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of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JOSE E. VIDAL, an individual, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

SOUTH COAST WINERY, INC., a
California stock corporation; CARTER
HOSPITALITY COLLECTIONS, INC., a
California stock corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 30-2024-01378750-CU-OE-CXC

CLASS ACTION

Assigned for All Purposes To:

Hon. Melissa R. McCormick

Dept.: CX104

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and Secret Under Payment of Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Labor Code § 226.7;
4. Rest-Break Liability Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
10. Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802; and
11. Violation of Business & Professions Code § 17200 *et seq.*
12. Penalties under PAGA Labor Code § 2698

DEMAND FOR JURY TRIAL

Original Complaint Filed: February 13, 2024

Trial Date: None Set

1 Plaintiff JOSE E. VIDAL (hereinafter “Plaintiff”), on behalf of himself and other similarly
2 situated non-exempt, hourly employees employed by Defendants within the state of California
3 during the relevant time period (collectively, “Employees”; individually, “Employee”), complains
4 of Defendants, and each of them, as follows:

5 INTRODUCTION

6 1. Plaintiff has filed an Amendment to Complaint/Cross Complaint form informing
7 the Court that Plaintiff incorrectly listed CARTER HOSPITALITY COLLECTIONS, INC. as a
8 named Defendant in Plaintiff’s original class action complaint filed on February 13, 2024. Plaintiff
9 informed the Court that the true name of the party to be listed should be Carter Hospitality Group,
10 LLC. This amended complaint is being filed therefore to both remedy the improperly named
11 Defendant and add a claim under the Private Attorneys’ General Act (“PAGA”).

12 2. Plaintiff brings this action on behalf of himself and all current and former
13 Employees within the State of California who, at any time from four years prior to the filing of
14 this lawsuit, are or were employed as non-exempt, hourly employees, including those employed as
15 servers, bartenders, line cooks, bussers, and those in similar and related positions by Defendants
16 SOUTH COAST WINERY, INC., a California stock corporation; CARTER HOSPITALITY
17 GROUP, LLC, a Florida limited liability company originally improperly named as Carter
18 Hospitality Collections, Inc.; and DOES 1 through 50, inclusive (all defendants being collectively
19 referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of them, violated
20 various provisions of the California Labor Code, relevant orders of the Industrial Welfare
21 Commission (“IWC”), and the California Business & Professions Code, and seeks redress for
22 these violations.

23 3. Plaintiff and the Class Members worked as hourly, non-exempt Employees for
24 Defendants in positions generally pertaining to providing hospitality related services to
25 Defendants’ customers and guests. Plaintiff, and upon information and belief the other similarly
26 situated Employees in the Class, were required to perform work tasks based out of Defendants’
27 hotels, resorts, wineries, and banquets in California. Plaintiff was employed by Defendants as a
28 server, and Defendants tasked him with duties that included taking food and beverage orders from

1 guests, delivering food and beverages, and collecting payments from guests and customers.

2 4. Defendants employed other similarly situated Employees in similar and related
3 positions based out of Defendants' hotels, resorts, wineries, and banquet facilities throughout
4 California, including in the city of Temecula. Plaintiff and the other similarly situated Class
5 Members worked at Defendants' behest without being paid all wages due and without being
6 provided all required breaks. More specifically, Plaintiff and the other similarly situated Class
7 Members were employed by Defendants and shared similar job duties and responsibilities, were
8 subjected to the same policies and practices, and endured similar violations at Defendants' hands.

9 5. Defendants required Plaintiff and the Employees in the Class to work off the clock
10 and failed to accurately record the hours they were on the clock, failed to pay them at the
11 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
12 resignation, and failed to provide Plaintiff and Class Members with accurate itemized wage
13 statements that prevented them from learning of these unlawful pay practices. Defendants also
14 failed to provide Plaintiff and the Class with lawful meal and rest periods, as Employees were
15 required to remain under Defendants' control and were not provided with the opportunity to take
16 full uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and
17 the applicable paragraphs of the IWC Wage Orders.

18 6. Defendant SOUTH COAST WINERY, INC. is a California stock corporation
19 which lists its principal address in Santa Ana, California with the California Secretary of State. It
20 lists a registered corporate agent with an address in Santa Ana, California and in Orange County.
21 South Coast Winery, Inc. lists its type of business as "Hospitality." The wage statements issued to
22 Plaintiff list "South Coast Winery" as his employer.

23 7. Upon information and belief, CARTER HOSPITALITY GROUP, LLC ("Carter
24 Hospitality") owns or otherwise operates as South Coast Winery, Inc. and is either a joint
25 employer with South Coast Winery, Inc., is a d/b/a of South Coast Winery, Inc., or is a parent
26 company of South Coast Winery, Inc. Carter Hospitality is not registered with the California
27 Secretary of State but lists it list a principal address in Kissimmee, Florida and a mailing address
28 in Santa Ana, California with Florida's Division of Corporations. Carter Hospitality's website

1 explains, “[e]stablished in 2011, Carter Hospitality Group, LLC. is a family-owned hospitality
2 company with 4 hotels and resorts as well as 3 wineries across the United States. Based in Orange
3 County, California, the company manages and owns a portfolio of luxury properties
4 including South Coast Winery Resort & Spa, Temecula, California; Carter Estate Winery and
5 Resort, Temecula California; and Carter Creek Winery Resort & Spa, Hill Country, Texas.”

6 8. Plaintiff was employed by Defendants in Temecula, California and Riverside
7 County, and Defendants employed other Class Members in Temecula and at the other hotels,
8 resorts, wineries, and banquet facilities throughout California. The website for Cater Hospitality
9 explains, “Based in Orange County, California, the company manages and owns a portfolio of
10 luxury properties including South Coast Winery Resort & Spa, Temecula, California; Carter
11 Estate Winery and Resort, Temecula California; and Carter Creek Winery Resort & Spa, Hill
12 Country, Texas. Carter Hospitality Group also serves as the owner-franchisee for Red Lion Hotel
13 Orlando Lake Buena Vista South, Orlando Florida. The company also owns the South Coast
14 Winery in Temecula California, Carter Estate Winery in Temecula California...”

15 9. This Court has jurisdiction over this Action pursuant to California Code of Civil
16 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
17 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
18 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
19 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
20 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Orange County and
21 Defendants listed a principal California address in Santa Ana, California. Defendants also employ
22 Class Members at hotels, resorts, wineries, and banquet facilities throughout California.

23 10. The true names and capacities, whether individual, corporate, associate, or
24 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
25 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
26 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
27 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
28 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend

1 this Complaint to reflect the true names and capacities of the Defendants designated herein as
2 Does 1 through 50 when their identities become known.

3 11. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
4 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
5 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
6 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
7 all respects as the employers or joint employers of Employees. Defendants, and each of them,
8 exercised control over the wages, hours or working conditions of Employees, created and
9 implemented the policies and practices that governed the employment of Plaintiff and the Class
10 Members and dictated their job duties and responsibilities, or otherwise suffered or permitted
11 Plaintiff and the other Employee Class Members to work, or engaged them, thereby creating a
12 common law employment relationship with the Employee Class Members. Therefore, Defendants,
13 and each of them, employed or jointly employed the Employee Class Members.

14 **FACTUAL BACKGROUND**

15 12. The Employees who comprise the Class, including Plaintiff, are non-exempt
16 employees pursuant to the applicable Wage Order of the Industrial Welfare Commission
17 ("IWC"). During the period of four years prior to the filing of this action through its resolution,
18 the Employee Class Members were employed by Defendants and worked in non-exempt
19 positions at the direction of Defendants in the State of California. Plaintiff and the Class
20 Members were either not paid by Defendants for all hours worked or were not paid at the
21 appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to
22 pay Plaintiff and the Class Members all wages due and owing, including compensation for off the
23 clock work, noncompliant meal and rest breaks, and Defendants' failure to furnish accurate wage
24 statements, all in violation of various provisions of the California Labor Code and applicable
25 paragraphs of the IWC Wage Orders.

26 13. During the course of Plaintiff and the Class Members' employment with
27 Defendants, they were not paid all wages they were owed, including for all work performed
28 (resulting in "off the clock" work) and for all their overtime hours worked, and they were not

1 paid at the required rates for overtime. This has resulted in systematic and ongoing violations of
2 the California Labor Code and relevant IWC Wage Orders. Upon information and belief,
3 Defendants employ other non-exempt, hourly employees as servers, bartenders, line cooks,
4 bussers, and in similar and related positions based out of their hotels, resorts, wineries, and
5 banquets in California.

6 14. Plaintiff was generally scheduled to work five to six days per week for eight to
7 nine hours per shift. Plaintiff was generally scheduled to work Monday and Tuesday from 10 a.m.
8 to 5 p.m., Wednesday at 7:30 a.m. to 4:30 p.m. or 5:00 p.m., and Saturday and Sunday at 9:00
9 a.m. to 4:30 p.m. or 5:00 p.m.. On many occasions, Plaintiff was also required to work longer
10 shifts with an additional hour or two of time if approved by Defendants to be paid at overtime
11 premium rates. However, Plaintiff was also required by Defendants to endure substantial off the
12 clock work before and after his scheduled shift hours.

13 15. Defendants' policy and practice of requiring systematic off the clock work flowed
14 in part from their unlawful timekeeping procedures. Defendants required that clock in and clock
15 out times, as well as meal period clock in and clock out times, be inputted using their employee
16 ID or finger print in a time clock. Defendants instructed Plaintiff and the Class Members to clock
17 out for thirty minutes for a meal period and to do so before the fifth hour of work as required
18 under the Labor Code and Wage Orders. Defendants instructed Plaintiff and the Class Members
19 to thus record compliant meal breaks without regard to whether they were actually taken on time
20 or for the full duration or were interrupted by customer, guests, and management demands and
21 other work requirements. Additionally, on many occasions, Defendants gave Plaintiff verbal
22 warnings when his clock in and clock out time records failed to reflect compliance with
23 Defendants' timekeeping instructions. By deducting 30 minutes for a meal period that was
24 generally not lawfully provided if at all, Defendants effectively and unlawfully deducted at least
25 30 minutes of hours worked from each Employee's daily work shifts.

26 16. Plaintiff was also required to work off the clock after he clocked out for a meal
27 period. Plaintiff frequently juggled tables and attended to the needs of guests and customers
28 during his meal periods, especially if Defendants were understaffed on any given shift. Plaintiff

1 estimates that at least three of his meal periods during a workweek were interrupted by work
2 related demands and tasks. Thus, off the clock work occurred in the form of the unlawful
3 deduction of 30 minutes of hours worked for an alleged thirty-minute-long meal period that was
4 provided generally untimely if at all. Additional off the clock work occurred in the instances
5 where Plaintiff and Class Members were required to wait in line to clock in for their shifts or
6 clock in for lunch.

7 17. Additionally, Defendants paid performance-based bonuses, “BQT” payments,
8 service charges, and other form of remuneration besides hourly rates to Employees in the Class,
9 and upon information and belief, Defendants failed to include these additional forms of
10 remuneration in the regular rate used to calculate and pay the overtime that Defendants did pay.
11 Defendants also unlawfully secretly lowered Plaintiff’s pay wage while purporting to pay a
12 higher wage, and failed to inform Plaintiff before doing so. Defendants thus failed to provide
13 notice as required by the California Labor Code, including § 223.

14 18. Plaintiff was therefore not paid for all his hours worked at the required minimum,
15 overtime and double time wage rates due to Defendants’ uniformly applied and unlawful policy
16 and practice of requiring him to work off the clock and without pay. Defendants systematically
17 underpaid Plaintiff and the Class Members by failing to pay them at the required overtime rates
18 for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a
19 day at the required double time rate. Upon information and belief, the Class Members were bound
20 by similar scheduling and timekeeping policies and endured similar violations at Defendants’
21 hands as Plaintiff.

22 19. Defendants have either failed to maintain timekeeping records for Plaintiff that
23 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants
24 required and the actual hours Plaintiff worked or the breaks he received. By failing to pay for all
25 hours worked, and by under-recording regular hours to the detriment of the Class Members,
26 Defendants have committed knowing and intentional ongoing violations of the record keeping
27 requirements under the Labor Code, including section 1174, by either failing to maintain records
28 or retaining inaccurate ones.

1 20. The failure to pay for all hours worked and underpayment of wages to Plaintiff
2 and the Class Members is and has been a direct consequence of Defendants' unlawful
3 compensation policies and practices, which upon information and belief applied uniformly to the
4 Class Members working based out of Defendants' hotels, resorts, wineries, and banquets facilities
5 throughout California. As a result of the above-described unlawful requirements to work off the
6 clock, the failure to accurately record all hours worked and pay wages at the correct rates, and the
7 other wage violations they endured at Defendants' hands, Plaintiff and the Class Members were
8 not properly paid all wages earned and all wages owed to them by Defendants, including when
9 working more than eight hours in any given day and/or more than forty hours in any given week.

10 21. Therefore, from at least four years prior to the filing of this lawsuit and continuing
11 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
12 hours worked and failing to pay minimum wages for all time worked, as required by California
13 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
14 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
15 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
16 week and double-time rates for all hours worked in excess of twelve hours a day, in violation of
17 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

18 22. Defendants also failed to provide Plaintiff and the Class Members with their
19 required meal periods and the at least two ten-minute rest breaks as required at a minimum for
20 Plaintiff's scheduled shift durations. The above described off the clock work contributed to
21 Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Class
22 Members, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s).
23 Defendants similarly failed to authorize and permit Plaintiff and the employee Class Members to
24 take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the
25 IWC Wage Order(s).

26 23. More specifically, Plaintiff worked shifts that entitled him to at least one meal
27 period. As addressed above, Defendant's managers required Plaintiff and the Class Members to
28 clock out for 30 minutes for a meal period and would deduct that time from hours worked for the

1 shift. To whatever extent there was ever a schedule for meal periods, it went by the wayside
2 quickly as there always seemed to be a customer or guest to attend to. This led to systematically
3 late meal periods, if they were provided at all, and on-duty meal periods that were incessantly
4 interrupted by customer, guest, and management demands and required job duties and tasks to be
5 performed, which required Employees to remain under Defendants' control during breaks.
6 Management expectations, along with understaffing of employees, contributed to Employees
7 working through meal periods or not taking them or taking them late so work could be
8 accomplished or they were required to remain under Defendants' control during meal periods.

9 24. Additionally, Defendants instructed Plaintiff and the Class Members to clock out
10 for at least 30 minutes for a meal period and to do so before the fifth hour of work as required
11 under the Labor Code and Wage Orders. Defendants instructed Plaintiff and the Class Members to
12 thus record compliant meal breaks without regard to whether they were actually taken on time or
13 for the full duration or were interrupted by customer, guest, and management demands and other
14 work requirements. Plaintiff recalls that at least three of his meal periods per week were
15 interrupted with work related demands, and despite that fact, Defendants automatically deducted
16 thirty minutes for meal period on each work shift without regard to whether it was lawful.

17 25. Therefore, meal period violations systematically occurred ongoing throughout all
18 of Plaintiff's work shifts where Defendants both failed to provide a lawful meal period or penalty
19 payment and then also unlawfully deducted 30 minutes from Plaintiff's hours worked for the day.
20 To the extent Defendants ever did pay Plaintiff a meal period premium, they failed to include all
21 forms of remuneration beyond hourly wages in the regular hourly rate used to pay the one-hour
22 premium payment. Upon information and belief, the other Class Members were subjected to
23 similar unlawful policies and practices and endured similar violations as Plaintiff.

24 26. Defendants thus failed to provide all the legally required unpaid, off-duty meal
25 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
26 Members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
27 Members were required to perform work as ordered by Defendants for more than five hours
28 during a shift without receiving compliant meal periods. Additionally, as addressed above,

1 Defendants followed a practice of requiring off the clock work in a manner that would impact
2 when Employees were to receive meal periods and rest breaks and required them to respond to
3 work calls and inquiries and other demands during breaks, thus leading to further violations.

4 27. Upon information and belief, Defendants' systems did not automatically generate a
5 meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours
6 into a work shift or in the event the time punch records reflected a meal period of less than thirty
7 minutes. However, upon information and belief, in the event Defendants did pay any meal period
8 premiums, they did so at the employee's customary regular rate of hourly compensation without
9 including all forms of remuneration in that hourly rate calculation, for example by omitting
10 bonuses and the like from the rate at which meal premiums were paid.

11 28. Defendants thus followed uniformly applied policies of not providing all required
12 meal periods to their Employees. Meal periods were often not properly provided, as work and
13 customer demands impermissibly shortened their breaks. Even when Plaintiff and the Class
14 Members were able to take a meal period, it was generally interrupted by work duties or was taken
15 after the fifth hour of work. Additionally, as addressed above, Defendants followed a practice of
16 requiring off the clock work in a manner that would impact when Employees were to receive meal
17 periods and rest breaks, thus leading to further violations.

18 29. As a result, Defendants' failure to provide Plaintiff and the Class Members with all
19 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
20 periods is and will be evidenced by Defendants' business records, or lack thereof. As further
21 detailed above, Defendants also failed to pay Employees "premium pay," i.e. one hour of wages at
22 each Employee's effective regular hourly rate of compensation for each meal period or rest break
23 that Defendants failed to provide or deficiently provided.

24 30. Therefore, for at least four years prior to the filing of this action and through to the
25 present, Plaintiff and the Class Members were unable to take off-duty breaks or were otherwise
26 not provided with the opportunity to take required breaks as required under the Labor Code and
27 Wage Orders due to Defendants' policies and practices. On the occasions when Plaintiff and the
28 Class Members were provided with a meal period, it was often untimely or interrupted, or was

1 impermissibly shortened, and Employees were not provided with one hour's wages in lieu thereof.

2 Meal period violations thus occurred in one or more of the following manners:

- 3 (a) Class Members were not provided full thirty-minute duty free meal periods
4 for work days in excess of five hours and were not compensated one hour's
5 wages in lieu thereof, or were not compensated at the correct regular rate
6 of compensation, all in violation of, among others, Labor Code §§ 226.7,
7 512, and the applicable Industrial Welfare Commission Wage Order(s);
- 8 (b) Class Members were not provided second full thirty-minute duty free meal
9 periods for work days in excess of ten hours;
- 10 (c) Class Members were required to work through at least part of their daily
11 meal period(s);
- 12 (d) Meal periods were provided after five hours of continuous work during a
13 shift; and
- 14 (e) Class Members were restricted in their ability to take a full thirty-minute
15 meal period.

16 31. Similar violations resulted from Defendants' failure to authorize and permit
17 Plaintiff and the Class Members to take duty-free, net ten minute rest breaks for every four hours
18 of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class Members
19 were either not authorized permitted the opportunity to take a rest break, or were required to
20 remain under Defendants' control and respond to calls and instructions from management, guest,
21 customer, and job demands if and when they even attempted to take one. Upon information and
22 belief, Defendants thus also failed to authorize and permit employees to leave the premises during
23 rest breaks, evidencing Defendants' policy and practice of requiring Plaintiff and the Class
24 Members to remain under their control during required off-duty rest break times.

25 32. Rest breaks were not scheduled or were often received a rest break with a
26 violation. Defendants' uniformly applied policies and practices resulted in untimely and
27 shortened or on-duty rest breaks when they were authorized and permitted. Plaintiff and the Class
28 Members worked shifts of at least eight hours, which required at least two rest breaks, and often

1 worked shifts over ten hours, which required at least three rest breaks. Even on the occasions
2 when Defendants authorized and permitted Plaintiff to take a first rest break, he was not
3 permitted to take a second or a third break, and those that were provided were often late and
4 generally interrupted by job duties and requirements. During Plaintiff's entire employment
5 duration with Defendants, he cannot recall a time when he took a second or third rest break even
6 when he was scheduled to work for over 10 hours.

7 33. During rest periods, employers must relieve employees of all duties and relinquish
8 control over how employees spend their time. Plaintiff and the Class Members were and are
9 under Defendants' control when they are working through rest breaks and remaining under
10 Defendants' control. Defendants have also provided either impermissibly shortened or untimely
11 meal and rest breaks to Plaintiff and the Class Members. Plaintiff and the Employees in the Class
12 were thus not authorized and permitted to take lawful rest periods, were systematically required
13 by Defendants to work through or during breaks, and were not provided with one hour's wages in
14 lieu thereof. They were required to remain on-duty during breaks or portions of their breaks, thus
15 making them either untimely or shortened and on-duty, and they were also prevented from
16 leaving the premises and otherwise remain under Defendants' control during rest breaks under
17 Defendants' uniformly applied policies and practices. Rest period violations therefore arose in
18 one or more of the following manners:

- 19 (a) Class Members were required to work without being provided a minimum
20 ten minute rest period for every four hours or major fraction thereof worked
21 and were not compensated one hour of pay at their regular rate of
22 compensation for each workday that a rest period was not provided;
- 23 (b) Class Members were not authorized and permitted to take timely rest periods
24 for every four hours worked, or major fraction thereof;
- 25 (c) Class Members were required to remain on-duty during rest periods or
26 otherwise had their rest periods interrupted by work demands; and
- 27 (d) Class Members were required to remain under Defendants' control during
28 rest breaks.

1 34. From at least four years prior to the filing of this lawsuit and continuing to the
2 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
3 deducting the Employees' earned wages, including by the above described off the clock work and
4 on-duty work while on unpaid meal breaks. In addition to failing to authorize and permit rest
5 breaks, Defendants unlawfully deducted up to 30 minutes for thirty-minute meal periods that were
6 rarely provided or otherwise received without violation. Thus, by deducting 30 minutes for a meal
7 period that was generally not lawfully provided if at all, Defendants effectively and unlawfully
8 deducted at least 30 minutes of hours worked from each Employee's daily work shifts. By not
9 compensating Employees for all hours worked, Defendants unlawfully deducted wages earned in
10 violation of Labor Code § 221.

11 35. Defendants also violated California Labor Code § 246 by not providing all
12 required paid sick days to Plaintiff and the Class Members. Labor Code § 246 provides that an
13 Employee who "works in California for the same employer for 30 or more days within a year
14 from the commencement of employment is entitled to paid sick days as specified in this section."
15 Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their
16 required and earned sick days, in violation of Labor Code § 246. Additionally and upon
17 information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to
18 the Class Members during the relevant time period, including by failing to provide two work
19 weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and
20 248.2 and including damages and penalties as these sections are enforced through Labor Code §
21 248.5, which requires that: "If paid sick days were unlawfully withheld, the dollar amount of paid
22 sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250),
23 whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars
24 (\$4,000), shall be included in the administrative penalty." Plaintiff accordingly seeks this relief
25 available for Defendants' failure to provide Employees with all their required and earned sick
26 days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1,
27 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246,
28 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees

1 and costs pursuant to Labor Code § 2699(g)(1).

2 36. As a result of these illegal policies and practices, Defendants also engaged in and
3 enforced the following additional unlawful practices and policies against Plaintiff and the Class
4 Members he seeks to represent:

- 5 (a) failing to pay all wages owed to Class Members who either were discharged,
6 laid off, or resigned in accordance with the requirements of Labor Code §§
7 201, 202, 203;
- 8 (b) failing to pay all wages owed to the Class Members twice monthly in
9 accordance with the requirements of Labor Code § 204;
- 10 (c) failing to pay Class Members all wages owed, including all meal and rest
11 period premium wages, and failing to pay them at the regular rate of
12 compensation;
- 13 (d) failing to maintain accurate records of Class Members' hours worked and
14 earned wages and meal periods in violation of Labor Code §§ 226 and
15 1174(d) and section 7 of the applicable IWC Wage Orders; and
- 16 (e) failing to produce timekeeping records in response to Plaintiff's timely and
17 lawful request to receive them under these authorities.

18 37. Defendants have also consistently failed to provide Class Members with timely,
19 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,
20 including by the above-described requirement of off the clock work, failure to pay all overtime
21 and double time wages owed and failure to pay them at the appropriate premium rates, and failure
22 to pay premium wages for unprovided or otherwise unlawful meal and rest breaks, or by
23 miscalculating any overtime or meal period or rest break premium wages and by the systematic
24 and unlawful deductions Defendants took from Employee wages. Defendants have also made it
25 difficult to account with precision for the unlawfully withheld wages and meal and rest period
26 compensation owed to Plaintiff and the Class, during the liability period, including because they
27 did not calculate the regular rate of pay correctly when paying overtime or meal period premiums
28 and because they did not implement and preserve a record-keeping method as required for non-

1 exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable
2 California Wage Orders. Defendants also failed to list the employee's name, social security or
3 employee ID, and address on the paystub, and failed to indicate the pay period on Plaintiff's
4 paystubs. Defendants also failed to accurately record and pay for all regular and overtime hours
5 worked and submitted by Plaintiff and the Class Members, including by failing to pay all overtime
6 hours at the correctly calculated overtime premium rate. Defendants also failed to list the name of
7 the actual employer and on wage statements issued in violation of Labor Code § 226(a)(8).

8 38. Defendants have thus also failed to comply with Labor Code § 226(a) by
9 inaccurately reporting total hours worked and total wages earned by Plaintiff and the Class
10 Members, along with the appropriate applicable rates, among others requirements. Plaintiff and
11 Class Members are therefore entitled to penalties not to exceed \$4,000.00 for each employee
12 pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the
13 applicable California IWC Wage Orders by failing to maintain time records showing when the
14 employee begins and ends each work period, meal periods, and wages earned pursuant to Labor
15 Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from
16 payment of wages and accurately reporting total hours worked.

17 39. Defendants also required Plaintiff and the Class Members to work hours off the
18 clock for which they were not compensated, including during interrupted or otherwise on-duty
19 meal and rest periods and were not provided with sick pay and supplemental sick leave and were
20 subjected to systematic off the clock work. Defendants also failed to pay all overtime premium
21 wages owed for work conducted on a work shift and a workday or failed to pay it at the correct
22 rate, as addressed above. Therefore, Defendants have also followed a uniform and consistent
23 policy of failing to pay all wages owed to Plaintiff and other similarly situated Employees at the
24 time of their termination or within seventy-two hours of their resignation, as required by
25 California wage-and-hour laws.

26 40. Additionally, from at least four years prior to the filing of this lawsuit and
27 continuing to the present, Defendants have regularly required Plaintiff, and upon information and
28 belief the other Class Members, to incur necessary business expenses, including by requiring them

1 to launder their uniforms at their own expense. Plaintiff and the Class Members must be
2 reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants
3 systematically failed to do so.

4 41. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
5 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 212, 213, 218, 218.5, 218.6, 221, 223,
6 226, 226.4, 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12,
7 1185, 1194, 1194.2 1197, 1198, 1198.5, 1199, and 2802, 2698 *et seq.*, and California Code of
8 Regulations, Title 8, section 11000 *et seq.*

9 42. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
10 and the Class Members seek injunctive relief, restitution, and disgorgement of all benefits
11 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
12 fraudulent practices alleged in this Complaint.

13 **CLASS ALLEGATIONS**

14 43. Plaintiff brings this class action on behalf of himself and all others similarly
15 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (often
16 referred to as “the Class” or “Class Members”) defined as follows: “All individuals employed by
17 Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and
18 ending on a date as determined by the Court (“the Class Period”), and who have been employed as
19 non-exempt, hourly employees by Defendants within the State of California.” This includes all
20 types of servers, bartenders, line cooks, bussers, and those in similar and related positions. Further,
21 Plaintiff seeks to represent the Subclasses composed of and defined as follows:

22 a. Subclass 1. Minimum Wages Subclass. All Class Members who were not
23 compensated for all hours worked for Defendants at the applicable minimum wage.

24 b. Subclass 2. Wages and Overtime Subclass. All Class Members who were not
25 compensated for all hours worked for Defendants at the required rates of pay, including for all
26 hours worked in excess of eight in a day and/or forty in a week.

27 c. Subclass 3. Meal Period Subclass. All Class Members who were subject to
28 Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-

1 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

2 d. Subclass 4. Rest Break Subclass. All Class Members who were subject to
3 Defendants' policy and/or practice of failing to authorize and permit Employees to take
4 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
5 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

6 e. Subclass 5. Wage Statement Subclass. All Class Members who, within the
7 applicable limitations period, were not provided with accurate itemized wage statements.

8 f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class Members
9 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,
10 including by requiring off the clock work.

11 g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class
12 Members who were subject to Defendants' policy and practice of not timely paying all wages
13 earned when they were due and payable at least twice monthly.

14 h. Subclass 8. Termination Pay Subclass. All Class Members who, within the
15 applicable limitations period, either voluntarily or involuntarily separated from their employment
16 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
17 termination.

18 i. Subclass 9. Payroll Records Subclass. All Class Members who were subject to
19 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
20 by California wage-and-hour laws.

21 j. Subclass 10. Expense Reimbursement Subclass. All Class Members who incurred
22 necessary and reasonable expenses in connection with performing their job duties for Defendants
23 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

24 k. Subclass 11. UCL Subclass. All Class Members who are owed restitution as a
25 result of Defendants' business acts and practices, to the extent such acts and practices are found to
26 be unlawful, deceptive, and/or unfair.

27 44. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
28 modify the class description with greater particularity or to provide further division into subclasses

1 or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
2 against Defendants, the Class Period should be adjusted accordingly.

3 45. Defendants, as a matter of company policy, practice and procedure, and in violation
4 of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements,
5 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
6 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time
7 worked by the Plaintiff and the other members of the Class, even though Defendants enjoyed the
8 benefit of this work, required Employees to perform this work and permitted or suffered to permit
9 this work. Defendants have uniformly denied these Class Members wages to which these
10 employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in
11 order to unfairly cheat the competition and unlawfully profit.

12 46. This action has been brought and may properly be maintained as a class action
13 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
14 of interest in this litigation and the proposed Class is easily ascertainable from the employment
15 records for Plaintiff and the Class Members that Defendants are required to maintain under
16 California law.

17 **A. Numerosity**

18 47. The potential members of the class as defined are so numerous that joinder of all
19 the member of the class is impracticable. While the precise number of Class Member has not been
20 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
21 time period relevant to this lawsuit employed, at least over one hundred Employees who satisfy
22 the Class definition within the State of California. Plaintiff alleges that Defendants’ employment
23 records will provide information as to the number and location of all Class Members.

24 **B. Commonality**

25 48. There are questions of law and fact common to the Class that predominate over any
26 questions affecting only individual Class Members. The common questions are numerous and
27 substantial and flow from Defendants’ uniform policies and/or practices of violating the California
28 Labor Code addressed above. As such, these common questions predominate over individual

1 questions concerning each individual Class Member's showing as to his or her eligibility for
2 recovery or as to the amount of damages. These common questions of law and fact include:

- 3 a. Whether Defendants failed to pay Employees minimum wages;
- 4 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 5 c. Whether Defendants failed to pay Employees overtime as required under Labor
6 Code § 510;
- 7 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
8 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
9 premium pay in lieu thereof;
- 10 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
11 Orders, by failing to authorize and permit Employees to take requisite rest breaks
12 or provide premium pay in lieu thereof;
- 13 f. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not
14 providing employees with all required sick days and COVID-19 supplemental sick
15 leave;
- 16 g. Whether Defendants violated Labor Code § 226(a) by providing Employees with
17 inaccurate wage statements;
- 18 h. Whether Defendants violated Labor Code § 221;
- 19 i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
20 wages and compensation due and owing at the time of termination of employment;
- 21 j. Whether Defendants' conduct was willful;
- 22 k. Whether Defendants violated Labor Code § 226 and § 1174 and § 1198 and the
23 IWC Wage Orders by failing to maintain accurate records of Class Members'
24 earned wages and work periods;
- 25 l. Whether Defendants violated Labor Code § 1194 by failing to compensate all
26 Employees during the relevant time period for all hours worked, whether regular or
27 overtime;
- 28 m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all

wages earned at least twice monthly;

n. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees;

o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

p. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

49. The claims of the named plaintiff are typical of those of the other Employees. The Employee Class Members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct and uniformly applied policies in violation of statutes, as well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for the off the clock work and meal and rest violations he was required to endure are typical of those of the other Class Members.

D. Adequacy of Representation

50. Plaintiff will fairly and adequately represent and protect the interest of the Employee Class Members. Counsel who represents Plaintiff and the Employees in the Class are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

51. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only individual Employees. Each Employee in the Class has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

52. As to the issues raised in this case, a class action is superior to all other methods for the fair and efficient adjudication of this controversy, as joinder of all Class Members is impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class Members. Further, as the economic or other loss suffered by vast numbers of Class Members may be relatively small, the expense and burden of individual actions makes it difficult for the Class

1 Members to individually redress the wrongs they have suffered. Moreover, in the event
2 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
3 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
4 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
5 to vindicate their rights for violations they endured which they would otherwise be foreclosed
6 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

7 53. Class action treatment will allow those persons similarly situated to litigate their
8 claims in the manner that is most efficient and economical for the parties and the judicial system.
9 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
10 Plaintiff contemplates the eventual issuance of notice to the proposed Class Members that would
11 set forth the subject and nature of the instant action. The Defendants' own business records can be
12 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
13 that any further notice is required additional media and/or mailings can be used.

14 54. Defendants, as prospective and actual employers of the Employees in the Class,
15 had a special fiduciary duty to disclose to prospective Class Members the true facts surrounding
16 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
17 Employees as well as the effect of any alleged arbitration agreements that may have been forced
18 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
19 and policies, most notably intentionally refusing to pay for all hours actually worked which should
20 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
21 agreements and policies and practices on the Employees and Class as a whole.

22 55. Plaintiff and the Employees in the Class did not discover the fact that they were
23 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
24 ever any discussion about Plaintiff's and the Class's waiver of their Constitutional rights of trial
25 by jury, right to collectively organize and oppose unlawful pay practices under California law as
26 well as obtain injunctive relief preventing such practices from continuing. As a result, the
27 applicable statutes of limitation were tolled until such time as Plaintiff and the Class Members
28 discovered their claims.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES AND SECRET UNDERPAYMENT OF WAGES**
3 **(Against All Defendants)**

4 56. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 57. Defendants failed to pay Employees minimum wages for all hours worked.
7 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
8 would work hours and not receive wages, including as alleged above in connection with off the
9 clock work, including all the time required to remain on duty and under Defendants' control
10 during breaks and due to the work demands placed upon them by Defendants' management,
11 guests, customers and by the unlawful deduction of hours or by paying what should have been
12 overtime hours as regular hours. Defendants' uniformly applied policies required systematic off
13 the clock work and underpayment of all wages owed to Employees over a period of time, while
14 benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay
15 minimum wages to Plaintiff and the Class Members, including by requiring systematic off the
16 clock work. To the extent any local wage ordinances were also applicable to paying the
17 employees an hourly rate above the minimum wage rate, Defendants failed to comply with the
18 local wage ordinances. Defendants' uniform pattern of unlawful wage and hour practices
19 manifested, without limitation, applicable to the Class as a whole, as a result of implementing a
20 uniform policy and practice that denied accurate compensation to Plaintiff and the other members
21 of the Class as to minimum wage pay.

22 58. In California, employees must be paid at least the applicable state minimum wage
23 for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and
24 paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Also, pursuant to
25 California Labor Code § 204, other applicable laws and regulations, and public policy, an
26 employer must timely pay its employees for all hours worked. Defendants failed to do so.

27 59. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
28 states: "The minimum wage for employees fixed by the commission is the minimum wage to be

1 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The
2 applicable minimum wage rate fixed by the commission for work during the relevant period is
3 found in the Wage Orders.

4 60. California Labor Code § 223 requires that an employer maintain the designated
5 wage scale if contract requires an employer to do so. Section 223 makes it unlawful to secretly
6 pay a lower wage while purporting to pay the wage designed in the contract. Upon information
7 and belief, Defendants unlawfully lowered wages without providing notice to its employees.

8 61. The minimum wage provisions of California Labor Code are enforceable by private
9 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
10 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
11 overtime compensation applicable to the employee is entitled to recover in a civil action the
12 unpaid balance of the full amount of this minimum wage or overtime compensation, including
13 interest thereon, reasonable attorney’s fees and costs of suit.”

14 62. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
15 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
16 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
17 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
18 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
19 the absence of a contractually agreed upon one.

20 63. In committing these violations of the California Labor Code, Defendants
21 inaccurately recorded, or required Plaintiff and the Class Members to input times that did not
22 reflect their actual hours worked, or miscalculated hours or rates or otherwise underpaid the actual
23 time worked by Plaintiff and other members of the Class, including by requiring off the clock
24 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of
25 all earned wages, and other benefits in violation of the California Labor Code, the Industrial
26 Welfare Commission requirements and other applicable laws and regulations. As a result of these
27 violations, Defendants also failed to timely pay all wages earned in accordance with California
28 Labor Code § 1194.

1 64. California Labor Code § 1194.2 also provides for the following remedies: “In any
2 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
3 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
4 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

5 65. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
6 1197.1, Plaintiff and Class Members are entitled to recover a penalty of \$100.00 for the initial
7 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
8 pay each employee minimum wages.

9 66. Pursuant to California Labor Code § 1194.2, Plaintiff and Class Members are
10 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
11 interest thereon.

12 67. Defendants have the ability to pay minimum wages for all time worked and have
13 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
14 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

15 68. Plaintiff and the Class Members are entitled to recover the unpaid minimum wages
16 (including double minimum wages) and local wage ordinance wages and liquidated damages in an
17 amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s
18 fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other
19 members of the Class further request recovery of all unpaid wages, according to proof, interest,
20 statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as
21 provided by the California Labor Code and/or other applicable statutes. To the extent minimum
22 wage compensation is determined to be owed to the Class Members who have terminated their
23 employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202, and therefore
24 these individuals are also be entitled to waiting time penalties under California Labor Code § 203,
25 which penalties are sought herein on behalf of these Class Members. Defendants’ failure to timely
26 pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code §
27 226 because they resulted in the issuance of inaccurate wage statements. Defendants’ conduct as
28 alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Class

Members are entitled to seek and recover statutory costs.

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

69. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

70. California Labor Code § 1194 provides that “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” The action may be maintained directly against the employer in an employee’s name without first filing a claim with the Division of Labor Standards and Enforcement.

71. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a workweek.

72. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above, by unlawful deductions, by under-reporting actual hours worked, and by requiring Employees to do so as well. Defendants have also failed to include all forms of remuneration in the regular rate of pay used to calculate and pay overtime and failed to begin paying overtime when it was incurred due to the off the clock work, as detailed above.

73. Defendants thus had a consistent policy of not paying Employees wages for all hours worked, including hours at their required regular, overtime, and double-time rates.

1 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated
2 non-exempt employees to work through meal periods or remain under Defendants' control when
3 they were required to be clocked out or to otherwise work off the clock to complete their daily job
4 duties and respond to demands from customers, guests, and managers.

5 74. Therefore, Employees were not properly compensated, nor were they paid overtime
6 rates for hours worked in excess of eight hours in a given day and/or forty hours in a given week.
7 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated
8 Class Members to work through meal periods when they were required to be clocked out or to
9 otherwise work off the clock to complete their daily job duties.

10 75. Defendants' failure to pay Plaintiff and the Class Members the unpaid balance of
11 regular wages owed and overtime compensation for all hours worked, as required by California
12 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
13 IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly calculate the
14 regular rate used to calculate and pay overtime, and meal and rest premiums, as addressed above.

15 76. Additionally, Labor Code § 558(a) provides "any employer or other person acting
16 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
17 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
18 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
19 pay period for which the employee was underpaid in addition to an amount sufficient to recover
20 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
21 underpaid employee for each pay period for which the employee was underpaid in addition to an
22 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
23 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in
24 this section are in addition to any other civil or criminal penalty provided by law." Defendants
25 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
26 Wage Orders. Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor
27 Code § 558.

28 77. Defendants untimely provided Plaintiff with pay stubs several days late.

1 Defendants' failure to pay compensation in a timely fashion also constituted a violation of
2 California Labor Code § 204, which requires that all wages shall be paid semimonthly. From four
3 (4) years prior to the filing of this lawsuit to the present, in direct violation of that provision of
4 the California Labor Code, Defendants have failed to pay all wages and overtime compensation
5 earned by Employees. Each such failure to make a timely payment of compensation to
6 Employees constitutes a separate violation of California Labor Code § 204.

7 78. Employees have been damaged by these violations of California Labor Code §§
8 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
9 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
10 than \$100 for causing Employees "to work for longer hours than those fixed, or under conditions
11 of labor prohibited by an order of the commission" or if the employer pays "a wage less than the
12 minimum fixed by an order of the commission" or "violates...any provision of this chapter or
13 any order or ruling of the commission."

14 79. Consequently, pursuant to the California Labor Code, including Labor Code §§
15 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
16 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
17 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
18 their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties
19 against Defendants, and each of them, and any additional sums as provided by the Labor Code
20 and/or other statutes.

21 **THIRD CAUSE OF ACTION**

22 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

23 **(Against All Defendants)**

24 80. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
25 full herein.

26 81. Employees regularly worked shifts greater than five (5) hours and in some
27 instances, greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the
28 applicable IWC Wage Order, an employer may not employ someone for a shift of more than five

1 (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or
2 for a shift of more than ten (10) hours without providing him or her with a second meal period of
3 not less than thirty (30) minutes.

4 82. Defendants failed to provide Employees with meal periods as required under the
5 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
6 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
7 provided them after Employees worked beyond the fifth hour of their shifts or Employees
8 otherwise had them shortened and interrupted by work demands and requirements to perform off
9 the clock work and remain under Defendants' control. Furthermore, upon information and belief,
10 on the occasions when Employees worked more than ten hours in a given shift, they did so
11 without receiving a second uninterrupted thirty-minute meal period as required by law.

12 83. Defendants thus failed to provide Plaintiff and the Class Members with meal
13 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
14 including by not providing them with the opportunity to take meal breaks, by providing them late
15 or for less than thirty minutes, or by requiring them to perform work during breaks.

16 84. Moreover, Defendants failed to compensate Employees for each meal period not
17 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
18 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
19 employee a meal period in accordance with this section, the employer shall pay the employee one
20 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
21 period is not provided. As detailed above, on the occasions when Defendants did pay any meal
22 period premiums, they upon information and belief underpaid them by miscalculating the regular
23 rate of compensation by not including all forms of remuneration in it. Defendants thus failed to
24 compensate the Employees for each meal period not provided or inadequately provided, as
25 required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order.

26 85. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
27 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
28 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or

deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and other statutes and applicable IWC Wage Order paragraphs.

FOURTH CAUSE OF ACTION

REST-BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

86. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

87. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that employers must authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four (4) work hours.

88. Employees consistently worked consecutive four hour shifts and were generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for each consecutive four hour shift, and Defendants failed to provide Employees with timely rest breaks of not less than ten minutes for each consecutive four hour shift. Defendants made no effort to schedule or otherwise authorize and permit Plaintiff and the Class Members to take lawful rest breaks. Employees were often required to work or to otherwise remain under Defendants' control during rest periods, including by responding to work requirements, and had breaks provided untimely as a result of the above described off the clock work. Plaintiff and the Class Members were also not permitted to leave their work premises during rest breaks.

89. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders provide that if an employer fails to provide an employee rest period in accordance with this section, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. Defendants failed to do so.

90. Defendants, and each of them, have therefore intentionally and improperly denied rest periods to Plaintiff and the Class Members in violation of Labor Code §§ 226.7 and 512 and

1 paragraph 12 of the applicable IWC Wage Orders.

2 91. Defendants failed to authorize and permit Plaintiff and the Class Members to take
3 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
4 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
5 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
6 12 and 20 of the applicable IWC Wage Orders.

7 92. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
8 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour
9 of wages at their effective hourly rates of pay for each day worked without the required rest
10 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
11 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

12 **FIFTH CAUSE OF ACTION**
13 **VIOLATION OF LABOR CODE § 226(a)**
14 **(Against All Defendants)**

15 93. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
16 full herein.

17 94. California Labor Code § 226(a) requires an employer to furnish each of his or her
18 employees with an accurate, itemized statement in writing showing the gross and net earnings,
19 total hours worked, and the corresponding number of hours worked at each hourly rate; these
20 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
21 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
22 statements may be given to the employee separately from the payment of wages; in either case the
23 employer must give the employee these statements twice a month or each time wages are paid.

24 95. Defendants failed to provide Plaintiff and the similarly situated Employee Class
25 Members with accurate itemized wage statements in writing, as required by the Labor Code and
26 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to
27 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
28 including for all overtime and double time hours worked and for deficient meal periods and rest

breaks, all of which Defendants knew or reasonably should have known were owed to the Employees, as alleged above.

96. Throughout the liability period, Defendants intentionally failed to furnish to Plaintiff and the Class Members, upon each payment of wages, itemized statements accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class Members with such timely and accurate wage and hour statements.

97. Plaintiff and the Class Members suffered injury as a result of Defendants' knowing and intentional failure to provide them with the wage and hour statements as required by law and are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the Defendants have failed to provide an accurate wage statement, failed to provide accurate and complete information as required by any one or more of items Labor Code § 226(a)(1) to (9), inclusive, and the Plaintiff and Class Members cannot promptly and easily determine from the wage statement alone one or more of the following: (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period, (iii) The name and address of the employer and, (iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number. For purposes of Labor Code § 226(e) "promptly and easily determine" means a

1 reasonable person [i.e. an objective standard] would be able to readily ascertain the information
2 without reference to other documents or information.

3 98. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
4 are required “to pay each employee, on the established payday for the period involved, not less
5 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
6 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
7 or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class Members
8 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
9 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
10 IWC Wage Orders.

11 99. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
12 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
13 Class suffered injuries, including among other things confusion over whether they received all
14 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
15 them to make mathematical computations to analyze whether the wages paid in fact compensated
16 them correctly for all hours worked.

17 100. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
18 IWC Wage Order, Plaintiff and the Employee Class Members are entitled to recover the greater of
19 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
20 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
21 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
22 an award of costs and reasonable attorneys’ fees.

23 **SIXTH CAUSE OF ACTION**
24 **VIOLATION OF LABOR CODE § 221**
25 **(Against All Defendants)**

26 101. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.

28 102. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or

1 receive from an employee any part of wages theretofore paid by said employer to said employee.”
2 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
3 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
4 to do so.

5 103. Defendants unlawfully received and/or collected wages from the Employees in the
6 Class by requiring off the clock work, by miscalculating overtime, and by automatically deducting
7 time for meal periods when they were not lawfully provided and not paying one hour of pay at the
8 regular rate of compensation for every meal and rest period violation endured by Plaintiff and the
9 other Class Members, as alleged above. In addition to failing to authorize and permit rest breaks,
10 Defendants unlawfully deducted up to 30 minutes for thirty minute long meal periods that were
11 rarely provided or otherwise received without violation. Thus, by deducting 30 minutes for a meal
12 period that was generally not lawfully provided if at all, Defendants effectively and unlawfully
13 deducted at least 30 minutes of hours worked from each Employee’s daily work shifts, not
14 compensating Employees for all hours worked, Defendants unlawfully deducted wages earned in
15 violation of Labor Code § 221.

16 104. As a direct and proximate cause of the unauthorized deductions, Employees have
17 been damaged, in an amount to be determined at trial.

18 **SEVENTH CAUSE OF ACTION**
19 **VIOLATION OF LABOR CODE § 204**
20 **(Against All Defendants)**

21 105. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
22 full herein.

23 106. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
24 employment are due and payable twice during each calendar month, on days designated in
25 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
26 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
27 during which the labor was performed, and labor performed between the 16th and the last day,
28 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following

1 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment of
2 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
3 calendar days following the close of the payroll period.” As detailed above, Defendants
4 maintained a consistently applied policy and practice of not paying all wages earned between the
5 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
6 between the 16th and the last day of the month between the 1st and 10th day of the following month.
7 Defendants similarly failed to pay all wages earned by not more than seven calendar days
8 following the close of the payroll period.

9 107. All wages due and owing to Plaintiff and the Class Members, including as required
10 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
11 required by Labor Code § 1194 and other sections became due and payable to each employee in
12 each pay period that he or she was not provided with a meal period or rest period or paid straight
13 or overtime wages to which he or she was entitled.

14 108. Defendants violated Labor Code § 204 by systematically refusing to timely pay
15 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
16 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
17 payday for the period involved, not less than the applicable minimum wage for all hours worked in
18 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
19 hours than those fixed by the order or under conditions of labor prohibited by the order is
20 unlawful.” Plaintiff and the Class Members may therefore pursue damages and penalties for
21 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
22 penalties under paragraph 20 of the applicable IWC Wage Orders.

23 109. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
24 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
25 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
26 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
27 applicable IWC Wage Orders.
28

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

110. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

111. Plaintiff and numerous Class Members are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

112. Defendants failed to pay these Employees all wages due and certain at the time of termination or within seventy-two hours of resignation.

113. The wages withheld from these Employees by Defendants remained due and owing for more than thirty days from the date of separation from employment. Additionally, Defendants failed to pay Plaintiff his final check at the time of his termination.

114. Defendants thus failed to pay Plaintiff and the Class Members without abatement, all wages as defined by applicable California law. Among other things, these Employees were not paid all regular and overtime wages, including by Defendants failing to pay for all hours worked or requiring off the clock work or by unlawfully under-recording time entries to the detriment of Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

115. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required "to pay each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class Members may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer

1 hours than those fixed, or under conditions of labor prohibited by an order of the commission” or
2 if the employer pays “a wage less than the minimum fixed by an order of the commission” or
3 “violates...any provision of this chapter or any order or ruling of the commission.”

4 116. Defendants’ failure to pay wages, as alleged, entitles Plaintiff and these former
5 Employee Class Members to penalties under Labor Code § 203 and the applicable paragraphs of
6 the IWC Wage Orders as addressed above, including the requirement that an employee’s wages
7 shall continue until paid for up to thirty (30) days from the date they were due.

8 **NINTH CAUSE OF ACTION**

9 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS, LABOR CODE §§ 1174, 1174.5**

10 **(Against All Defendants)**

11 117. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
12 full herein.

13 118. California Labor Code § 1174 requires that all employers shall keep accurate time
14 and wage records for all employees. California Labor Code § 1174.5 further requires that any
15 employee suffering injury due to a willful violation of the aforementioned obligations may seek
16 damages, including civil penalties, from the employer.

17 119. During the course of Plaintiff’s and Employees’ employment, Defendants
18 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as
19 required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and
20 premium pay as discussed above and failing to document and pay for actual hours worked.

21 120. Defendants are also required by the California Labor Code § 1198 and the
22 applicable Wage Order to maintain a tracking system that accurately records the times during
23 which Employees work.

24 121. Defendants have maintained a common unlawful policy and practice of failing to
25 accurately record all hours worked and all meal period start and end times and by adjusting or
26 otherwise rounding and shaving them down.

27 122. Defendants’ failure to pay wages, as alleged above, was willful in that Defendants
28 knew wages to be due but failed to pay them.

1 123. Accordingly, Defendants are liable for civil penalties pursuant to the California
2 Labor Code including § 1174.5, for the three years prior to the filing of this Complaint.

3 **TENTH CAUSE OF ACTION**

4 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES LABOR CODE § 2802**

5 **(Against All Defendants)**

6 124. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
7 full herein.

8 125. Plaintiff is informed and believes and based thereon alleges that throughout the
9 period applicable, Defendants required Plaintiff and the Class Members to pay for necessary work
10 related expenses they incurred. Defendants required Plaintiff and the Class Members to launder
11 their uniform and failed to reimburse them for such expenses, as addressed above. Plaintiff and the
12 Class Members must be reimbursed for these necessary business expenses under Labor Code §
13 2802 and Defendants systematically failed to do so.

14 126. Defendants thus followed a uniform policy and practice of failing to reimburse
15 Employees for these necessary work related expenses or losses incurred in direct discharge of their
16 job duties during employment with Defendants and at the direction of the Defendants pursuant to
17 Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

18 127. Defendants' knowing and willful failure to reimburse lawful necessary work related
19 expenses and losses to Plaintiff and the Class Members resulted in damages because, among other
20 things, Defendants did not inform employees of their right to be reimbursed for those work related
21 expenses. As Defendants failed to inform and misled Plaintiff and the Class Members with regard
22 to their rights, Plaintiff and the Class Members were led to believe that incurring those lawful and
23 necessary expenses was an expected and essential function of their employment with Defendants
24 and that failure to incur those expenses would have adverse consequences on their employment.

25 128. Therefore, Plaintiff and the Class Members are entitled to reimbursement for any
26 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9
27 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while
28 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed

1 from the date Plaintiff and the Class Members incurred those expenses. Further, Plaintiff and the
2 Class Members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

3 **ELEVENTH CAUSE OF ACTION**
4 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***
5 **(Against All Defendants)**

6 129. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
7 in full herein. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
8 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
9 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
10 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
11 the public interest within the meaning of Code of Civil Procedure § 1021.5.

12 130. Plaintiff is a "person" within the meaning of Business & Professions Code
13 § 17204, has suffered injury, and therefore has standing to bring this cause of action for
14 injunctive relief, restitution, and other appropriate equitable relief.

15 131. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
16 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
17 fraudulent in that Defendants' policy and practice failed to provide the required amount of
18 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
19 Class Members for all hours worked, due to systematic business practices as alleged herein that
20 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
21 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
22 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
23 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

24 132. Wage-and-hour laws express fundamental public policies. Paying employees their
25 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
26 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
27 vigorously to enforce minimum labor standards, to ensure that employees are not required or
28 permitted to work under substandard and unlawful conditions, and to protect law-abiding

1 employers and their employees from competitors who lower costs to themselves by failing to
2 comply with minimum labor standards.

3 133. Defendants have violated statutes and public policies. Through the conduct alleged
4 in this Complaint Defendants have acted contrary to these public policies, have violated specific
5 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices
6 in violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived
7 Plaintiff, and all persons similarly situated, and all interested persons, of the rights, benefits, and
8 privileges guaranteed to all employees under the law.

9 134. Defendants' conduct, as alleged above, constitutes unfair competition in violation
10 of the Business & Professions Code § 17200 *et seq.*

11 135. Defendants, by engaging in the conduct herein alleged, by failing to pay wages
12 and overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise
13 of reasonable care should have known that their conduct was unlawful; therefore, their conduct
14 violates the Business & Professions Code § 17200 *et seq.*

15 136. By the conduct alleged herein, Defendants have engaged and continue to engage in
16 a business practice which violates California and federal law, including but not limited to, the
17 applicable Industrial Wage Order(s), the California Code of Regulations, and the California
18 Labor Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this
19 Court should issue declaratory and other equitable relief pursuant to California Business &
20 Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to
21 constitute unfair competition, including restitution of wages wrongfully withheld.

22 137. As a proximate result of the above-mentioned acts of Defendants, Employees have
23 been damaged, in a sum to be proven at trial.

24 138. Unless restrained by this Court Defendants will continue to engage in such
25 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
26 should make such orders or judgments, including the appointment of a receiver, as may be
27 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
28 deceptive practice prohibited by the Business & Professions Code, including but not limited to

1 the disgorgement of such profits as may be necessary to restore Employees to the money
2 Defendants have unlawfully failed to pay.

3 **TWELTH CAUSE OF ACTION**
4 **PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.***
5 **(Against All Defendants)**

6 139. Plaintiff realleges and incorporate all preceding paragraphs, as though set forth in
7 full herein.

8 140. Plaintiff and the Employees in the Class are also aggrieved employees as defined
9 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and
10 either were or are employed by Defendants (“Aggrieved Employees”) during the relevant time
11 period.

12 141. In failing to pay Aggrieved Employees minimum wages and overtime, not
13 providing proper meal and rest periods, failing to provide accurate itemized wage statements, and
14 failing to pay Employees wages upon termination or timely upon resignation, all discussed above,
15 Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required
16 under Labor Code § 204. Defendants also failed to maintain records showing accurate hours
17 worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and
18 paragraph 7 of the applicable IWC Wage Orders.

19 142. As such, Employees seek wages and penalties under Labor Code §§ 2698 and
20 2699 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5,
21 including the penalty provisions, without limitation, based, inter alia, on the following California
22 Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174,
23 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 *et seq.*

24 143. More specifically, after complying with the notice procedures of Labor Code §
25 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
26 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above
27 addressed underlying claims and seeking penalties as specified by the applicable corresponding
28 provisions, including as follows:

1 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
2 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
3 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
4 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
5 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
6 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
7 to Labor Code § 2699(g)(1);

8 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
9 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
10 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
11 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
12 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
13 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
14 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
15 pursuant to Labor Code § 2699(g)(1);

16 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
17 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
18 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
19 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
20 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
21 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
22 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
23 providing inaccurate wage statements and failing to maintain records as required under Labor
24 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
25 Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a
26 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
27 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
28 citation, ...";

1 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
2 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
3 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
4 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
5 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
6 § 2699(g)(1);

7 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
8 Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the
9 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
10 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
11 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
12 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs
13 pursuant to Labor Code § 2699(g)(1);

14 (f) All Alleged Violations of the IWC Wage Orders and Other Labor Code
15 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
16 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §
17 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and
18 paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to
19 Labor Code § 2699(g)(1).

20 144. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also
21 seeks the penalties and remedies set forth in Labor Code § 558, which states:

22 (a) Any employer or other person acting on behalf of an employer who violates, or
23 causes to be violated, a section of this chapter or any provision regulating hours and days of work
24 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)
25 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
26 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
27 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
28 each pay period for which the employee was underpaid in addition to an amount sufficient to

1 recover underpaid wages...

2 (b) If upon inspection or investigation the Labor Commissioner determines that a
3 person had paid or caused to be paid a wage for overtime work in violation of any provision of this
4 chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare
5 Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting,
6 and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a
7 violation of this chapter shall be the same as those set out in Section 1197.1.

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

10
11 145. Plaintiff has exhausted his administrative remedies by submitting a certified letter
12 to the LWDA and Defendants on February 12, 2024 (LWDA-CM-1010496-24) addressing in
13 detail the specific provisions of the Labor Code Defendants have violated and addressing the facts
14 and legal theories to support the alleged violations and requested penalties. The LWDA has not
15 provided notice of its intent to investigate the alleged violations within 65 calendar days of the
16 postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the
17 violations addressed herein and in the PAGA Notice letter and the original Complaint.

18 **RELIEF REQUESTED**

19 WHEREFORE, Plaintiff prays for the following relief:

- 20
- 21 1. For an order certifying this action as a class action;
 - 22 2. For compensatory damages in the amount of the unpaid minimum wages for work
23 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
24 the filing of this action, as may be proven;
 - 25 3. For liquidated damages in the amount equal to the unpaid minimum wage and
26 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
 - 27 4. For compensatory damages in the amount of all unpaid wages, including overtime
28 and double-time pay, as may be proven;
 5. For compensatory damages pursuant to Labor Code § 223, as may be proven;

1 6. For compensatory damages in the amount of the hourly wage made by Employees
2 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
3 years prior to the filing of this action, as may be proven;

4 7. For compensatory damages in the amount of the hourly wage made by Employees
5 for each day requisite rest breaks were not provided or were deficiently provided where no
6 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
7 be proven;

8 8. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

9 9. For restitution and/or damages and penalties for Defendants' failure to pay all
10 wages due twice monthly under Labor Code § 204, as may be proven;

11 10. For restitution and/or damages for all amounts unlawfully withheld from the wages
12 for all Class Members in violation of Labor Code § 221, as may be proven;

13 11. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
14 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

15 12. For penalties pursuant to Labor Code § 1174.5, as may be proven;

16 13. For penalties pursuant to Labor Code §§ 226, as may be proven;

17 14. For damages and restitution for failure to reimburse all reasonable and necessary
18 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

19 15. For restitution for unfair competition pursuant to Business & Professions Code
20 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

21 16. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

22 17. For penalties under Labor Code § 558, as may be proven;

23 18. For an order enjoining Defendants and their agents, servants, and employees, and
24 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
25 duties adumbrated in this Complaint;

26 19. For other wages and penalties under the Labor Code as may be proven;

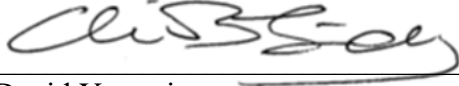
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- 1 20. For all general, special, and incidental damages as may be proven;
2 21. For an award of pre-judgment and post-judgment interest;
3 22. For an award providing for the payment of the costs of this suit;
4 23. For an award of attorneys' fees; and
5 24. For such other and further relief as this Court may deem proper and just.

6
7 DATED: April 17, 2024

D.LAW, INC.

8
9 By



David Yeremian
Alvin B. Lindsay
Melissa Rodriguez
Attorneys for Plaintiff JOSE E. VIDAL
and all others similarly situated

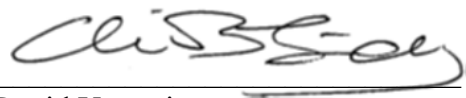
DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: April 17, 2024

D.LAW, INC.

By



David Yermian
Alvin B. Lindsay
Melissa Rodriguez
Attorneys for Plaintiff JOSE E. VIDAL
and all others similarly situated

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 W. Santa Ana Blvd MAILING ADDRESS: P.O. Box 1994 CITY AND ZIP CODE: Santa Ana CA 92702 BRANCH NAME: Civil Complex Center	FOR COURT USE ONLY
SHORT TITLE: Vidal vs. South Coast Winery, Inc.	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 30-2024-01378750-CU-OE-CXC

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of Orange. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Jose E. Vidal, an individual, on behalf of himself and others similarly situated

On Behalf of: Jose Vidal; CCMS ID: 81004303

Transaction Number: 11295810

Court Received Date: 04/17/2024

Court Received Time: 05:17:34 PM

Filed Date: 04/17/2024

Filed Time: 05:17 PM

Fee Amount Assessed: \$0.00

Case Number: 30-2024-01378750-CU-OE-CXC

Case Title: Vidal vs. South Coast Winery, Inc.

Location: Civil Complex Center

Case Type: Other employment

Case Category: Civil - Unlimited

Jurisdictional Amount: > 35000

Case Title:

Documents Electronically Filed/Received

Amended Complaint\n(1st
Amended Complaint)

Status

Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider LegalConnect

Email: support@legalconnect.com

Contact Person: Customer Support

Phone: 8009096859