

1 Janelle Carney (201570)
2 Janelle@JanelleCarneyLaw.com
3 JANELLE CARNEY – ATTORNEY AT LAW, APC
4 14758 Pipeline Ave., Suite E
5 Chino Hills, CA 91709
6 Telephone: (909) 521-9609/ Fax: (909) 393-0471

7 Anna R. Salusky, Esq. (SBN:222484)
8 SALUSKY LAW GROUP, APC
9 3738 Bayer Avenue, Suite 104
10 Long Beach, CA 90808
11 Tel: (562)855-0004
12 Fax: (562)855-0002
13 asalusky@saluskylaw.com

14 Attorneys for Plaintiff, Nikola Scuric

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

NIKOLA SCURIC, on behalf of himself and all
others similarly situated and the general public,

Plaintiff,

v.

IPIC THEATERS, LLC, a Delaware limited
liability company; and DOES 1 to 100,

Defendants.

) CASE NO. 24STCV07807
)
) CLASS ACTION
)
) **FIRST AMENDED COMPLAINT**
)
) 1. Violation of Unfair Competition Law
) 2. Recovery of Unpaid Wages and Penalties
) 3. Meal Period Violations
) 4. Failure to Provide Rest Periods
) 5. Violation of Labor Code §§ 351 and 353
) 6. Waiting Time Penalty
) 7. Wage Statement Penalty
) 8. PAGA Penalties
)
)

DEMAND FOR JURY TRIAL

FILED
Superior Court of California
County of Los Angeles

05/08/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Lozano Deputy

1 Plaintiff, Nikola Scuric, on behalf of himself and all others similarly situated and the
2 general public, hereby complain against IPIC THEATERS, LLC, a Delaware limited liability
3 company (hereinafter collectively referred to as “Defendant” or “IPIC”), and DOES 1 to 100, as
4 follows:

5 **GENERAL ALLEGATIONS**

6 **JURISDICTION**

7 1. This is a civil action seeking recovery of unpaid wages under California Labor Code
8 §§ 226, 226.3, 226.7, 351, 353, 558, 510, 512, 558, 2698, and 2699. The Plaintiff for himself and all
9 others similarly situated, bring an action for monetary damages for failure to pay wages as well as
10 for injunctive relief, declaratory relief and restitution for Defendant’s violations of Business and
11 Professions Code (B&PC) §17200, et seq., including full restitution of all compensation retained by
12 Defendant, as a result of its unlawful, fraudulent and unfair business practices. Plaintiff seeks all
13 available relief, including full damages, full restitution and/or disgorgement of all revenues, earnings,
14 profits, compensation and benefits retained by Defendant as a result of its unlawful, unfair business
15 practices.

16 **VENUE**

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

23 **PARTIES**

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

27 4. Plaintiff is informed and believes and thereon alleges that at all times mentioned
28 herein, Defendant IPIC THEATERS, LLC, is a Delaware limited liability company.

1 5. Plaintiff is informed and believes and thereon alleges that at all times mentioned
2 herein, Defendant and each of them listed herein are movie theaters/ food service licensed to do
3 business in California.

4 6. Plaintiff is informed and believes and thereon alleges that at all relevant times each
5 Defendant was licensed to do business in the State of California, County of Los Angeles, with various
6 locations in Southern California. Defendant's place of business in Los Angeles, California.

7 7. Further, Defendant is and was the employer of the Plaintiff and Plaintiff Class during
8 the Class Period who worked at Defendant's Westwood location, located at 10840 Wilshire Blvd,
9 Los Angeles, CA 90024. During the liability period, Defendant employed Plaintiff and similarly
10 situated non-exempt hourly employees and due to Defendant's uniform payroll practices, failed to
11 pay Plaintiff and Plaintiff Class for all time worked due to its failure to pay proper overtime
12 premiums, illegal tip pooling policy/practice, failure to pay Plaintiff and Plaintiff Class at least
13 minimum wage, failure to pay Plaintiff and Plaintiff class premiums for missed rest and meal periods
14 at the regular rate of pay, and failure to provide accurate wage statements. On information and belief
15 and based thereon, Plaintiffs allege that Defendant is conducting business in good standing in
California.

16 8. Plaintiff is informed and believes and thereon alleges that Defendant and DOES 1 to
17 100, control and operate business and establishments in locations within the State of California,
18 including, but not limited to, the County of Los Angeles. Thus, each named Defendant and DOES 1
19 to 100 are subject to B&PC §17200, et seq. (Unfair Competition Law) and the Labor Code as
20 hereinafter alleged.

21 9. Plaintiff does not know the true names or capacities, whether individual, partner, or
22 corporate, of Defendant sued herein as DOES 1 to 100, inclusive, and for that reason, said Defendant
23 is sued under such fictitious names, and Plaintiff will seek from this Court leave to amend this
24 Complaint when such true names and capacities are discovered. Plaintiff is informed and believes
25 and thereon alleges that each Defendant and each fictitious Defendant, whether individual, partners,
26 or corporate, was responsible in some manner for the circumstances alleged herein, and proximately
27 caused Plaintiff and all others similarly situated hereinafter alleged and the general public to be
28 subjected to the unlawful employment practices, wrongs, injuries and damages complained of herein.

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1 **PRIVATE ATTORNEY GENERAL ALLEGATIONS**

2 10. Plaintiff on behalf of himself and all others similarly situated, filed this cause of action
3 acting as a private attorney general on behalf of the general public to challenge and remedy the
4 business practices of Defendant alleged herein.

5 11. B&PC §17200, et seq., often referred to as the Unfair Competition Law, prohibits
6 unfair competition, which is defined to include any unlawful, unfair, or fraudulent business act or
7 practices. Defendant has instituted and implemented unlawful wage-and-hour policies, which
8 constitute unfair, unlawful, or fraudulent business acts or practices within the State of California.
9 Any person that has suffered injury may initiate an action to enforce B&PC §17200. The court is
10 authorized to order injunctive relief, declaratory relief, and restitution to affected members of the
11 general public as remedies for any violations of B&PC §17200.

12 12. Plaintiff is entitled to an award of attorneys' fees and costs in prosecuting this action
13 as a private attorney general against Defendant under CCP §1021.5 based in part on the following:

14 a. A successful outcome in this action will result in the enforcement of
15 important rights affecting the public interest by maintaining the integrity of entities that employ
16 employees;

17 b. This action will result in a significant benefit to the general public by ceasing
18 unlawful, unfair and deceptive activity, and by causing the return of ill-gotten gains obtained by
19 Defendant through their failure to properly pay their employees;

20 c. Unless this action is prosecuted, members of the general public will not
21 recover monies wrongfully taken from them, and many employees and consumers would not be
22 aware that they were victimized by Defendant's wrongful acts and practices; and unless attorneys'
23 fees and costs are awarded against Defendant, the general public will not be made whole.

24 **CLASS REPRESENTATIVE**

25 13. The class representative Plaintiff who worked in the position of non-exempt hourly
26 employee, while employed by Defendant within the State of California, is:

- 27 • Nikola Scuric

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1 **CLASS ACTION ALLEGATIONS**

2 14. Plaintiff bring this action on behalf of himself and all others similarly situated as a
3 class action pursuant to CCP §382. The Classes which Plaintiff seeks to represent are composed of
4 and defined as follows:

5 **Class Definition:**

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

9 **Class 1:**

10 All non-exempt hourly employees who worked for Defendant at least one (1) day in
11 California at any time from four (4) years preceding the filing of this Complaint to the date of the
12 class certification order, and who were not paid proper overtime premiums at the correct regular
13 rate of pay. ("Overtime Class").

14 **Class 2:**

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

19 **Sub-Class 1:**

20 All non-exempt hourly employees who worked for Defendant at least one (1) day in
21 California at any time from four (4) years preceding the filing of this Complaint through the date of
22 the class certification order, who were required to remain on-premises for their meal periods. ("On-
23 Premises Meal Period Class")

24 **Sub-Class 2:**

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

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1 **Class 3:**

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

6 **Sub-Class 3:**

7 All non-exempt hourly employees who worked for Defendant at least one (1) day in
8 California at any time from four (4) years preceding the filing of this Complaint through the date of
9 the class certification order, who were required to take on-duty, on-premises rest periods. (“On-
10 Duty Rest Period Class”).

11 **Sub-Class 4:**

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

16 **Class 4:**

17 All non-exempt hourly employees who worked for Defendant at least one (1) day in
18 California at any time from four (4) years preceding the filing of this Complaint through the date of
19 the class certification order, who had any portion of their tips withheld or unpaid by Defendant.
20 (“Tip Class”).

21 **Class 5:**

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

27 **Class 6:**

28 All non-exempt hourly employees who worked for Defendant at least one (1) day in
California at any time from one (1) year preceding the filing of this Complaint through the date of
the class certification order who were provided a paystub (a.k.a. wage statement) from Defendant

1 (“Pay Stub Class”). (This is a stand-alone and derivative class for all classes and sub-classes).

2 The members of the classes are so numerous that joinder of all members would be
3 unfeasible and not practicable. The membership of the classes is unknown to Plaintiff at this time;
4 however, it is estimated that the classes number greater than 50 individuals. The identity of such
5 membership is readily ascertainable via inspection of Defendant’s employment records.

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

- 9 i. Whether Defendant improperly retained, appropriated or deprived Plaintiff
10 of the use of monies or sums to which Plaintiff was legally entitled;
- 11 ii. Whether Defendant engaged in unfair business practices;
- 12 iii. Whether Defendant, and each of them, were participants in the alleged
13 unlawful conduct;
- 14 iv. Whether Defendant’s conduct was willful or reckless;
- 15 v. The effect upon and the extent of injuries suffered by Plaintiff and all others
16 similarly situated and the appropriate amount of compensation;
- 17 vi. The appropriate amount of monetary penalties allowed by Labor Code
18 §§201, et. seq. and 226;
- 19 vii. Whether Defendant violated Labor Code §226 and relevant IWC Wage
20 Orders;
- 21 viii. Whether Defendant knowingly and intentionally failed to maintain records
22 for Plaintiff and members of the Plaintiff class as required by Labor Code §
23 1174 and §7 of the IWC Order 5-2001 and its successors;
- 24 ix. Whether Defendant willfully violated provisions of the California Labor
25 Code;
- 26 x. Whether Defendant withheld tips from Plaintiff and Plaintiff Class; and
27 xi. Whether Defendant is subject to civil penalties pursuant to Labor Code
28 §§2699, et seq.

16. Plaintiff’s claims are typical of the claims of all members of the classes and subclasses
mentioned herein. Plaintiff, as a representative party, will fairly and adequately protect the interest

1 of the classes by vigorously pursuing this suit through her attorneys who are skilled and experienced
2 in handling matters of this type. Plaintiff has no claims or interests that are antagonistic to any class
3 member.

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

18 18. The prosecution of separate actions by the individual class members, even if possible,
19 would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the
20 individual class members against Defendant herein; and which would establish potentially
21 incompatible standards of conduct for Defendant; and/or (b) legal determinations with respect to
22 individual class members which would, as a practical matter, be dispositive of the interest of the
23 other class members not parties to adjudications or which would substantially impair or impede the
24 ability of the class members to protect their interests. Further, the claims of the individual members
25 of the class are not sufficiently large to warrant vigorous individual prosecution considering all of
26 the concomitant costs and expenses attending thereto.

27 19. Plaintiff and all others similarly situated are entitled to the wages and other monies
28 unlawfully withheld. This action is brought for the benefit of the public.

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1 **FIRST CAUSE OF ACTION**

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

3 20. Plaintiff re-alleges and incorporates by reference herein the allegations of all
4 preceding paragraphs as though fully set forth herein.

5 21. Beginning on an exact date unknown to Plaintiff, Defendant has engaged in a pattern
6 and practice of acts of unfair competition in violation of B&PC §17200, including the practices
7 alleged herein.

8 **VIOLATION OF MEAL PERIOD PROVISIONS**

9 22. Defendant's improper meal policies are in violation of California law including, but
10 not limited to Labor Code § 226.7, 512, and IWC Wage Order 5-2001. The Plaintiff and the members
11 of the class are entitled to a half hour meal period for every five (5) hours of their shift worked.
12 Defendant violated the meal break provisions and did not provide Plaintiff and the class with duty
13 free off-premises meal periods. Plaintiff and the class were entitled to one (1) hour of pay for each
14 meal break violation at their regular rate of pay. Plaintiff believes and thereon alleges that Defendant
15 failed to pay Plaintiff and the putative class members all their missed meal period payments at the
16 regular rate and had a policy and practice of requiring Plaintiff and the putative class members to
17 take on-duty, on-premises, or otherwise non-compliant meal periods within the first five (5) hours of
their shift.

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

21 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

22 24. Plaintiff is informed and believes and thereon alleges that as part of Defendant's
23 ongoing unfair business practices, Defendant, and each of them, fails to provide its employees with
24 proper and understandable itemized wage statement, as required by Labor Code § 226.

25 25. Plaintiff is informed, and believes, and thereon alleges, that Defendant, and each of
26 them, fail to provide each employee with an itemized statement which states the actual regular rate
27 paid, the actual total hours worked by the employee, the net wages earned, and all applicable hourly
28 rates in effect during the pay period and the corresponding number of hours worked at each hourly
rate by the employee.

VIOLATION OF LABOR CODE § 200, ET SEQ.

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

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

28. Plaintiff is informed and believes and thereon alleges that all employees who have been separated from Defendant did not timely receive a final paycheck detailing the proper amount of wages from Defendant in violation of Labor Code § 200, et. seq.

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

FAILURE TO PERMIT AND AUTHORIZE REST PERIOD BREAKS

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

31. Plaintiff is informed and believes, and thereon alleges that Defendant consistently compelled Plaintiff and other members of the Rest Period Class employed for shifts of more than four (4) hours, to take only one (1) rest break during their shifts, instead of two (2) or three (3) rest breaks required depending on shift length. Further, Plaintiff alleges Defendant failed to provide duty-free rest periods and off-site rest periods to Plaintiff and the class. Plaintiff and the Class are entitled to wages at their regular rate of pay for each violation where Defendant violated the rest break

1 provisions and failed to provide a compliant rest period due to non-compliant rest periods. Plaintiff
2 is entitled to one (1) hour of pay for each rest break violation at the correct regular rate of pay.
3 Defendant has failed to pay rest break violations at the correct regular rate of pay.

4 **FAILURE TO PAY PROPER WAGES AND OVERTIME COMPENSATION**

5 32. Plaintiff is informed and believes and thereon alleges that as part of Defendant's
6 ongoing unfair business practice, Defendant's employees were and are employed and scheduled as a
7 matter of established company policy to work, and in fact, worked in excess of eight (8) hours in a
8 day. The hours worked by Defendant's employees is in excess of eight (8) hours per day, and in
9 excess of forty (40) hours per week without receiving the proper overtime premium. The Defendant
10 is in violation of Labor Code §§ 510 and 1194, and the relevant California Industrial Welfare
11 Commission Orders 5-2001, et seq.

12 33. Under Labor Code §1194, an employee is not fully compensated for the unpaid
13 balance of their overtime compensation unless the employee is paid all unpaid compensation for the
14 regular hours and overtime hours worked during an overtime shift.

15 34. While Defendant's policy is to pay time-and-a-half for all hours worked in excess of
16 eight (8) hours per day, Defendant fails to pay members of the class proper premium overtime
17 premiums due to Defendant failing to properly calculate the regular rate of pay.

18 35. Plaintiff and all others similarly situated identified herein were and are employed and
19 scheduled as a matter of established company policy to work and in fact worked as non-exempt
20 hourly employees in excess of eight (8) hours per day for eight and one-half (8.5), nine (9), ten (10)
21 or twelve (12) hour shifts. Defendant employs and schedules all employees without providing daily
22 overtime compensation for such excess daily overtime hours worked in violation of Labor Code §§
23 510, 1194, 1198 and the relevant California Industrial Welfare Commission (IWC) orders. Pursuant
24 to Labor Code § 1198, it is unlawful to employ persons for longer than the hours set by the IWC or
25 under conditions prohibited by the applicable IWC Wage Orders. IWC Wage Order No. 5, as
26 amended, applies to Plaintiff and the hourly employees.

27 36. Defendants, and each of them, consistently administered a corporate policy regarding,
28 both staffing levels, duties and responsibilities of Defendant's employees, which required that the
entirety of the employees work overtime without proper premium overtime pay. Further, the Plaintiff
and the class are entitled to restitution of these wages obtained by Defendant, and each of them.

1 37. This corporate policy and pattern of conduct is accomplished with the advance
2 knowledge and designed intent not to pay the employees at a premium rate for all overtime hours.
3 Further, the Plaintiff and the members of the class are entitled to restitution of these wages obtained
4 by Defendant, and each of them.

5 38. Further, the Plaintiff and the members of the classes are entitled to restitution of all
6 unpaid wages obtained by Defendants, and each of them. Plaintiff, and the class, may seek restitution
7 for unpaid straight time wages under California Business & Professions Code §17200, et seq.
8 (“Section 17200”). Any business act or practice that violates the Labor Code through a failure to pay
9 wages is by definition an unfair business practice under §17200. Section 17200 provides an action
10 to recover wages as restitution, even if such recovery might be barred if brought pursuant to the
11 Labor Code, if the failure to pay constitutes a business practice. Defendants’ failure to properly pay
12 all wages, including straight time and the overtime premium at the correct regular rate, constitutes
13 an unfair business practice because it is a failure to timely pay wages pursuant to Labor Code §204;
14 Unpaid straight time wages and unpaid overtime wages are recoverable as restitution under Section
15 17200 based on Defendants’ subterfuge which constitutes an unfair business practice that fails to pay
16 earned wages in violation of the Labor Code. Defendants have continuously concealed their
17 subterfuge business practices, as herein alleged.

18 39. Plaintiff is informed and believes and thereon alleges that as part of Defendant’s
19 ongoing unfair business practice, Defendant’s California hourly employees were and are employed
20 and schedule as a matter of established company policy to work, and in fact, worked over eight (8)
21 hours a day. The hours worked by Defendant’s hourly employees is in excess of eight (8) hours per
22 day, and in excess of forty (40) hours per pay period without receiving the proper straight time or
23 overtime compensation for such excess hours worked in violation of Labor Code §§ 203, 510 and
24 1194, and the relevant California Industrial Welfare Commission orders.

25 40. Plaintiff and all others similarly situated identified herein were and are employed and
26 scheduled as a matter of established company policy to work and in fact worked as non-exempt
27 hourly employees in excess of eight (8) hours per day. Defendant employed and scheduled all
28 employees without providing overtime compensation for such excess daily overtime hours worked
in violation of Labor Code §§ 510, 1194, 1198 and the relevant California Industrial Welfare
Commission (IWC) orders, including daily and weekly overtime premiums, including the seventh

1 day premium. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the
2 hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders. IWC
3 Wage Order No. 5 as amended, applies to Plaintiff.

4 41. Plaintiff, and the class are entitled to and do seek such relief as may be necessary to
5 restore to them the money and property which Defendant has acquired, or of which Plaintiff and class
6 members have been deprived by means of the herein described unfair, unlawful, and/or fraudulent
7 business practices.

8 42. Plaintiff, and the class are further entitled to and do seek a declaration that the above-
9 described business practices are unfair, unlawful, and/or fraudulent, and injunctive relief restraining
10 Defendant from engaging in any of the herein described unfair, unlawful, and/or fraudulent business
11 practices at all times in the future.

12 43. Plaintiff seeks restitution and injunctive relief for all the aforementioned violations.

13 44. Defendant has engaged in unfair business practices in California by practicing,
14 employing and utilizing the employment practices complained of herein. Defendant's use of such
15 practices constitutes an unfair business practice, unfair competition, and provides an unfair advantage
16 over Defendant's competitors. Plaintiff and the putative class seek full restitution of said monies, as
17 necessary and according to proof, to restore any and all monies withheld and/or acquired by
18 Defendant by means of the unfair business practices complained of herein. Plaintiff seeks, on behalf
19 of all current and former employees of Defendant, restitution of said monies. Plaintiff further seeks
20 on behalf of the Plaintiff and the putative class, the appointment of a receiver, as necessary, to
21 establish the total restitutionary relief from Defendant. The restitution includes all wages withheld
22 by Defendant as a result of the unfair business practices, including interest thereon. Absent a
23 statutory provision specifically governing the type of claim at issue, the prejudgment interest rate is
24 10 percent. The acts complained of herein occurred, at least in part, within the last four (4) years
25 preceding the filing of the Complaint.

26 45. Plaintiff is informed and believes and thereon alleges that at all times herein
27 mentioned, Defendant has engaged in unlawful, deceptive, and unfair business practices prohibited
28 by California B&PC §17200, thereby depriving its employees and the putative class the minimum
working condition, standards and conditions due to them under the California labor laws and
Industrial Welfare Commission wage orders as specifically described herein. Plaintiff seek an

1 injunction preventing Defendant from continuing its unfair business practice of improperly depriving
2 its employees' overtime pay. Plaintiff further seeks an order requiring Defendant to identify by full
3 name, telephone number, and last known address employees who worked or still work for Defendant
4 from four (4) years preceding the filing of the original Complaint through the date of judgment;
5 Plaintiff further seeks an order requiring Defendant to timely pay restitution to all current and former
6 employees, including back wages, and interest. The acts complained of herein occurred, at least in
7 part, within the last four (4) years preceding the filing of the original Complaint.

8 46. By and through its unfair, unlawful, and/or fraudulent business practices and acts
9 described herein, Defendant has obtained valuable services from Plaintiff and all persons similarly
10 situated and, has deprived Plaintiff and all persons similarly situated of valuable rights and benefits
11 guaranteed by law, all to their detriment.

12 47. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled to
13 and do seek such relief as may be necessary to restore to them the money and property which
14 Defendant has acquired, or of which Plaintiff and class members have been deprived by means of
15 the herein described unfair, unlawful, and/or fraudulent business practices.

16 48. Plaintiff, and all persons similarly situated, and all persons in interest, are further
17 entitled to and do seek a declaration that the above-described business practices are unfair, unlawful,
18 and/or fraudulent, and injunctive relief restraining Defendant from engaging in any of the herein
19 described unfair, unlawful, and/or fraudulent business practices at all times in the future.

20 49. Plaintiff requests attorney's fees and costs pursuant to Code of Civil Procedure
21 §1021.5 since this action is brought to vindicate important rights of a large class and the public.

22 **SECOND CAUSE OF ACTION**

23 **RECOVERY OF UNPAID WAGES & PENALTIES**

24 **(Violation of Labor Code §§ 204, 510, 1194 and 1198)**

25 **Against All Defendants**

26 50. Plaintiff re-alleges and incorporates by reference herein the allegations of all
27 preceding paragraphs as though fully set forth herein.

28 51. Plaintiff and all others similarly situated identified herein were and are employed and
scheduled as a matter of established company policy to work and in fact worked as non-exempt
hourly employees in excess of eight (8) hours per day and/or in excess of forty (40) hours per pay

1 period, including shifts that last ten (10) hours or twelve (12) hours without daily overtime paid for
2 the hours worked in excess of eight (8) in a day at the correct regular rate. Labor Code § 204
3 establishes the fundamental right of all employees in the state of California to be paid the proper
4 amount of wages in a timely fashion for their work, including overtime.

5 52. Plaintiff is informed and believes and thereon alleges that the hourly non-exempt class
6 was underpaid due to Defendant's willful and wrongful underpayment of overtime premiums at an
7 incorrect regular rate in order to avoid payment of overtime wages and other benefits in violation of
8 the Labor Code and the orders issued by the IWC, thereby Defendant is able to reduce its overhead
9 and operating expenses and gain an unfair advantage over competing companies complying with
10 state law.

11 53. Plaintiff is informed and believes and thereon alleges that the hourly non-exempt class
12 was under paid premium overtime compensation at a lower rate of pay than the regular rate when
13 Defendant paid overtime. The "regular rate" means "the hourly rate actually paid for the normal, non-
14 overtime workweek." (Id. (emphasis added)); see also *Walling v. Youngerman-Reynolds Hardwood*
15 *Co.*, 325 U.S. 419, 424 (1945) ("[T]he regular rate refers to the hourly rate actually paid the employee
16 for the normal, non-overtime workweek for which he is employed.") (emphasis added); *United States*
17 *v. Rosenwasser*, 323 U.S. 360, 364 (1945) (defining the "regular rate" is defined as "the hourly rate
18 actually paid for the normal, non-overtime workweek.") (quotation omitted) (emphasis added);
19 *Huntington Memorial Hosp. v. Superior Court*, (2005) 131 Cal.App.4th 893, 905 (regular rate is the
20 hourly rate paid for a non-overtime workweek); *Brunozzi v. Cable Communications, Inc.*, 851 F.3d
21 990, 996 (9th Cir. 2017) (To determine the regular rate, "we must first determine what the parties
22 agreed [the employee] is to be paid in a normal, non-overtime workweek.") (emphasis added).)
23 "Wage divided by hours equals regular rate." (Bay Ridge, 334 U.S. at 461 (quotation omitted).) The
24 employer may not "compute the regular rate in a wholly unrealistic and artificial manner so as to
25 negate the statutory purposes." (*Walling*, 325 U.S. at 424.) The regular rate "must reflect all
26 payments which the parties have agreed shall be received regularly during the workweek, exclusive
27 of overtime payments." (Id.) The regular rate "is not an arbitrary label chosen by the parties; it is an
28 actual fact. Once the parties have decided upon the amount of wages and the mode of payment the
determination of the regular rate becomes a matter of mathematical computation" (Id. at 244-45.)
"The regular hourly rate of pay of an employee is determined by dividing his total remuneration for

1 employment (except statutory exclusions) in any workweek by the total number of hours actually
2 worked by him in that workweek for which such compensation was paid." (29 C.F.R. § 778.109.)

3 54. Plaintiff is informed and believes and thereon alleges that Defendant consistently
4 administered a corporate policy regarding both staffing levels and duties and responsibilities of the
5 members of the classes which required the entirety of all classes to work without overtime or
6 minimum wages, by working off-the-clock. Thus, Plaintiff and all others similarly situated routinely,
7 regularly and customarily performed overtime work. Accordingly, Plaintiff and all others similarly
8 situated are entitled to overtime compensation under California law.

9 55. Pursuant to Labor Code §§ 218 and 1194(a), Plaintiff may bring a civil action for
10 overtime wages directly against the employer without first filing a claim with the Division of Labor
11 Standards Enforcement (hereinafter "DLSE") and may recover such wages, together with interest
12 thereon, penalties, attorneys' fees and costs.

13 56. At all times relevant hereto, Defendant has failed to pay to Plaintiff and all persons
14 similarly situated wages when due as required by Labor Code § 204.

15 57. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the
16 hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders. IWC
17 Wage Order No. 5, as amended, applies to Plaintiff.

18 58. At all times relevant hereto, Plaintiff is informed and believes and thereon alleges that
19 Defendant has treated Plaintiff and all other similarly situated hourly employees as hourly non-
20 exempt employees. Despite this classification, Defendants have willfully and wrongfully underpaid
21 overtime premiums at the regular rate in order to avoid payment of overtime wages and other benefits
22 in violation of the Labor Code and the orders issued by the IWC, thereby Defendant is able to reduce
23 its overhead and operating expenses and gain an unfair advantage over competing companies
24 complying with state law.

25 59. Plaintiff is informed and believes and thereon alleges that Defendant consistently
26 administered a corporate policy regarding both staffing levels and duties and responsibilities of the
27 members of the classes which required the entirety of all classes to work overtime without proper
28 premium pay at the correct regular rate. This included a uniform corporate policy and practice of
allocating straight time only hourly rate for all hours worked in a day in excess of eight (8) hours and
for carrying out a policy that fails to pay overtime premiums. This corporate policy and pattern of

1 conduct was/is accomplished with the advance knowledge and design of all Defendants herein. Thus,
2 Plaintiff and all others similarly situated routinely, regularly and customarily performed overtime
3 work. Accordingly, Plaintiff and all others similarly situated are entitled to overtime compensation
4 under California law.

5 60. Defendant has willfully failed to pay the earned and unpaid wages of such individuals,
6 including, but not limited to premium pay at the correct rate, and other wages earned and remaining
7 uncompensated according to amendment, or proof.

8 61. The pattern, practice and uniform administration of corporate policy regarding illegal
9 employee compensation as described herein is unlawful and creates an entitlement to recovery by
10 Plaintiff and all others similarly situated, in a civil action, for the unpaid balance of the full amount
11 of the all wages owing, including the proper calculation of the regular rate, including interest thereon,
12 willful penalties, reasonable attorneys' fees, and costs of suit according to the mandate of Labor Code
§ 1194, et. seq.

13 62. Likewise, Defendant has a pattern, practice and uniform administration of corporate
14 policy regarding failure to comply with the required provisions of Labor Code § 226.7, in failing to
15 pay Plaintiff and the class the meal and rest break violation payment at the regular rate.

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PROVIDE MEAL BREAKS**

18 63. Plaintiff incorporates by reference as if fully set forth herein, the allegations of
19 paragraphs above.

20 64. Labor Code §226.7 requires an employer to pay an additional hour of compensation
21 for each meal period the employer fails to provide. Plaintiff alleges that Defendant failed to provide
22 legally compliant meals in addition to impeding, discouraging and/or dissuading employees from
23 taking legally compliant meal periods. Employees are entitled to a meal period of at least thirty (30)
24 minutes per five (5) hour work period. Plaintiff and the class consistently worked over five (5) hour
25 shifts without meal periods due to Defendant's policy of discouraging, dissuading and/or impeding
26 Plaintiff and the class from taking meal periods. Plaintiff and the class were scheduled by Defendant
27 in such a way that they were not able to take compliant meal breaks and complete their tasks for the
28 day. Additionally, Plaintiff alleges that he was required to take on-duty meal periods and was not

1 provided off-premises, duty-free meal periods. Pursuant to the Code, Plaintiff and the class are
2 entitled to a meal period of not less than thirty (30) minutes prior to exceeding five (5) hours of
3 employment.

4 65. Defendant failed to provide, impeded and/or discouraged Plaintiff and others from
5 taking timely meal breaks of not less than thirty (30) minutes as required by the Labor Code during
6 the relevant class period. Further, Defendant had a policy and practice of requiring Plaintiff and the
7 putative class members to take on-duty meal periods.

8 66. Pursuant to Labor Code §226.7, Plaintiff is entitled to damages in an amount equal to
9 one (1) hour of wages at the employee's regular rate per missed meal break, in a sum to be proven at
10 trial.

11 **FOURTH CAUSE OF ACTION**

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

13 **(Against All Defendants)**

14 67. Plaintiff re-alleges and incorporates by reference as if fully set forth herein, the
15 aforementioned allegations.

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

25 69. Further, even if rest premiums were paid, they were not paid at the correct regular
26 rate.

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

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1 **FIFTH CAUSE OF ACTION**

2 **Violation of Labor Code sections 351 and 353 (Improper “Tip Pooling”)**

3 71. Plaintiff re-alleges and incorporates by reference herein the allegations of all
4 preceding paragraphs as though fully set forth herein.

5 72. Throughout the applicable time period, Plaintiff and the aggrieved employees were
6 denied benefits and protections of the California Labor Code and IWC Wage Orders) and were
7 damaged thereby. Plaintiff brings this action under the UCL as referenced above and under the
8 PAGA once the time period for administrative prerequisites expires.

9 73. Plaintiff believes that Defendant failed to provide Plaintiff and other non-exempt
10 employees with all tips due and owing to them, in violation of Labor Code section 351. The
11 violations were caused, in part, by Defendant’s illegal “tip pooling” system, whereby Defendant and
12 its agents would improperly collect, withhold, and/or take a portion of the gratuities from the
13 gratuities paid, given to, or left for the employees. Defendant and its agents would also fail to timely
14 provide for the remuneration of gratuities provided via credit or debit card. Defendant also failed to
15 keep accurate records of all gratuities received, in violation of Labor Code section 353.

16 74. As a direct result of Defendant’s failure to comply with the foregoing provisions of
17 the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
18 proven at trial.

19 75. Plaintiff has incurred and continues to incur legal expenses and attorneys’ fees.
20 Plaintiff is presently unaware of the precise amount of these expenses and fees and prays for leave
21 of court to amend this Complaint when the amounts are fully known.

22 **SIXTH CAUSE OF ACTION**

23 **FAILURE TO PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES**

24 **WAITING TIME PENALTIES (Labor Code §§201-203)**

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

27 77. Plaintiff is informed and believes and thereon alleges that Defendant failed to pay
28 Plaintiff all wages due and owing immediately upon termination, thereby violating Labor Code §201.

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

4 79. Plaintiff is informed and believes and thereon alleges that Defendant and each of them
5 failed to pay Plaintiff all wages due and owing upon voluntary resignation, thereby violating Labor
6 Code §202.

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

10 81. Defendant willfully withheld paying Plaintiff's wages thereby violating Labor Code
11 §203. As such, Defendant is required to pay Plaintiffs a 30-day wage penalty in addition to all unpaid
12 wages as described herein.

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

15 **SEVENTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
17 **PURSUANT TO LABOR CODE §226**

18 **Against All Defendants**

19 83. Plaintiff re-alleges and incorporates by reference herein the allegations of all
20 preceding paragraphs as though fully set forth herein. The applicable Wage Order provides:

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

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

85. Defendant thus required Plaintiff and the class to work under conditions prohibited by order of the Industrial Welfare Commission, in violation of those orders.

86. The Class Members, including Plaintiff, suffered injury as a result of Defendant's knowing and intentional failure to provide the Class Members, including Plaintiff, with the wage and hour statements required by law, as Plaintiff and the class were unable to tell from looking at their pay stubs if they were being paid properly.

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

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES UNDER LABOR CODE §§ 2698-2699.8

Against All Defendants

88. Plaintiff re alleges and incorporates each and every one of the allegations of all preceding paragraphs contained in paragraphs, inclusive of this Complaint, as if fully set forth herein.

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

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

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

4 92. Prior to filing this Complaint, Plaintiff gave written notice to the LWDA on or about
5 February 28, 2024, via mandatory online filing through the State of California LWDA/ Department
6 of Industrial Relations website with a copy to the employer via certified mail, of the specific
7 provisions of this code alleged to have been violated, including listing some facts and some theories
8 to support the alleged violations as required by Labor Code §2699.3; A true and correct copy of the
9 letter is attached hereto as **Exhibit 1**. At the date of filing this Complaint, the LWDA has not
10 responded with any intention to investigate. Therefore, Plaintiff may now request PAGA penalties.

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

14 94. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiff and the aggrieved employees are
15 entitled to recover civil penalties for each of the Defendant's violations of Labor Code §§ 201, 202,
16 203, 204, 226, 226.7, 510, 512, and 1194, 1197, and 1198 during the applicable limitations period in
the following amounts:

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

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

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

1 d. For violations of Labor Code § 1197, one hundred dollars (\$100.00) for each
2 aggrieved employee for each initial and intentional violation per pay period (regardless of
3 whether the initial violations were intentionally committed) and two hundred fifty dollars
4 (\$250.00) for each aggrieved employee for each subsequent violation per pay period
5 (regardless of whether the initial violations were intentionally committed), in addition to an
6 amount sufficient to recover unpaid wages, liquidated damages pursuant to Labor Code §
7 1194.2.

8 e. For violations of Labor Code §§ 201, 202, 203, and 226.7, one hundred dollars
9 (\$100.00) for each aggrieved employee per pay period for each initial violation and two
10 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
11 violation (penalty amounts established by Labor Code § 2699(f)(2)).

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

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

21 h. Penalties under Labor Code § 256, in addition to and entirely independent
22 and apart from other penalty provided in the Labor Code, including Labor Code
23 § 2699, et seq., for any aggrieved employee who was discharged or quit, and was not paid all
24 earned wages at termination in accordance with Labor Code §§ 201, 201.1, 201.5, 202, and
25 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each day that
26 he or she was paid late, until payment was/is made, up to a maximum of thirty (30) days;

27 i. Penalties under Labor Code § 558, in addition to and entirely independent
28 and apart from other penalty provided in the Labor Code, in the amount of \$50 for
each underpaid aggrieved employee for each pay period the aggrieved employee was
underpaid, and \$100 for each subsequent violation for each underpaid employee for each pay

1 period for which the employee was underpaid pursuant to Labor Code §558 provided to the
2 affected employees;

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

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

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

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

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays:

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

16 **As to the First Cause of Action:**

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

19 3. An order for full restitution of all monies, as necessary and according to proof, to
20 restore any and all monies withheld by the Defendant by means of the unfair practice complained
21 of herein. Plaintiff seeks, on behalf of the putative class, the appointment of a receiver, as
22 necessary. The restitution includes all monies retained as wages, as defined in Labor Code §§ 200,
23 et seq., 510, and 1194, and interest, and attorneys' fees as a result of the unfair business practices or
24 retained in violation of Labor Code §1198 and IWC Wage Order 5-2001;

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

27 5. For an accounting, under administration of Plaintiff and subject to Court Review, to
28 determine the amount to be returned by Defendant and the amounts to be refunded to members who

1 are or were not paid all their wages due to Defendant's unfair business practices;

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

5 7. For an order requiring Defendant to make full restitution and payment pursuant to
6 B&PC Sections 17200, et seq. for unfair business practices that violate Labor Code §§ 200, et seq.,
7 510, and 1194;

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

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

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

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

16 **As to the Second Cause of Action:**

17 12. For recovery of the unpaid balance of the full amount of unpaid minimum wage or
18 overtime and double time compensation, per Labor Code §§ 204, 218, 510, 1194, 1194.2, 1197,
19 and 1198 due and owing, according to proof;

20 13. For liquidated damages in an amount equal to the wages unlawfully unpaid and
21 interest thereon for the uncompensated non-overtime hours of work, as authorized by Labor Code
22 §1194.2(a);

23 14. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code §1194(a)
24 and CC §3287;

25 15. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §218.5
26 and/or Labor Code §1194(a).

27 **As to the Third Cause of Action**

28 16. One (1) hour of pay at each of the employees' regular rate of compensation for each

workday that a meal break was not provided, impeded, discouraged and/or dissuaded and/or correct pay for missed meal premiums at the correct regular rate;

As to the Fourth Cause of Action:

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

As to the Fifth Cause of Action:

18. For penalties and restitution of wages according to proof, as set forth under Labor Code sections 351 and 353.

As to the Sixth Cause of Action:

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

20. For reasonable attorneys' fees and costs;

As to the Seventh Cause of Action:

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

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

As to the Eighth Cause of Action:

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

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

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

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

(1) For any initial violation, fifty dollars (\$50) for each underpaid

1 employee for each pay period for which the employee was underpaid;

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

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

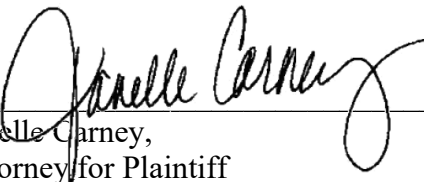
8 28. For civil penalties under Labor Code §2699(f), in addition to and entirely
9 independent and apart from other penalty provided in the Labor Code and for Labor Code
10 violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per
11 pay period for each violation, and \$200 for each aggrieved employee per pay period for each
12 subsequent violation.

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

13 29. For such other and further relief as this Court may deem just and proper.
14

15 Date: May 7, 2024

JANELLE CARNEY – ATTORNEY AT LAW, APC
SALUSKY LAW GROUP, APC

17 
18 Janelle Carney,
19 Attorney for Plaintiff

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JURY TRIAL DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

Date: May 7, 2024

JANELLE CARNEY – ATTORNEY AT LAW, APC
SALUSKY LAW GROUP, APC

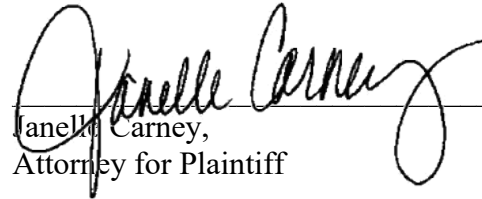

Janelle Carney,
Attorney for Plaintiff

Exhibit 1



JANELLE CARNEY
ATTORNEY AT LAW
A PROFESSIONAL LAW CORPORATION

February 28, 2024

Via Online Filing

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

Via Certified Mail

Ipic Theaters, LLC
433 PLAZA REAL, Suite 355
Boca Raton, FL 33432

Subject: *Scuric v. Ipic Theaters, LLC*

Dear Representative:

This office along with Salusky Law Group, APC represents Nikola Scuric in connection with Labor Code violation claims related to his employment with Ipic Theaters, LLC (Hereinafter referred to as "Ipic").

Mr. Scuric intends to seek PAGA penalties on behalf of himself and all other non-exempt employees of Ipic in California who were subject to any of the Labor Code violations enumerated below during the PAGA Period ("Aggrieved Employees"). The PAGA Period begins one year prior to the date of this letter.

Meal Break Violations

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

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant meal period was not provided. Mr. Scuric and the Aggrieved Employees could not take compliant meal periods; meal periods were short, late, or missed altogether and/or were required to be taken on premises. Mr. Scuric was regularly interrupted on breaks, thus he should have received premium pay for each missed

break. Nonetheless, premium pay was not paid for all violations, and as a result PAGA penalties apply. Further, Scuric was required to remain on-premises for his meal breaks.

Mr. Scuric is entitled to the PAGA penalties in LC § 558 and 2698, et seq.

Rest Break Violations

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

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

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

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

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

Regular Rate

Mr. Scuric alleges that Ipic fails to include all non-discretionary remuneration when calculating the regular rate of pay and by such failure, underpaid employees their overtime. Mr. Scuric is entitled to seek LC § 558, and 2699 penalties accordingly.

Overtime Violations

Pursuant to Labor Code section 510, any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Although Mr. Scuric and the Aggrieved Employees often worked more than 40 hours a week, they were not paid overtime for work over 40 hours a week. Rather, they were paid "straight time" instead. Based on this violation of Labor Code section 510, the PAGA penalties in Labor Code section 558 apply.

Violation of Labor Code §§ 351 and 353

Throughout the applicable time period, Mr. Scuric and other aggrieved employees were denied the benefits and protections of the California Labor Code and IWC Wage Order(s). Defendants failed to provide Mr. Scuric and other aggrieved employees with all tips due and owing to them, in violation of Labor Code section 351. The violations were caused, in part, by Defendant's illegal "tip pooling" systems, whereby Defendant and its agents would improperly collect, withhold and/or take a portion of the gratuities from the gratuities paid, given to, or left for the employees. Defendant and its agents would also fail to timely provide for the remuneration of gratuities provided via credit or debit card. Defendants also failed to keep accurate records of all gratuities received, in violation of Labor Code section 353.

Wage Statement Violations

Mr. Scuric allege that Ipic willfully failed to provide accurate itemized wage statements to him and other Aggrieved Employees pursuant to Labor Code § 226. Specifically, Ipic wage statements failed to include accurate information and this violation is uniform for all employees. This is a derivative and stand-alone claim as Ipic's pay stubs do not contain required elements of Labor Code §226, including the correct rates as there are no payments for missed meal or rest period violations. Further, Defendant fails to allow former employees to access their paystubs and fails to provide records pursuant to Wage Order 5-01 §7.

Mr. Scuric and other employees are entitled to recover civil penalties pursuant to section 226.3, which states in relevant part: "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of...(\$250) per employee per violation in an initial citation and...(\$1,000) per employee for each violation in a subsequent citation, for...fail[ing] to keep the records required in subdivision (a) of Section 226." Further, Mr. Scuric and the Aggrieved Employees are entitled to penalties pursuant to Labor Code§ 2698, et seq.

Waiting Time Penalties

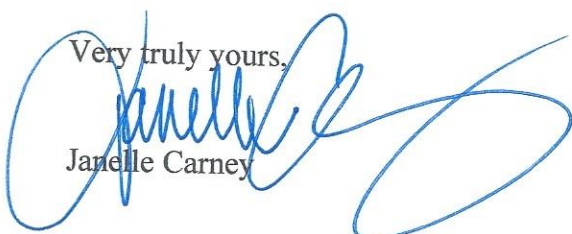
The unpaid wages described above were still due when Mr. Scuric and the Aggrieved Employees stopped working for Ipic. Because Ipic did not pay the Aggrieved Employees all wages owed during their employment, it follows that the Aggrieved Employees were willfully never paid these wages after the conclusion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

Reservation of Rights

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

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

Very truly yours,


Janelle Carney

JC/jw

Cc: Salusky Law Group, APC