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KIMMY DAO

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN FRANCISCO

CIVIC CENTER COURTHOUSE

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

01/05/2024
Clerk of the Court
BY: JAMES XIONG
Deputy Clerk

CGC-24-611422

KIMMY DAO, an individual,

Plaintiff,

vs.

PANDORA KARAOKE, INC., a
California Corporation; URBAN
LIFE INC., a California Corporation
TIMMY CHOY, an individual; and
DOES 1 through 50, inclusive,

Defendants.

Case No.:

PLAINTIFF'S COMPLAINT FOR:

1. Failure to pay overtime; Violation of California Labor Code §§ 218.5, 510, and 1198;
2. Failure to pay minimum wage; Violation of California Labor Code §§ 218.5, 1181.12, 1194, 1194.2, and 1197;
3. Failure to pay wages when due Violation of California Labor Code §§ 210
4. Failure to pay all wages at time of separation Labor Code §§ 201, 203 218.5, and 1194;
5. Failure to provide accurate, itemized wage statements in Violation of California Labor Code § 226 and Wage Order No. 5-2001 § 7;
6. Failure to comply with inspection request in violation of California Labor Code § 226(c)
7. Failure to Maintain Records in violation of California Labor Code §§ 1174, 1174.5
8. Conversion of Tips and Gratuities in violation of Common Law Conversion and California Civil Code § 3336
9. Failure to provide Meal Periods in violation of California Labor Code § 226.7, § 512(a)
10. Failure to provide Rest Breaks in violation of California Labor Code § 226.7, § 512(a)
11. Retaliation under Labor Code § 1102.5;
12. Failure to reimburse Violation of Labor Code § 2802
13. Unfair Competition. Violation of Business and Professions Code §§17200, et seq.

Amount demanded exceeds \$25,000.

JURY TRIAL DEMANDED

1 **I. INTRODUCTION**

2 1. This action is brought by Plaintiff KIMMY DAO (hereafter “Plaintiff” or “Ms. Dao”)
3 against Defendants PANDORA KARAOKE, INC., a California Corporation, URBAN LIFE
4 INC., a California Corporation, and TIMMY CHOY, an individual (collectively “Defendants”).
5 Plaintiff seeks, attorney’s fees and costs of suit. Plaintiff is informed and believes and, on that
6 basis, alleges, as follows:

7 **II. GENERAL ALLEGATIONS**

8 2. The grounds of this action are multiple illegal employment practices giving rise to among
9 other things the following:

10 a. Causes of action for multiple violations of various wage/hour and related laws which
11 deprived Plaintiff of employment benefits and rights mandated under California law.

12 3. This court is the proper court, and this action is properly filed in San Francisco County
13 and in this judicial district because Defendants do business in San Francisco County and have
14 their business located in San Francisco County.

15 4. Plaintiff is a former hourly non-exempt employee for Defendants.

16 5. Plaintiff is informed and believes, and thereon alleges that Defendant Pandora Karaoke,
17 Inc. is a California corporation.

18 6. Plaintiff is informed and believes, and thereon alleges that Defendant Urban Life, Inc.
19 Doing Business as Neck of the Woods is a California corporation.

20 7. Plaintiff brings this action against the following Individual Defendants and Entity
21 Defendants, alter egos, agents, and other persons/entities engaged with Individual Defendants
22 and Entity Defendants in a joint enterprise: Defendant PANDORA KARAOKE, INC., a
23 California Corporation, Defendant URBAN LIFE INC., a California Corporation, and TIMMY
24 CHOY, an individual, and DOES 1 through 50, inclusive were the employers/joint employers of
25 Plaintiff in the State of California.

26 8. Defendant TIMMY CHOY as an owner acting on behalf of an employer, who violates,
27 or causes to be violated, any provision regulating minimum wages or hours and days of work in
28 any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections

203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation under Labor Code 558.1

9. Plaintiff is informed and believes, and thereon alleges, Individual Defendants and Entity Defendants and DOES 1 - 50 were also engaged in a single enterprise in which each said Defendant contributed skill, effort, knowledge, and/or money to achieve a common purpose of maximizing the profits of the single enterprise. That DOES 1 - 50 are the partners owners, shareholders, managers, joint employers, or alter egos of Defendant Employers and were acting on behalf of defendant employers at all relevant times alleged here in.

III. FACTUAL BACKGROUND

10. Ms. Dao was employed by Pandora Karaoke, Urban Life, and Timmy Choy most recently as a server from on or around 2010 until November 4th, 2023.

11. Defendant Timmy Choy is the owner of Pandora Karaoke and Urban Life Inc.

12. Throughout Plaintiff's employment, Defendants instituted tip sharing policies which affected all of its employees, including Plaintiff.

13. Defendants required its servers and bartenders, including Plaintiff, to share a portion of their tips with both the owner and manager despite neither performing service-related duties.

14. More specifically, the "house" would take a percentage from all tips earned and the manager would take at least an additional 15% from all tips earned.

15. Pandora kept a detailed record of all tips earned. This record specifically indicates the percentage of the tips that are illegally retained by management.

16. Throughout her employment with Defendants, Plaintiff regularly worked shifts that were longer than 5 hours.

17. Plaintiff has been denied an uninterrupted 30 minute meal break during shifts longer than five hours.

18. Throughout her employment with Defendants, Plaintiff regularly worked shifts that were longer than 8 hours.

19. Plaintiff has been denied overtime payment for hours worked in excess of 8 hours per

1 day and forty hours per week.

2 20. Defendant has unilaterally adjusted the timesheets and hours of Plaintiff to avoid
3 payment of earned wages.

4 21. Additionally, Plaintiff and other employees regularly worked for Defendants past closing
5 time at 2:00 am.

6 22. Plaintiff and other employees have been told that there is no need to clock out after 2:00
7 am as time tracking stops at closing time, not when they complete work.

8 23. Plaintiff would perform tasks such as cleaning, restocking, maintaining the karaoke
9 rooms, and reconciling the cash registers after 2:00 am when Defendants' business hours had
10 ended.

11 24. However, Plaintiff and other employees were never paid by Defendants for their time
12 worked past 2:00 am.

13 25. For at least one pay period, Defendants paid Plaintiff at a pay rate below the minimum
14 wage for San Francisco County.

15 26. Defendants denied all meal breaks to Plaintiff.

16 27. Defendants denied all rest periods to Plaintiff.

17 28. Defendant has consistently failed to pay on time and in full including but not limited to
18 paychecks on 10/23/23; 9/10/23; and 6/18/23.

19 29. In 2021 Defendant began to repay some of at least \$44,500 in late and unpaid bonus
20 wages admittedly owed to Plaintiff however no interest on the admittedly late payments was ever
21 made.

22 30. Defendant never paid Plaintiff and other employees for overtime worked at the regular
23 rate accounting for bonus wages received.

24 31. On Saturday November 4th 2023 Plaintiff was terminated by Defendant in retaliation for
25 bringing wage and hour complaints, for warning other employees of the theft of their tips and
26 wages, for raising this and other issues with defendant verbally and in writing on multiple
27 occasions.

28 32. Plaintiff and other employees were paid under minimum wage on dates including but not

1 limited to the following pay dates, 08/02/2023.

2 33. Defendant failed to pay overtime in Violation of California Labor Code §§ 510 and 1198.
3 Defendant failed to pay minimum wage in Violation of California Labor Code §§ 1181.12,
4 1194, 1194.2 and 1197. Defendant failed to pay the final paycheck on time as required under
5 Labor Code §§ 201, 203, 218.5 and 1194. Defendant failed to provide accurate, itemized wage
6 statements in Violation of California Labor Code § 226 and Wage Order No. 5-2001 § 7.
7 Defendant acted in Retaliation against employees in violation of Labor Code §§ 98.6, 246.5 and
8 1102.5. Defendant failed to pay employees all hours worked in Violation of California Labor
9 Code § 203 and 29 C.F.R. §§ 785.15 and 785.16.

10 34. Defendants conduct, as alleged herein, has caused Plaintiff damages including, but not
11 limited to, loss of wages and compensation.

1 **FIRST CAUSE OF ACTION**

2 *Failure to pay overtime*

3 Violation of California Labor Code §§ 218.5 510 and 1198;

4 (Against all Defendants)

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6 35. Plaintiff restates and incorporates by reference each and every allegation of the
7 foregoing paragraphs as though fully set forth herein.

8 36. Labor Code § 510 states: "Eight hours of labor constitutes a day's work. Any work in
9 excess of eight hours in one workday and any work in excess of 40 hours in any one work week
10 and the first eight hours worked on the seventh day of work in any one work week shall be
11 compensated at the rate of no less than one and one-half times the regular rate of pay."

12 37. Labor Code § 558 states:

13 (a) Any employer or other person acting on behalf of an employer who violates, or causes
14 to be violated, a section of this chapter or any provision regulating hours and days of
work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
as follows:

15 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
16 period for which the employee was underpaid in addition to an amount sufficient to
recover underpaid wages.

17 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
18 employee for each pay period for which the employee was underpaid in addition to an
amount sufficient to recover underpaid wages.

19 (3) Wages recovered pursuant to this section shall be paid to the affected employee.

20 (b) If upon inspection or investigation the Labor Commissioner determines that a person
21 has paid or caused to be paid a wage for overtime work in violation of any provision of
this chapter, or any provision regulating hours and days of work in any order of the
Industrial Welfare Commission, the Labor Commissioner may issue a citation.

22 (c) The civil penalties provided for in this section are in addition to any other civil or
criminal penalty provided by law.

23 38. Labor Code § 1198 states: "It is unlawful to employ person for longer than the hours set
24 by the IWC or under conditions prohibited by the applicable IWC Wage Orders."

25 39. Labor Code § 218.5 states: In any action brought for the nonpayment of wages, fringe
26 benefits, or health and welfare or pension fund contributions, the court shall award reasonable
27 attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees
28 and costs upon the initiation of the action. Plaintiff request attorney's fees and costs under

1 § 218.5 for this cause of action which is brought for nonpayment of wages.

2 40. Defendants, and each of them willfully, knowingly, and intentionally failed to calculate
3 and compensate Defendant's non-exempt employees the overtime wages they were entitled to
4 under Labor Code Labor Code §510 and 1198, the applicable Wage Order and/or local regulation
5 for all the hours they worked for Defendants.

6 41. As applicable under California law to the allegations made in this cause of action,
7 Plaintiff is entitled to recover the wages, damages, penalties, awards, and other remedies set forth
8 below in the Prayer for Damages, Awards and Other Relief.

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1 **SECOND CAUSE OF ACTION**

2 *Failure to pay minimum wage*

3 Violation of California Labor Code §§218.5, 1181.12, 1194, 1194.2, and 1197

4 (Against all Defendants)

5 43. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
6 paragraphs as though fully set forth herein.

7 44. California Labor Code § 1197 States: “The minimum wage for employees fixed by the
8 commission or by any applicable state or local law, is the minimum wage to be paid to
9 employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

10 45. California Labor Code § 1182.12 States:

11 (1) For any employer who employs 26 or more employees, the minimum wage shall be as follows:

12 (A) From January 1, 2017, to December 31, 2017, inclusive,- (\$10.50) per hour.

13 (B) From January 1, 2018, to December 31, 2018, inclusive,- (\$11) per hour.

14 (C) From January 1, 2019, to December 31, 2019, inclusive,- (\$12) per hour.

15 (D) From January 1, 2020, to December 31, 2020, inclusive,- (\$13) per hour.

16 (E) From January 1, 2021, to December 31, 2021, inclusive,- (\$14) per hour.

17 (F) From January 1, 2022, and until adjusted by subdivision (c) - (\$15.00) per hour.

18 (G) From January 1, 2023, and until adjusted by subdivision (c) - (\$15.50) per hour.

19 46. California Labor Code § 1182.12(c) adjusts the current Minimum Wage from January 1,
20 2024 to (\$16.00) per hour.

21 47. According to San Francisco’s minimum wage ordinance, San Francisco’s minimum
22 wage per hour worked is \$18.07 as of July 1, 2023. (Section 12R.4 of the San Francisco
23 Administrative Code).

24 48. Labor Code § 218.5 states that: In any action brought for the nonpayment of wages,
25 fringe benefits, or health and welfare or pension fund contributions, the court shall award
26 reasonable attorney's fees and costs to the prevailing party if any party to the action requests
27 attorney's fees and costs upon the initiation of the action. Plaintiff request attorney’s fees and
28 costs under § 218.5 for this cause of action which is brought for nonpayment of wages.

49. At all times during the applicable statutes of limitations period, Defendants, and each of
them willfully, knowingly, and intentionally failed to calculate and compensate Defendant’s
non-exempt employees the minimum wages they were entitled to under Labor Code § 1182.12,

1 the applicable Wage Order and/or local regulation for all the hours they worked for Defendants
2 including but not limited to as follows:

3 a. Said employees wage rate has been paid effectively lower than minimum wage as
4 employees have not been paid at least the minimum wage due to working off the clock before
5 and after work which are unpaid working hours.

6 b. Said employees have been paid effectively lower than minimum wage due to “rounding”
7 and “adjustment” of clock-in/out times which have consistently worked to Defendant’s
8 unfair advantage.

9 c. Employees have not been paid for on duty meal periods, rest periods.

10 d. Employees actual rate was below minimum wage for pay periods including but not
11 limited to the paystub with pay date 08/02/2023 with pay rate \$18.01 when minimum wage
12 was \$18.07.

13 50. Pursuant to §4 of IWC Wage Order No. 5-2001, and the IWC California Minimum Wage
14 Order (MW-2014), Plaintiff was entitled to receive not less than minimum wage for all hours
15 worked.

16 51. For all hours that Plaintiff worked, they are entitled to and seek not less than the
17 California minimum wage and, pursuant to Labor Code §1194.2(a) liquidated damages in an
18 amount equal to the unpaid minimum wages and interest thereon. Pursuant to Labor Code §1194,
19 Plaintiff is entitled to their attorneys' fees and costs and interest according to proof.

20 52. As applicable under California law to the allegations made in this cause of action,
21 Plaintiff is entitled to recover the wages, damages, penalties, awards, and other remedies set forth
22 below in the Prayer for Damages, Awards and Other Relief.

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1 **THIRD CAUSE OF ACTION**

2 *Failure to pay wages when due*

3 Violation of California Labor Code §§ 210, 204

4 (Against all Defendants)

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6 53. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
7 paragraphs as though fully set forth herein.

8 54. Labor Code § 210 requires every person who fails to pay the wages of each employee as
9 provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be
10 subject to a penalty.

11 55. Labor Code § 204 states that the requirements of this section shall be deemed satisfied
12 by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
13 more than seven calendar days following the close of the payroll period.

14 56. As a direct and proximate result of Defendants' conduct, Plaintiff has been injured by,
15 among other things, not being paid all wages when due.

16 57. Defendants are in violation of Labor Code § 204 and 210 and are liable to Plaintiff for
17 damages.

18 Plaintiff and other employees are entitled to recover the damages or penalties provided by Labor
19 Code § 210(a)(2), which is for any initial violation, one hundred dollars (\$100) for each failure
20 to pay each employee including interest thereon, and reasonable attorneys' fees and costs.

21 58. Plaintiff is entitled to these civil penalties in an amount to be proven at trial.

22 59. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff is owed
23 damages and civil penalties for the failure to pay wages when due.

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1 **FOURTH CAUSE OF ACTION**

2 *Failure to pay wages owed at time of separation*

3 Violation of California Labor Code §§ 201, 203, 218.5, and 1194.

4 (Against all Defendants)

5 61. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
6 paragraphs as though fully set forth herein.

7 62. At all times relevant to this Complaint, Labor Code §201 and 203 were in effect and
8 applicable to Defendants.

9 63. Labor Code § 201 states that: “If the employee and employer relationship is separated,
10 then the wages earned and unpaid at the time of discharge are due and payable immediately.”

11 64. Defendants terminated Plaintiff’s employment on or about November 4, 2023 and so
12 were required to pay Plaintiff all wages earned and unpaid on that date. Plaintiff’s final paycheck
13 did not include all hours earned, and it failed to comply with the requirement of Labor Code §
14 201 that all outstanding wages be paid on the day of separation. As of January 5, 2024,
15 Defendants still have not paid Plaintiff those premiums and missing wages.

16 65. Labor Code § 203 states that:
17 “If an employer willfully fails to pay, without abatement or reduction . . . any wages
18 of any employee who is discharged or who quits, the wages of the employee shall
19 continue as a penalty from the due date thereof at the same rate until paid or until
20 an action therefor is commenced; but the wages shall not continue for more than
21 30 days.”

22 66. Labor Code § 218.5 states that: In any action brought for the nonpayment of wages,
23 fringe benefits, or health and welfare or pension fund contributions, the court shall award
24 reasonable attorney's fees and costs to the prevailing party if any party to the action requests
25 attorney's fees and costs upon the initiation of the action. Plaintiff requests attorney’s fees and
26 costs under § 218.5 for this cause of action which is brought for nonpayment of wages.

27 67. Accordingly, as a result of Defendants’ conduct, Plaintiff is entitled to waiting time
28 penalties under Labor Code § 203, with interest thereon and reasonable attorneys’ fees and costs
pursuant to Labor Code §§ 218.5 and 1194.

68. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff has lost

1 and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff claims
2 such amount as general damages for mental and emotional distress, aggravation, and physical
3 harm, in an amount to be proven at trial, together with pre-judgment interest pursuant to Civil
4 Code § 3287 and any other provision of law providing for pre-judgment interest.

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1 **FIFTH CAUSE OF ACTION**

2 *Failure to provide accurate itemized wage statements*

3 Violation of California Labor Code § 226(a), 226(e)

4 (Against all Defendants)

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6 70. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
7 paragraphs as though fully set forth herein.

8 71. Labor Code § 226(a) requires an employer to furnish its employees with an accurate
9 itemized statement in writing showing, among other things, gross wages earned, net wages
10 earned, all applicable hourly rates in effect during the pay period, and the corresponding number
11 of hours worked at each hourly rate by the employee.

12 72. Under Labor Code § 226(e), an employee suffering injury as a result of a knowing and
13 intentional failure by an employer to comply with § 226(a) is entitled to recover the greater of
14 all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 for each
15 violation in a subsequent pay period, up to a maximum amount of \$4,000.

16 73. As a direct and proximate result of Defendants' conduct, Plaintiff has been injured by,
17 among other things, not being paid all wages due, not knowing how many hours Plaintiff worked
18 and at what rates and being required to file this action to recover wages and determine the number
19 of hours worked and wages due.

20 74. Defendants are in violation of Labor Code § 226(a) and are liable to Plaintiff for damages.
21 Plaintiff is entitled to recover the damages or penalties provided by Labor Code § 226(e),
22 including interest thereon, and reasonable attorneys' fees and costs.

23 75. Plaintiff is entitled to these civil penalties in an amount to be proven at trial.

24 76. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff has lost
25 and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff claims
26 such amount as general damages for mental and emotional distress, aggravation, and physical
27 harm, in an amount to be proven at trial, together with pre-judgment interest pursuant to Civil
28 Code § 3287 and any other provision of law providing for pre-judgment interest.

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1 **EIGHTH CAUSE OF ACTION**

2 *Conversion of Tips and Gratuities*

3 Violation of Common Law and California Civil Code § 3336

4 (Against all Defendants)

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6 88. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
7 paragraphs as though fully set forth herein.

8 89. Cal. Lab. Code § 351 states that: No employer or agent shall collect, take, or receive
9 any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or
10 deduct any amount from wages due an employee on account of a gratuity, or require an
11 employee to credit the amount, or any part thereof, of a gratuity against and as a part of the
12 wages due the employee from the employer. Every gratuity is hereby declared to be the sole
13 property of the employee or employees to whom it was paid, given, or left for. An employer
14 that permits patrons to pay gratuities by credit card shall pay the employees the full amount
15 of the gratuity that the patron indicated on the credit card slip, without any deductions for any
16 credit card payment processing fees or costs that may be charged to the employer by the credit
17 card company. Payment of gratuities made by patrons using credit cards shall be made to the
18 employees not later than the next regular payday following the date the patron authorized the
19 credit card payment.

20 90. California Civil Code § 3336 states that: The detriment caused by the wrongful
21 conversion of personal property is presumed to be: The value of the property at the time of
22 the conversion, with the interest from that time... and A fair compensation for the time and
23 money properly expended in pursuit of the property.

24 91. The elements of a conversion claim are: (1) the plaintiff's ownership or right to
25 possession of the property; (2) the defendant's conversion by a wrongful act or disposition
26 of property rights; and (3) damages." (Lee v. Hanley (2015) 61Cal.4th 1225, 1240 [191
27 Cal.Rptr.3d 536, 354 P.3d 334].

28 92. The availability of Conversion to enforce Section 351 of the Labor Code is made

1 clear in, *Lu v. Hawaiian Gardens*. which states that: “To the extent that an employee may be
2 entitled to certain misappropriated gratuities, we see no apparent reason why other remedies,
3 such as a common law action for conversion, may not be available.” [Lu v. Hawaiian Gardens
4 Casino, Inc., 50 Cal. 4th 592, 603–04, 236 P.3d 346, 353 (2010)].

5 93. Defendants have instituted tip policies which have taken tips that rightfully belong to
6 Plaintiff in at least five ways: 1) Defendant’s required Plaintiff to share tip’s with both the
7 Restaurant Owner and Management. 2) Defendant’s unilaterally changed policies without
8 notice to employees to benefit Defendant. 3) Defendant would use a rounding policy to reduce
9 tips consistently in favor of defendants. 4) Defendant would consistently fail to pay tips on
10 time. 5) Defendant took a larger portion of the service fee to offset tips he could no longer
11 steal after being informed employees were aware of the illegally converted tips.

12 94. As applicable under California law to the allegations made in this cause of action,
13 Plaintiff is entitled to recover the wages, damages, penalties, awards, and other remedies set forth
14 below in the Prayer for Damages, Awards and Other Relief.

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1 **NINTH CAUSE OF ACTION**

2 *Failure to Provide Meal Breaks*

3 Violation of California Labor Code § 226.7

4 (Against all Defendants)

5
6 96. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
7 paragraphs as though fully set forth herein.

8 97. At all relevant times, IWC Wage Order § 11 and California Labor Code §§ 226.7 and
9 512(a) were applicable to Plaintiff's employment by Defendants.

10 98. At all relevant times, California Labor Code § 226.7 provides that no employer shall
11 require an employee to work during any meal or rest period mandated by an applicable order of
12 the California IWC.

13 99. At all relevant times, IWC Wage Order § 11 and California Labor Code § 512(a) provide
14 that an employer may not require, cause or permit an employee to work for a work period of
15 more than give (5) hours per day without providing the employee with a meal period of not less
16 than thirty (30) minutes, except that if the total work period per day of the employee is no more
17 than six (6) hours, the meal period may be waived by mutual consent of both the employer and
18 employee.

19 100. At all relevant times, Wage Order § 11 and California Labor Code § 512(a)
20 further provide that an employer may not require, cause or permit an employee to work for a
21 work period of more than ten (1) hours per day without providing the employee with a second
22 uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours
23 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
24 consent of the employer and the employee only if the first meal period was not waived.

25 101. The Court has interpreted § 512 to require employers to relinquish control of their
26 employees' activities during meal periods: "Employers must afford employees uninterrupted
27 half-hour periods in which they are relieved of any duty or employer control and are free to come
28 and go as they please." Brinker Restaurant Corp. v. Superior Court, (2012) 53 Cal.4th 1004,

1 1037. Defendants did not allow Plaintiff to ever take a meal periods, and so are in violation of
2 the meal period requirement for every day on which Plaintiff was entitled to a meal period.

3 102. During the relevant time period, Plaintiff and other aggrieved employees who
4 were scheduled to work for a period of time no longer than six (6), and who did not waive their
5 legally mandated meal periods by mutual consent, were required to work for periods longer than
6 five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or
7 rest period.

8 103. During the relevant time period, Plaintiff and other aggrieved employees who
9 were scheduled to work for a period of time in excess of six (6) hours were required to work for
10 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
11 (30) minutes and/or rest period.

12 104. During the relevant time period, Defendants intentionally and willfully required
13 Plaintiff to work during meal periods and failed to compensate Plaintiff the full meal period
14 premium for work performed during meal periods.

15 105. During the relevant time period, Defendants failed to pay Plaintiff the full meal
16 period premium due pursuant to California Labor Code § 226.7.

17 106. As a direct result, Plaintiff has suffered substantial damages in an amount to be proven
18 at trial and is entitled to all appropriate legal remedies provided by the Labor Code and Wage
19 Order, including unpaid wages, liquidated damages, interest, attorneys' fees, and costs of suit.

20 107. Defendants' conduct violates IWC Wage Order § 11 and California Labor Code
21 §§ 226.7 and 512(a).

22 108. For all the days on which Plaintiff was denied a valid meal period, they are entitled to
23 seek and do seek from Defendants one additional hour of pay at the regular rate of compensation
24 for each workday that a meal period was not provided, pursuant to Wage Order § 11 and Labor
25 Code § 226.7(c). Further, pursuant to Labor Code § 1194, Plaintiff is entitled to their attorneys'
26 fees and costs and interest according to proof.

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1 employees the full rest period premium for work performed during rest periods.

2 117. During the relevant time period, Defendants failed to pay Plaintiff and other
3 aggrieved employees the full rest period premium due pursuant to California Labor Code §
4 226.7.

5 118. As a direct result, Plaintiff has suffered and continues to suffer substantial
6 damages in an amount to be proven at trial and are entitled to all appropriate legal remedies
7 provided by the Labor Code and the Wage Order, including unpaid wages, liquidated damages,
8 interest, attorneys' fees, and costs of suit.

9 119. Defendants' conduct violates IWC Wage Order § 12 and California Labor Code
10 § 226.7.

11 120. Plaintiff is entitled to seek and do seek from Defendants one additional hour of
12 pay at the regular rate of compensation for each workday that a rest period was not provided,
13 pursuant to Wage Order § 12 and Labor Code § 226.7(c). Further, pursuant to Labor Code §
14 1194, Plaintiff is entitled to their attorneys' fees and costs and interest according to proof.

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1 **TWELFTH CAUSE OF ACTION**

2 *Failure to Reimburse*

3 Violation of California Labor Code § 2802

4 (Against all Defendants)

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6 126. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
7 paragraphs as though fully set forth herein.

8 127. Labor Code § 2802 states: An employer shall indemnify his or her employee for all
9 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
10 of his or her duties... Interest shall accrue from the date on which the employee incurred the
11 necessary expenditure or loss. For purposes of this section, the term “necessary expenditures or
12 losses” shall include all reasonable costs, including, but not limited to, attorney's fees incurred
13 by the employee enforcing the rights granted by this section.

14 128. Here, Plaintiff has incurred unreimbursed expenses for travel including but not
15 limited to Gas, and Car Maintenance. Plaintiff has incurred unreimbursed expenses for cleaning
16 of work clothes. Plaintiff has incurred unreimbursed expenses for the maintenance and storage
17 of defendant’s files. Plaintiff has incurred unreimbursed expenses for the maintenance and
18 storage of defendant’s files. Plaintiff has incurred unreimbursed expenses for the required use
19 of a cell phone for company business. Plaintiff has incurred unreimbursed expenses for other
20 categories in an amount to be proven at trial.

21 129. As a direct and foreseeable result of the aforesaid acts of Entity Defendants,
22 Plaintiff has lost and will continue to lose income and benefits in an amount to be proven at trial.
23 As a proximate result of the foregoing conduct of Defendants, which violated the provisions of
24 Labor Code § 2802, Plaintiff has been forced to incur and will continue to incur attorney’s fees
25 and costs in the litigation of this claim in an amount to be proven at trial.

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- d. Failing and refusing to pay Plaintiff final paycheck on time under Labor Code §§ 201
- e. Failing and refusing to pay Plaintiff Tips and Gratuities in violation of Common Law Conversion and California Civil Code § 3336
- f. Failing and refusing to pay Plaintiff to provide Meal Periods in violation of California Labor Code § 226.7
- g. Failing and refusing to pay Rest Breaks in violation of California Labor Code § 226.7,
- h. Failing and refusing to pay lost wages due to retaliation in violation of California Labor Code § 1102.5
- i. Failing and refusing to reimburse in violation of California Labor Code § 2802

137. All of these allegations constitute unfair business practices and/or unlawful business practices in violation of California B&PC §17200, *et seq*

138. Defendants have avoided payment of wages, overtime and double time wages and other benefits as required by the California Labor Code, the California Code of Regulations and applicable IWC Wage Orders. As a result of Defendants' unfair business practices, Defendants have reaped unfair benefits and illegal profits at the expense of Plaintiff, others similarly situated, and the members of the public. Defendants should be made to disgorge their ill-gotten gains and to restore them to Plaintiff.

139. Plaintiff seek full restitution of said monies, as necessary and according to proof, to restore any and all monies withheld and/or acquired by Defendants by means of the unfair, unlawful, and fraudulent business practices complained of herein. Plaintiff seeks, restitution of monies retained by Defendants. Plaintiff further seeks, on behalf of themselves, the appointment of a receiver, as necessary, to establish the total restitutionary relief from Defendants. The restitution includes all wages withheld by Defendants as a result of the unfair, unlawful, and/or fraudulent business practices; including interest thereon. Absent a statutory provision specifically governing the type of claim at issue, the prejudgment interest rate is 10 percent. The acts complained of herein occurred, at least in part, within the last four (4) years preceding the filing of the Complaint.

1 140. Plaintiff is informed and believe and thereon allege that at all times herein mentioned,
2 Defendants have engaged in unlawful, deceptive, and unfair business practices prohibited by
3 California B&PC §17200, thereby depriving their employees, the minimum working condition,
4 standards and conditions due to them under the California labor laws and Industrial Welfare
5 commission wage orders as specifically described herein.

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

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

14 143. Plaintiff, and all persons similarly situated, and all persons in interest, are further entitled
15 to and do seek a declaration that the above-described business practices are unfair, unlawful,
16 and/or fraudulent, and declaratory relief of Defendants engaging in any of the herein described
17 unfair, unlawful, and/or fraudulent business practices.

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1 **PLAINTIFF INTENDS TO AMEND COMPLAINT TO SEEK ADDITIONAL**
2 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEY GENERAL'S ACT**

3 *Private Attorney Generals Act*

4 Violation of Business and Professions Code § 2698 et seq.

5 (Against all Defendants)

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8 145. Plaintiff is currently exhausting administrative remedies with regard to recently
9 discovered violations that are subject of an PAGA Notice. Plaintiff also provided written notice
10 by U.S. certified mail to Defendants of the specific provisions of the Labor Code alleged to have
11 been violated and the facts and theories to support the alleged violations, and as such will be
12 permitted to amend her existing Complaint as a matter of right pursuant to Code §
13 2699.3(a)(2)(C).

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

147. For all unpaid wages due to Plaintiff in amounts to be proven at trial;

148. For the full amount of unpaid minimum wages and liquidated damages due Plaintiff pursuant to Labor Code §§ 1194 and 1194.2;

149. For the full amount of unpaid overtime and double time wages due Plaintiff pursuant to Labor Code §1194;

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

151. For recovery as authorized by Labor Code § 1199;

152. For recovery as authorized by Wage Order No. 5-2021

153. For restitution of all unpaid wages due Plaintiff;

154. For all applicable statutory penalties, in amounts to be proven at trial;

155. For an award of waiting time penalties pursuant to section 203 of the California Labor Code, in amounts to be proven at trial;

156. For general damages including compensatory damages according to proof;

157. For pre-judgment interest as allowed by Labor Code §§218.6 and 1194(a) as well as Cal. Civil Code §3287 and to the extent permitted by law, the California Constitution, and/or deemed equitable by the Court;

158. For all applicable interest on damages, wages, and penalties due;

159. For injunctive relief to prevent further violations of the California Labor Code;

160. For declaratory relief that Defendants engaged in unfair practices;

161. For restitution of all moneys due to Plaintiff, and disgorged profits from the unlawful and/or unfair business practices of Defendants, pursuant to California Business & Professions Code §17200;

162. For one (1) hour of pay at each of the employees' regular rate of compensation for each workday that a legally compliant rest break was not provided;

163. For one (1) hour of pay at each of the employees' regular rate of compensation for each

workday that a legally compliant meal break was not provided

164. For costs of suit, expenses and attorneys' fees pursuant to Labor Code §§226(e) and (h), 1194(a), Code of Civil Procedure §1021.5, §210, §218.5 et seq., and all other applicable law, and;

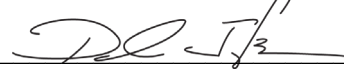
165. For damages of not less than \$250,000 plus punitive damages and attorney fees.

166. For declaratory relief that Defendants violated Labor Code §§201-203, 204, 226, 246, 510, 1102.5, 1197.

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

Dated: January 5, 2024

JAFARI LAW GROUP, INC.



David V. Jafari
Saul Acherman
Eli Hamblet
Attorneys for Plaintiff
Kimmy Dao

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues so triable in the Complaint.

Dated: January 5, 2024

JAFARI LAW GROUP, INC.



David V. Jafari
Saul Acherman
Eli Hamblet
Attorneys for Plaintiff
Kimmy Dao

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