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JUAN DE LEON SANCHEZ, and all others similarly situated

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

04/24/2024 at 06:47:58 PM

Clerk of the Superior Court
By Maria Acevedo, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

(UNLIMITED JURISDICTION)

JUAN DE LEON SANCHEZ, as an
“aggrieved employee” on behalf of himself and
other similarly situated “aggrieved employees”
under the Labor Code Private Attorneys
General Act of 2004,

Plaintiff,

vs.

THE BITTER END, INC. dba THE TIPS
CROW, a California corporation; and DOES 1
to 25, inclusive,

Defendants.

Case No. 37-2024-00019319-CU-OE-CTL

**COMPLAINT FOR VIOLATIONS
OF THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED

1 Plaintiff, Juan De Leon Sanchez (hereafter “Plaintiff”), on behalf of himself, the State of
2 California, and the other Aggrieved Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action under the Labor Code Private Attorneys
5 General Act of 2004, § 2698, *et seq.* (“PAGA”) based on alleged violations of the California
6 Labor Code and Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”),
7 against Defendants The Bitter End, Inc. dba The Topsy Crow, a California corporation, and DOES
8 1 to 25, inclusive (collectively “The Topsy Crow” or “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him, the State of California, and the Aggrieved Employees (defined below), for civil penalties
11 and other related relief. These claims are based on Defendants’ failures to: 1) pay all wages,
12 including minimum, regular, overtime, and doubletime wages earned for all hours worked at the
13 correct rates of pay; 2) provide meal periods or pay correctly-calculated premium wages in lieu
14 thereof; 3) authorize and permit rest periods or pay correctly-calculated premium wages in lieu
15 thereof; 4) indemnify for business expenses; 5) issue only accurate and complete itemized wage
16 statements; 6) timely pay wages during employment; 7) timely pay wages upon separation from
17 employment; and 8) maintain accurate employment records. Accordingly, Plaintiff now seeks to
18 recover civil penalties and related relief through this representative action.

19 **JURISDICTION AND VENUE**

20 3. Jurisdiction and Venue are proper in this Court and this action is properly filed in
21 the County of San Diego in this judicial district because Defendants The Bitter End, Inc. dba The
22 Topsy Crow and DOES 1 to 25, inclusive, do business in the County of San Diego and because
23 Defendants’ obligations and liabilities arise therein, and because the work that was performed by
24 Plaintiff and the Aggrieved Employees in the County of San Diego is the subject of this action.
25 Moreover, the aggregate claims of Plaintiff and the Aggrieved Employees, inclusive of all relief,
26 place more than \$25,000 in controversy.

27 **THE PARTIES**

28 4. Plaintiff Juan De Leon Sanchez is resident of San Diego, California.

1 5. Defendant The Bitter End, Inc. dba The Tipsy Crow is a corporation organized
2 and existing under the laws of California and as such, a citizen of California based on Plaintiff's
3 information and belief.

4 6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
5 participation in the conduct alleged herein of the Defendants sued as DOES 1-25, inclusive, but
6 is informed and believes and thereon alleges that said Defendants are legally responsible for the
7 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
8 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
9 when ascertained.

10 7. The "Aggrieved Employees" are all individuals the Defendants have employed or
11 otherwise contracted with in California as hourly or non-exempt employees, during the period
12 beginning one year before the Plaintiff's notice of February 12, 2024 to the California Labor and
13 Workforce Development Agency ("LWDA") and ending on the date judgment is entered.

14 8. Plaintiff is informed and believes and thereon alleges that, at all relevant times
15 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
16 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
17 and scope of such agency or employment, and with the approval and ratification of each of the
18 other Defendants.

19 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
20 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
21 of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved
22 Employees in accordance with applicable California labor laws as alleged herein.

23 10. Plaintiff is informed and believes and thereon alleges that each and every one of
24 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
25 each acting as agents and/or employees, and/or under the direction and control of each of the other
26 defendants, and that said acts and failures to act were within the course and scope of said agency,
27 employment, and/or direction and control.

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1 **FACTUAL ALLEGATIONS**

2 11. IWC Wage Order 5-2001 (“the Wage Order”) applies to “all persons employed in
3 the public housekeeping industry,” where “Public Housekeeping Industry” includes “Restaurants,
4 night clubs, taverns, bars, cocktail lounges...” (*Id.*, §§ 1 & 2(P)(1).). At all relevant times during
5 the applicable limitations period, THE TIPSY CROW operated a bar. Accordingly, Plaintiff and
6 the Aggrieved Employees are entitled to the protections provided under the Wage Order.

7 12. THE TIPSY CROW first began to employ Plaintiff in or around November 2022
8 as a Security Guard at its bar located at 770 Fifth Ave. in San Diego, California. Plaintiff’s
9 employment ended on or around June 29, 2023.

10 13. At all relevant times, THE TIPSY CROW issued wages to Plaintiff and all of the
11 other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times,
12 THE TIPSY CROW classified Plaintiff and all of the other Aggrieved Employees as non-exempt
13 employees entitled to the protections of the Labor Code and the Wage Order. THE TIPSY CROW
14 employed Plaintiff and all of the Aggrieved Employees more than six, eight, and ten hours per
15 day. During his tenure, Plaintiff generally worked 3-4 days a week from approximately 6:00 p.m.
16 to 2:00 a.m., and occasionally worked the day shift from approximately 12:00 p.m. to 6:00 p.m.
17 Plaintiff’s latest rate of pay was approximately \$19.00 per hour.

18 14. THE TIPSY CROW failed to pay Plaintiff and other Aggrieved Employees for all
19 time worked or subject to its control. Plaintiff and the other Aggrieved Employees were not paid
20 for all hours worked and consistently worked “off the clock” in that the company had a policy
21 and practice of rounding down work hours and “time shaving” which led to Plaintiff and others
22 not being paid for all hours worked, which would include the minimum wage. Moreover, to the
23 extent employees such as Plaintiff and others worked through their meal periods and those meal
24 periods were interrupted, they were not compensated for that time, which would be akin to a
25 minimum wage violation. In addition, THE TIPSY CROW instructed Plaintiff and the other
26 Aggrieved Employees to clock out at the end of their shifts and wait for approximately 30 minutes
27 in order to receive their tips. Finally, Plaintiff and the other Aggrieved Employees were not given
28 accurate tips to which they were entitled. Furthermore, THE TIPSY CROW management,

1 including Nick Barnes, Chris, Matthew, and Anthony (last names unknown) would often speak
2 to or text/call Plaintiff and others about their schedules and work-related matters while they were
3 off the clock. Plaintiff would often receive text messages from management/supervisors regarding
4 his work schedule and other work-related matters.

5 15. Due to the above “off the clock” violations, THE TIPSY CROW failed to pay
6 Plaintiff and the Aggrieved Employees properly-calculated overtime wages. The Aggrieved
7 Employees’ actual work hours, which included the “off the clock” work as described above,
8 entitled them to overtime, however, it was not company policy to keep accurate track of all hours
9 worked and to pay employees the accurate amount of overtime, especially since the “off the
10 clock” work was not factored into the equation. Furthermore, any incentive payments and/or
11 bonus payments were not factored into employees’ regular rate of pay for purposes of deciphering
12 the correct overtime rate of pay. In addition, any bonus and/or incentive payments were not
13 factored into the correct meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel,*
14 *LLC* (2021) 11 Cal. 5th 858, 863.

15 16. THE TIPSY CROW failed to authorize and permit Plaintiff and others with 10-
16 minute rest periods for every four hours of work, or majority portion thereof, throughout their
17 employment. THE TIPSY CROW did not completely relieve Plaintiff and others of all duty
18 during said rest periods. THE TIPSY CROW did not pay to Plaintiff and others one additional
19 hour of pay at their regular rate of compensation for each workday that one or more statutory rest
20 periods was not provided. It was not part of the company policy for employees such as Plaintiff
21 to take at least two rest breaks per shift. The concept of rest breaks was not consistently
22 implemented as it was not company policy. Moreover, it would not have been possible for
23 employees such as Plaintiff to take such rest breaks due to being understaffed and due to a heavy
24 workload, especially in the fast-paced bar industry. Throughout his employment, Plaintiff never
25 took rest breaks and was never instructed by management to take a rest break. As such, the culture
26 as well as the policies and procedures of THE TIPSY CROW did not lend itself to the employees
27 receiving consistent statutory rest breaks wherein they were relieved of all work duties. On
28 information and belief, THE TIPSY CROW did not provide a break room for its employees. The

1 environment at THE TIPSY CROW was not conducive to receiving multiple statutory rest breaks
2 under California law and timely, statutory rest breaks were not authorized or enforced.

3 17. THE TIPSY CROW failed to provide Plaintiff and the other Aggrieved Employees
4 the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout
5 their employment. THE TIPSY CROW did not completely relieve Plaintiff and other employees
6 of all duty during said meal periods. THE TIPSY CROW did not pay to Plaintiff and its hourly,
7 non-exempt employees one additional hour of pay at their regular rate of compensation for each
8 workday that one or more statutory meal periods was not provided. The hourly, non-exempt
9 employees would often not be able to receive timely meal periods before the 5th hour worked that
10 were actually uninterrupted. The latter was due to the workload and due to being in a fast-paced
11 bar environment. Moreover, THE TIPSY CROW required Plaintiff and the Aggrieved Employees
12 to have their handheld transceivers within reach and hearing and respond to the general managers'
13 and other security guards' calls requesting assistance, updates, or answers to general questions at
14 all times, even during their meal and rest periods. Also, Plaintiff worked alone during the day
15 shifts. As such, there was no "breaker" employee to cover for him and allow him to take his meal
16 and rest periods. Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal
17 break was not part of the company culture and was not enforced by THE TIPSY CROW.
18 Consequently, it was the normal practice and custom of THE TIPSY CROW not to authorize,
19 permit, and enforce timely statutory meal periods. On information and belief, THE TIPSY CROW
20 did not provide a break room for its employees. To the extent that THE TIPSY CROW argues
21 that employees receive meal break premium pay for missed meal periods, that argument is
22 inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations
23 themselves, irrespective of whether an employee received the premium payment for a missed,
24 short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated,
25 "section 226.7 does not give employers a lawful choice between providing either meal and rest
26 breaks or an additional hour of pay." *See Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th
27 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the
28 employer has still committed a violation even if the remedy for the violation has been paid. *See*

1 *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work
2 environment and culture at THE TIPS Y CROW was not conducive to receiving consistent,
3 timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums
4 paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or
5 incentive payments as well as overtime compensation.

6 18. Additionally, THE TIPS Y CROW violated Labor Code Section 351 and 353 by
7 taking some of the tips meant for employees and also deducting the tips from Plaintiff and others'
8 earned wages. As such, Plaintiff and the other Aggrieved Employees were not given accurate tips
9 to which they were entitled.

10 19. THE TIPS Y CROW failed to reimburse Plaintiff and the other Aggrieved
11 Employees for business expenses they incurred in direct consequence of the discharge of their
12 duties. THE TIPS Y CROW required Plaintiff and the Aggrieved Employees to use their own
13 personal cell phones to communicate with management concerning work matters on the
14 "WhatsApp" group chat. THE TIPS Y CROW management texted Plaintiff and the others on a
15 regular basis regarding their work schedules. However, THE TIPS Y CROW did not provide
16 Plaintiff and the others with mobile phones and did not reimburse Plaintiff and the other
17 Aggrieved Employees for these mobile phone expenses. Accordingly, THE TIPS Y CROW was
18 in violation of California Labor Code sections 2800 and 2802.

19 20. THE TIPS Y CROW failed to pay its employees all wages due to them within any
20 time period specified by California Labor Code section 204, including the minimum wages and
21 overtime as described above as well as meal/rest break premiums.

22 21. THE TIPS Y CROW did not provide Plaintiff and other Aggrieved Employees
23 accurate, itemized wage statements. Wage statements must include, among other things, total
24 hours worked by the employee. Labor Code § 226(a)(2). THE TIPS Y CROW issued wage
25 statements that inaccurately reflected total hours worked, gross and net wages earned, and the
26 number of hours worked at each hourly rate because of THE TIPS Y CROW's failure to properly
27 pay wages as explained herein. Labor Code §§ 226(a)(1), (2), (5), (9). THE TIPS Y CROW'
28 failure to maintain accurate records as to the hours worked daily by employees also constitutes a

1 violation of Labor Code section 1174(d).

2 22. Finally, because THE TIPSY CROW did not properly pay all wages earned as
3 explained herein, THE TIPSY CROW also failed to pay final wages owed to Plaintiff and other
4 Aggrieved Employees in violation of Labor Code section 203. These earned but unpaid wages
5 include minimum wages and compensation for all hours worked, overtime compensation,
6 premium pay for missed meal and rest breaks, and business expense reimbursement, among
7 others.

8 23. THE TIPSY CROW has also violated Labor Code section 558 and engaged in
9 business practices which violate Business and Professions Code Section 17200.

10 24. Accordingly, Plaintiff now seeks civil penalties on behalf of himself and the
11 Aggrieved Employees based on Defendants' alleged violations of the California Labor Code and
12 the Wage Order.

13 **FIRST (AND ONLY) CAUSE OF ACTION**

14 **CIVIL PENALTIES**

15 **(Lab. Code §§ 2698, *et seq.*)**

16 **(By Plaintiff, on behalf of himself and the other Aggrieved Employees, against all**
17 **Defendants)**

18 25. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

19 26. At all relevant times, Plaintiff and the Aggrieved Employees have been non-
20 exempt employees entitled to the protections of both the Labor Code and the Wage Order.

21 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
22 **THE CORRECT RATES OF PAY**

23 27. Section 2(K) of the Wage Order defines "hours worked" as "the time during which
24 an employee is subject to the control of an employer, and includes all the time the employee is
25 suffered or permitted to work, whether or not required to do so."

26 28. Section 3 of the Wage Order states:

27 The following overtime provisions are applicable to employees 18 years of age or
28 over and to employees 16 or 17 years of age who are not required by law to attend
school and are not otherwise prohibited by law from engaging in the subject work.
Such employees shall not be employed more than eight (8) hours in any workday

1 or more than 40 in a workweek unless the employee receives one and one half
2 (1½) times such employee's regular rate of pay for all hours worked over 40 hours
3 in the workweek. Eight (8) hours of labor constitutes a day's work. Employment
4 beyond eight (8) hours in any workday or more than six (6) days in any workweek
is permissible provided the employee is compensated for such overtime at not less
than:

- 5 (a) One and one-half (1½) times the employee's regular rate of pay for all
6 hours worked in excess of eight (8) hours up to and including twelve (12)
7 hours in any workday, and for the first eight (8) hours worked on the
8 seventh (7th) consecutive day of work in a workweek;
- 9 (b) Double the employee's regular rate of pay for all hours worked in excess
10 of 12 hours in any workday and for all hours worked in excess of eight (8)
11 hours on the seventh (7th) consecutive day of work in a workweek.
- 12 (c) The overtime rate of compensation required to be paid to a nonexempt
13 full-time salaried employee shall be computed by using the employee's
14 regular hourly salary as one fortieth (1/40) of the employee's weekly
15 salary.

16 29. Section 4 of the Wage Order requires an employer to pay non-exempt employees
17 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
18 an employer has actual or constructive knowledge that employees are working.

19 30. Labor Code section 510 states:

20 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
21 in one workday and any work in excess of 40 hours in any one workweek and the
22 first eight hours worked on the seventh day of work in any one workweek shall be
23 compensated at the rate of no less than one and one-half times the regular rate of
24 pay for an employee. Any work in excess of 12 hours in one day shall be
25 compensated at the rate of no less than twice the regular rate of pay for an
26 employee. In addition, any work in excess of eight hours on any seventh day of a
27 workweek shall be compensated at the rate of no less than twice the regular rate of
28 pay of an employee. Nothing in this section requires an employer to combine more
than one rate of overtime compensation in order to calculate the amount to be paid
to an employee for any hour of overtime work.

31. Labor Code section 1194 invalidates any agreement between an employer and an
employee to work for less than the minimum wage required under the applicable Wage Order.

32. Labor Code section 1197 makes it unlawful for an employer to pay an employee
less than the minimum wage required under the applicable Wage Order for all hours worked
during a payroll period.

33. Labor Code section 1198 makes it unlawful for an employer to employ an

1 employee under conditions that violate the Wage Order.

2 34. In conjunction, these provisions of the Labor Code require employers to pay non-
3 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
4 worked, including unrecorded hours when the employer knew or reasonably should have known
5 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
6 Cal.4th 575, 585.)

7 35. At all relevant times during the applicable limitations period, Defendants failed to
8 compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not
9 limited to overtime wages for all overtime hours they worked at the correct rates of pay.

10 36. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
11 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
12 failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked as
13 required by California law.

14 **B. FAILURE TO PROVIDE MEAL PERIODS**

15 37. In relevant part, California Labor Code § 1198 states:

16 The maximum hours of work and the standard conditions of labor fixed by the
17 commission shall be the maximum hours of work and the standard conditions of
18 labor for employees. The employment of any employee for longer hours than those
19 fixed by the order or under conditions of labor prohibited by the order is unlawful.

20 38. In relevant part, In relevant part, California Labor Code § 512 states:

21 An employer shall not employ an employee for a work period of
22 more than five hours per day without providing the employee with
23 a meal period of not less than 30 minutes, except that if the total
24 work period per day of the employee is no more than six hours, the
25 meal period may be waived by mutual consent of both the
26 employer and employee.

27 An employer shall not employ an employee for a work period of
28 more than 10 hours per day without providing the employee with
a second meal period of not less than 30 minutes, except that if the
total hours worked is no more than 12 hours, the second meal
period may be waived by mutual consent of the employer and the
employee only if the first meal period was not waived.

39. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

1 (A) No employer shall employ any person for a work period of
2 more than five (5) hours without a meal period of not less than
3 30 minutes, except that when a work period of not more than
4 six (6) hours will complete the day's work the meal period may
5 be waived by mutual consent of the employer and employee.
6 Unless the employee is relieved of all duty during a 30 minute
7 meal period, the meal period shall be considered an "on duty"
8 meal period and counted as time worked. An "on duty" meal
9 period shall be permitted only when the nature of the work
prevents an employee from being relieved of all duty and when
by written agreement between the parties an on-the-job paid
meal period is agreed to. The written agreement shall state that
the employee may, in writing, revoke the agreement at any
time.

10 (B) If an employer fails to provide an employee a meal period in
11 accordance with the applicable provisions of this Order, the
12 employer shall pay the employee one (1) hour of pay at the
13 employee's regular rate of compensation for each work day that
the meal period is not provided.

14 40. In relevant part, California Labor Code § 226.7 states:

15 (b) An employer shall not require an employee to work during
16 a meal or rest period mandated pursuant to an applicable
17 statute, or applicable regulation, standard, or order of the
18 Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of
Occupational Safety and Health.

19 (c) If an employer fails to provide an employee a meal period
20 or rest period in accordance with a state law, including, but
21 not limited to, an applicable statute or applicable
22 regulation, standard, or order of the Industrial Welfare
23 Commission, the Occupational Safety and Health
24 Standards Board, or the Division of Occupational Safety
and Health, the employer shall pay the employee one
additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest
period is not provided.

25 41. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
26 Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each
27 day they worked five or more hours. Pursuant to California Labor Code § 512, they were also
28 entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

1 42. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees
2 with all required timely 30-minute meal periods free from any work duties in accordance with the
3 Wage Order.

4 43. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved
5 Employees with all timely and uninterrupted meal periods. Furthermore, Defendants failed to pay
6 premium wages for days on which they failed to provide Plaintiff and the other Aggrieved
7 Employees with timely meal periods.

8 44. Plaintiff is informed and believes and thereon alleges that, at all relevant times
9 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
10 which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty
11 meal periods required by California law.

12 **C. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

13 45. In relevant part, California Labor Code § 1198 states:

14 The maximum hours of work and the standard conditions of labor
15 fixed by the commission shall be the maximum hours of work and
16 the standard conditions of labor for employees. The employment
17 of any employee for longer hours than those fixed by the order or
18 under conditions of labor prohibited by the order is unlawful.

19 46. In relevant part, Section 12 of the Wage Order states:

20 Rest Periods:

21 (A) Every employer shall authorize and permit all employees to take
22 rest periods, which insofar as practicable shall be in the middle of
23 each work period. The authorized rest period time shall be based
24 on the total hours worked daily at the rate of ten (10) minutes net
25 rest time per four (4) hours or major fraction thereof. However, a
26 rest period need not be authorized for employees whose total daily
27 work time is less than three and one-half (3 ½) hours. Authorized
28 rest period time shall be counted as hours worked for which there
shall be no deduction from wages.

 (B) If an employer fails to provide an employee a rest period in
accordance with the applicable provisions of this order, the
employer shall pay the employee one (1) hour of pay at the
employee's regular rate of compensation for each workday
that the rest period is not provided.

 47. In relevant part, California Labor Code § 226.7 states:

1 (b) An employer shall not require an employee to work during
2 a meal or rest period mandated pursuant to an applicable
3 statute, or applicable regulation, standard, or order of the
4 Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of
Occupational Safety and Health.

5 (c) If an employer fails to provide an employee a meal period
6 or rest period in accordance with a state law, including, but
7 not limited to, an applicable statute or applicable
8 regulation, standard, or order of the Industrial Welfare
9 Commission, the Occupational Safety and Health
10 Standards Board, or the Division of Occupational Safety
and Health, the employer shall pay the employee one
11 additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest
period is not provided.

12 48. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled
13 to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour
14 period of work, or major fraction thereof.

15 49. Defendants intentionally failed to authorize and permit Plaintiff and the Aggrieved
16 Employees to take all 10-minute rest periods free from any work duties in accordance with the
Wage Order.

17 50. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
18 Aggrieved Employees to take all timely rest periods. Furthermore, Defendants failed to pay
19 premium wages to Plaintiff and the Aggrieved Employees for days on which they failed to
20 authorize and permit Plaintiff and the other Aggrieved Employees to take timely rest periods.

21 51. At all relevant times, due to high workload, Defendants failed to authorize and
22 permit Plaintiff and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every
23 four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest
24 period protections of the Wage Order from the California Division of Labor Standards
25 Enforcement. Moreover, Defendants failed to pay Plaintiff and the Aggrieved Employees
26 premium wages on workdays they failed to authorize and permit them to take 10-minute rest
periods every four hours worked or major fraction thereof.

27 52. Plaintiff is informed and believes and thereon alleges that, at all relevant times
28 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy

1 which resulted in Defendants not authorizing and permitting Plaintiff and the Aggrieved
2 Employees to take all rest breaks required by California law.

3 **D. FAILURE TO INDEMNIFY**

4 53. In pertinent part, California Labor Code section 2802(a) states, “An employer shall
5 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
6 consequence of the discharge of his or her duties.”

7 54. Labor Code section 1198 prohibits employers from employing their employees
8 under conditions prohibited by the Wage Order.

9 55. At all relevant times during the applicable limitations period, as a condition for
10 employment, Defendants required Plaintiff and the Aggrieved Employees to incur certain
11 business expenses. These costs include, but are not limited to, use of personal cell phones to
12 communicate with management concerning work matters. However, Defendants did not
13 reimburse Plaintiff and the others for these business expenses.

14 56. Therefore, Defendants failed to indemnify Plaintiff and the Aggrieved Employees
15 for expenditures incurred as a direct consequence of discharging their duties in violation of
16 California Labor Code sections 2800 and 2802.

17 57. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
18 Defendants maintained a policy and/practice, or lack thereof, which resulted in Defendants’
19 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they
20 incurred during the course of performing their duties.

21 **E. TIP VIOLATIONS**

22 58. Labor Code § 351 prohibits an employer or agent of the employer from collecting,
23 taking, or receiving any gratuity or a part thereof that is paid, given to, or left for an employee by
24 a patron, or deducting any amount from wages due an employee on account of a gratuity, or
25 requiring an employee to credit the amount, or any part thereof, of a gratuity against and as a part
26 of the wages due the employee from the employer. Labor Code § 351 further declares that every
27 gratuity is the sole property of the employee or employees to whom it was paid, given, or left for.

28 59. Labor Code § 353 requires every employer to keep accurate records of all gratuities it
receives, whether received directly from the employee or indirectly by means of deductions from
the wages of the employee or otherwise.

60. At all relevant times during the applicable limitations period, THE TIPSY CROW did

1 not provide the Aggrieved Employees with accurate tips to which they were entitled in violation
2 of Labor Code § 351 and did not maintain records showing tips received and paid to its employees
3 in violation of Labor Code § 353.

4 61. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
5 Defendants maintained a policy and/practice, or lack thereof, which resulted in Defendants' not
6 providing Plaintiff and the Aggrieved Employees with accurate tips and maintaining records
7 showing tips received and paid to employees.

8 **F. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
9 **STATEMENTS**

10 62. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
11 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
12 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
13 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
14 each hourly rate by the employee.

15 63. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
16 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
17 the employer fails to provide accurate and complete information as required by California Labor
18 Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement
19 alone one or more of the following:

20 A. The amount of the gross wages or net wages paid to the employee during
21 the pay period or any of the other information required to be provided on the itemized wage
22 statement pursuant to California Labor Code § 226(a);

23 B. Which deductions the employer made from gross wages to determine the
24 net wages paid to the employee during the pay period;

25 C. The name and address of the employer and, if the employer is a farm labor
26 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
27 and address of the legal entity that secured the services of the employer during the pay period;

28 D. The name of the employee and only the last four digits of his or his social
security number or an employee identification number other than a social security number; and

E. The number of piece-rate units earned and the piece rate.

64. "Promptly and easily determine," as stated in California Labor Code § 226(e),

1 means a reasonable person would be able to readily ascertain the information without reference
2 to other documents or information.

3 65. As alleged herein, at all relevant times during the applicable limitations period,
4 Defendants violated California Labor Code section 226 because they did not properly and
5 accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,
6 the corresponding number of hours worked at each rate by the employee and other requirements
7 of California Labor Code section 226. Defendants failed to state in the wage statements they
8 issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned,
9 including, but not limited to, regular and overtime wages for work they performed off-the-clock
(as described above).

10 66. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with
11 accurate wage statements was knowing and intentional. Defendants had the ability to provide
12 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally
13 provided wage statements that Defendants knew were not accurate.

14 67. As a result of being provided with inaccurate wage statements by Defendants,
15 Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive
16 accurate wage statements were violated and they were misled about the amount of wages they
17 had actually earned and were owed. In addition, the absence of accurate information on their wage
18 statements prevented immediate challenges to Defendants' unlawful pay practices, has required
19 discovery and mathematical computations to determine the amounts of wages owed, has caused
20 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
21 submission of inaccurate information about wages to state and federal government agencies.
22 Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage
23 statements whether Defendants complied with their obligations under California Labor Code
24 section 226(a).

25 **G. UNTIMELY WAGES DURING EMPLOYMENT**

26 68. Labor Code § 204 states:

- 27 (a) All wages, other than those mentioned in Section 201,
28 201.3, 202, 204.1, or 204.2, earned by any person in any
employment are due and payable twice during each
calendar month, on days designated in advance by the
employer as the regular paydays. Labor performed
between the 1st and 15th days, inclusive, of any calendar

month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

69. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiff and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Defendants also failed to provide Plaintiff and the Aggrieved Employees with all premium wages on workdays they failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

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1 **H. UNTIMELY FINAL WAGES**

2 70. Labor Code § 201 provides that all earned and unpaid wages of an employee who
3 is discharged are due and payable immediately at the time of discharge.

4 71. Labor Code § 202 provides that all earned and unpaid wages of an employee who
5 quits after providing at least 72-hours notice before quitting are due and payable at the time of
6 quitting and that all earned and unpaid wages of an employee who quits without providing at least
7 72-hours notice before quitting are due and payable within 72 hours.

8 72. By failing to pay earned minimum and premium wages to Plaintiff and the
9 Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in
10 violation of Labor Code § 201 or § 202.

11 73. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
12 and the Aggrieved Employees all of their earned and unpaid wages (described above) have been
13 willful in that, at all relevant times, Defendants have deliberately maintained policies and
14 practices that violate the requirements of the Labor Code and the Wage Order, even though at all
15 relevant times, they have had the ability to comply with those legal requirements.

16 **I. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

17 74. Labor Code § 1174 states:

18 Every person employing labor in this state shall:

19 ...

20 (c) Keep a record showing the names and addresses of all employees
employed and the ages of all minors.

21 (d) Keep, at a central location in the state or at the plants or establishments
22 at which employees are employed, payroll records showing the hours
23 worked daily by and the wages paid to, and the number of piece-rate
24 units earned by and any applicable piece rate paid to, employees
25 employed at the respective plants or establishments. These records shall
26 be kept in accordance with rules established for this purpose by the
27 commission, but in any case shall be kept on file for not less than three
years. An employer shall not prohibit an employee from maintaining a
personal record of hours worked, or, if paid on a piece-rate basis, piece-
rate units earned.

28 75. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

76. Section 7 of the Wage Order states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

77. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

78. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees.

79. Accordingly, Plaintiff seeks an award of civil penalties against the Defendants on behalf of himself and all of the other Aggrieved Employees as follows: (1) \$500 for each

1 aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code
2 section 1174.5); and (2) \$100 for each aggrieved employee for each initial violation of Labor
3 Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per
4 pay period (penalties set by Labor Code section 2699(f)(2)).

5 **J. CIVIL PENALTIES SOUGHT**

6 80. During the applicable time period, Defendants violated California Labor Code
7 §§ 201, 202, 203, 204, 226, 226.7, 351, 353, 510, 512, 558, 1174, 1194, 1197, 1198, 2802 and
8 related Labor Code statutes.

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

12 82. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
13 Employees are entitled to recover civil penalties for each of the Defendants' violations of
14 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 351, 353, 510, 512, 558, 1174, 1194,
15 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

16 A. For violations of California Labor Code § 204, one hundred dollars
17 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
18 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
19 (penalty amounts established by California Labor Code § 210).

20 B. For violations of California Labor Code § 226, two hundred fifty dollars
21 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee
22 for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

23 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
24 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
25 employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for
26 each pay period for which the employee was underpaid (penalty amounts established by
27 California Labor Code § 558).

28 ///

1 D. For violations of California Labor Code § 1174, five hundred dollars
2 (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established
3 by Labor Code § 1174.5).

4 E. For violations of California Labor Code § 1197, one hundred dollars
5 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
6 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
7 (regardless of whether the initial violations were intentionally committed) (penalty amounts
8 established by California Labor Code § 1197.1).

9 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 351,
10 353, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
11 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved
12 employee per pay period for each subsequent violation (penalty amounts established by
13 California Labor Code § 2699(f)(2)).

14 **K. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

15 83. Plaintiff has complied with the procedures for bringing suit specified in California
16 Labor Code § 2699.3. By letter dated February 12, 2024, Plaintiff gave written notice by certified
17 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific
18 provisions of the California Labor Code alleged to have been violated, including the facts and
19 theories to support the alleged violations. The LWDA has failed to take action in response within
20 65 days of Plaintiff’s notice dated February 1, 2024.

21 84. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
22 Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in
23 connection with their claims for civil penalties.

24 **PRAYER FOR RELIEF**

25 85. WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees,
26 prays for relief and judgment against Defendants as follows:

- 27 A. Civil penalties;
28 B. Costs of suit;
C. Reasonable attorneys’ fees; and

1 D. Such other relief as the Court deems just and proper.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiff, on behalf of himself and all other Aggrieved Employees, hereby demands a jury
4 trial on all issues so triable.

5 Respectfully submitted,

6 Dated: April 24, 2024

MM LAW, APC

7 By: Maralle Messrelan
8 Maralle Messrelan, Esq.
9 Attorney for Plaintiff,
10 JUAN DE LEON SANCHEZ, and all
11 others similarly situated
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