withheld)**

21 **(Against All Defendants)**

22 98. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
23 and every allegation set forth above.

24 99. Pursuant to Labor Code section 351 *et seq.*, "No employer or agent shall collect,
25 take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by
26 a patron ... Every gratuity is hereby declared to be the sole property of the employee or
27 employees to whom it was paid, given, or left for. An employer that permits patrons to pay
28 gratuities by credit card shall pay the employees the full amount of the gratuity that the patron

1 indicated on the credit card slip, without any deductions for any credit card payment processing
2 fees or costs that may be charged to the employer by the credit card company. Payment of
3 gratuities made by patrons using credit cards shall be made to the employees not later than the
4 next regular payday following the date the patron authorized the credit card payment.”

5 100. Plaintiff was left gratuities by patrons which they never received due to the fact
6 that Defendants collected said gratuities for itself in order to cover a 3% surcharge it
7 alternatively labeled as an “inflation fee surcharge” or as an “employee health & benefits
8 surcharge.” In the event that patrons refused to pay such a surcharge, this surcharge was simply
9 deducted from the payment of gratuities.

10 101. As a proximate result of the aforementioned conversion of plaintiffs' gratuities
11 by Defendant, Plaintiff has suffered substantial losses in his earnings, gratuities and/or other
12 employment-related benefits to which Plaintiff was entitled, all to Plaintiff's damage in an
13 amount unknown at this time but which will be shown according to proof at the time of trial.

14 **ELEVENTH CAUSE OF ACTION**

15 **Violation of Cal. Labor Code § 2699, Et Seq.**

16 **(Private Attorneys General Act)**

17 **(Against All Defendants)**

18 102. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 103. PAGA expressly establishes that any provision of the California Labor Code
21 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
22 departments, divisions, commissions, boards, agencies or employees for a violation of the
23 California Labor Code, may be recovered through a civil action brought by an aggrieved
24 employee on behalf of himself or herself, and other current or former employees.

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

1 105. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved
2 employees” as defined by California Labor Code section 2699(c) in that they are all current or
3 former employees of Defendants, and one or more of the alleged violations was committed
4 against them. As set forth in detail above, during all times relevant to this Action, Defendants
5 have routinely subjected Plaintiff and the Aggrieved Employees to violations of California
6 Labor Codes by:

7 **Failure to Pay Overtime**

8 106. Defendants’ failure to pay legally required overtime wages to Plaintiff and the
9 other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or
10 unfair activity prohibited by California Labor Code sections 204, 510, 1194 and 1198.

11 **Failure to Provide Meal Periods**

12 107. Defendants’ failure to provide legally required meal periods to Plaintiff and the
13 other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or
14 unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

15 **Failure to Provide Rest Periods**

16 108. Defendants’ failure to provide legally required rest periods to Plaintiff and the
17 other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or
18 unfair activity prohibited by California Labor Code section 226.7 and 512.

19 **Failure to Pay Minimum Wages**

20 109. Defendants’ failure to pay legally required minimum wages to Plaintiff and the
21 other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or
22 unfair activity prohibited by California Labor Code sections 1194, 1197, 1197.1 and 1198.

23 **Failure to Timely Pay Wages Upon Termination**

24 110. Defendants’ failure to timely pay wages to Plaintiff and the other Aggrieved
25 Employees upon termination in accordance with Labor Code sections 201 and 202 constitutes
26 unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

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28 //

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

2 111. Defendants' failure to timely pay wages to Plaintiff and the other Aggrieved
3 Employees during employment in accordance with Labor Code section 204 constitutes
4 unlawful and/or unfair activity prohibited by California Labor Code section 204.

5 **Failure to Provide Complete and Accurate Wage Statements**

6 112. Defendants' failure to provide complete and accurate wage statements to
7 Plaintiff and the other Aggrieved Employees in accordance with Labor Code section 226(a)
8 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

9 **Failure to Keep Complete and Accurate Payroll Records**

10 113. Defendants' failure to keep complete and accurate payroll records relating to
11 Plaintiff and the other Aggrieved Employees in accordance with California Labor Code section
12 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section
13 1174(d).

14 **Failure to Reimburse Necessary Business-Related Expenses and Costs**

15 114. Defendants' failure to reimburse Plaintiff and the other Aggrieved Employees
16 for necessary business-related expenses and costs in accordance with California Labor Code
17 sections 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California
18 Labor Code sections 2800 and 2802.

19 **Failure to Provide Written Notice of Paid Sick Leave and Supplemental Paid Sick Leave**

20 115. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with
21 written notice of paid sick leave and Supplemental Paid Sick Leave in accordance with
22 California Labor Code sections 226(a), 246(a), 246(i) and 1174(d) constitutes unlawful and/or
23 unfair activity prohibited by California Labor Code sections 2800 and 2802.

24 116. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff,
25 individually and on behalf of the Aggrieved Employees and the State of California, requests
26 and is entitled to recover penalties against Defendants for the Labor Code violations described
27 above, including but not limited to penalties under California Code of Regulations Title 8
28 section 11010, penalties under California Labor Code sections 2699, 558, 210, 1197.1, 226,

226.3, 226.8, 1174.5, and 1197.1, and any and all additional penalties and sums as provided by the California Labor Code and/or other statutes. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial.

117. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees.

118. Plaintiff has exhausted his administrative remedies pursuant to Labor Code section 2699.3. On January 18, 2024, Plaintiff, through his counsel of record, by online filing with the Labor and Workforce Development Agency (“LWDA”) and by certified mail to the Defendants, notified Defendants and the LWDA of the specific provisions of the Labor Code and IWC Wage Orders that Defendants have violated, including the facts and theories to support the violations, and of Plaintiff’s intent to bring a claim for civil penalties under PAGA. Plaintiff also paid the filing fee required under Labor Code section 2699.3. As of the filing of this Complaint, more than sixty-five (65) days have elapsed since the mailing of Plaintiff’s January 18, 2024 notice, and the Labor and Workforce Development Agency has not indicated that it intends to investigate the violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties for himself and other Aggrieved Employees pursuant to Labor Code section 2699.3.

119. Further, Plaintiff is entitled to seek and recover reasonable attorneys’ fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

JURY TRIAL DEMANDED

1. Plaintiff demands a jury as to all causes of action.

PRAYER FOR RELIEF

2. Plaintiff prays for judgment against Defendant as follows:

- (a) For general economic and non-economic damages according to proof;

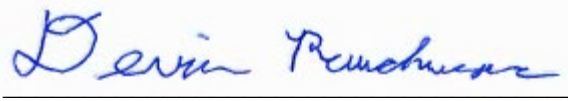
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- (b) For special damages according to proof;
- (c) For punitive damages where allowed by law;
- (d) For injunctive relief according to proof enjoining the unlawful, fraudulent and/or unfair practices, policies and patterns alleged herein;
- (e) For prejudgment interest pursuant to California Civil Code section 3287 and/or California Civil Code section 3288 and/or any other provision of law providing for prejudgment interest;
- (f) For attorneys' fees where allowed by law;
- (g) For costs of suit incurred herein; and
- (h) For such other and further relief as this Court deems just and proper.

DATE: March 29, 2024

DOMB & RAUCHWERGER LLP

By:



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