

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

06/26/2024 at 04:56:56 PM

By: Milagros Cortez,
Deputy Clerk

JOHN D. TRIEU (SBN 189198)
LAW OFFICES OF JOHN D. TRIEU, APC
9211 BOLSA AVE., SUITE 222
WESTMINSTER, CA 92683
TELEPHONE NO.: 714.892.2154
FACSIMILE NO.: 714.893.6710
E-MAIL: JOHN@TRIEULAW.COM

Attorneys for Plaintiff, **TIEN MAI**

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA, HAYWARD HALL OF JUSTICE

TIEN MAI, an individual

Plaintiff,

vs.

AOSEN GROUP, LLC dba PHO AO SEN, an
unknown business entity; HANH DINH, an
individual; YEN NGUYEN, an individual; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 24CV081413

Assigned For All Purposes To:

Dept:

COMPLAINT FOR:

- 1. FAILURE TO PAY OVERTIME WAGES**
- 2. FAILURE TO PAY MINIMUM WAGES**
- 3. FAILURE TO PERMIT MEAL PERIODS**
- 4. FAILURE TO PERMIT REST PERIODS**
- 5. FAILURE TO PROVIDE PROPER
ITEMIZED STATEMENTS**
- 6. FAILURE TO PAY WAGES DUE UPON
TERMINATION OF EMPLOYMENT**
- 7. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

All allegations in this Complaint are based upon information and belief except for those allegations, which pertain to the PLAINTIFF named herein and PLAINTIFF's counsel. Each allegation in this Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

1 **I. INTRODUCTION**

2 1. This is an individual and representative wage and hour action.

3 2. By this action, PLAINTIFF, TIEN MAI (“PLAINTIFF”), is seeking damages, statutory
4 and civil penalties and attorneys’ fees pursuant to the claims alleged in this Complaint against
5 Defendants, AOSEN GROUP, LLC dba PHO AO SEN, HANH DINH, and YEN NGUYEN
6 (collectively referred to as “DEFENDANTS”).

7 3. DEFENDANTS are a chain of popular Asian restaurants specializing in Vietnamese
8 cuisine with three restaurant locations (Livermore, Oakland, Albany) which employ hostess, servers,
9 cooks, dishwashers, waiters, and waitresses as necessary workers to services its diners. and are covered
10 under IWC Wage Order No. 5 for the Public Housekeeping Industry. The locations are owned and
11 controlled by DEFENDANTS which follow common rules and procedures applicable to all restaurant
12 locations, including using the same timekeeping and payroll system.

13 4. PLAINTIFF also files this action as a representative on behalf of other current and former
14 employees of DEFENDANTS, pursuant to Labor Code §§ 2698, et seq., of the Private Attorneys
15 General Act of 2004 (“PAGA”) seeking penalties, attorneys’ fees, and injunctive relief.

16 5. For at least three years prior to the filing of this action, DEFENDANTS consistently
17 maintained and enforced against PLAINTIFF and DEFENDANTS’ non-exempt employees, among
18 others, the following unlawful practices and policies, in violation of California state wage and hour
19 laws:

20 (a) DEFENDANTS had a consistent policy of requiring PLAINTIFF and
21 DEFENDANTS’ non-exempt employees to work more than eight (8) hours in
22 any given day and/or more than forty (40) hours in any given week, and not
23 paying overtime compensation pursuant to applicable California Labor Code
24 requirements.

25 (b) DEFENDANTS had a consistent policy of not paying PLAINTIFF and
26 DEFENDANTS’ non-exempt employees minimum wages and/or overtime
27
28

1 compensation for all hours worked pursuant to applicable California Labor Code
2 requirements.

3 (c) DEFENDANTS had a consistent policy of requiring PLAINTIFF and
4 DEFENDANTS' non-exempt employees to work at least five (5) hours without
5 a lawful meal period and failing to pay employees one (1) hour of pay at his
6 regular rate of compensation for each workday that the meal period is not
7 provided, as required by California state wage and hour laws.

8 (d) DEFENDANTS had a consistent policy of failing to provide PLAINTIFF and
9 DEFENDANTS' non-exempt employees rest periods of at least (10) minutes for
10 every shift over 3.5 hours and/or 7 hours worked or major fraction thereof and
11 failing to pay PLAINTIFF one (1) hour of pay at his regular rate of compensation
12 for each workday that the rest period is not provided, as required by California
13 state wage and hour laws.

14 (e) DEFENDANTS had a consistent policy of requiring employees to work a split
15 shift in which employees would work two shifts interrupted by non-paid, non-
16 working hours consisting of more than 1-2 hours a day and DEFENDANTS did
17 not pay employees one hour's pay at the minimum wage for each day in which
18 employees worked a split shift.

19 (f) With respect to PLAINTIFF and DEFENDANTS' non-exempt employees who
20 either were discharged, laid off, or resigned, DEFENDANTS failed to pay them
21 in accordance with the requirements of Labor Code sections 201, 202, 203; and

22 (g) DEFENDANTS failed to maintain accurate records of PLAINTIFF's and
23 DEFENDANTS' non-exempt employees earned wages and work periods;

24 (h) DEFENDANTS failed to provide PLAINTIFF and DEFENDANTS' non-
25 exempt employees with written notice of the employer's information, wage
26 information, workers compensation, paid sick leave laws at the time of hire or
27 during their employment period pursuant to Labor Code § 2810.5; and
28

(i) DEFENDANTS failed to keep records documenting the hours worked by PLAINTIFF and DEFENDANTS' non-exempt employees pursuant to Labor Code § 247.5.

6. PLAINTIFF brings this action pursuant to California Labor Code sections 201, 202, 203, 218, 218.6, 221, 224, 226, 247.5, 256, 351, 353, 511, 512, 558, 558.1, 1174, 1182.11-1182.13, 1194, 1197, 1197.1, 1198, 2751, 2698, 2699, 2810.5 among others, and California Code of Regulations, Title 8, section 11050 *et seq.*, seeking unpaid meal and rest period compensation, penalties, injunctive, and other equitable relief, and reasonable attorneys' fees and costs.

II. PARTIES

A. PLAINTIFF

7. At all times relevant, PLAINTIFF, TIEN MAI, is a former non-exempt employee of DEFENDANTS and is a resident of the County of Alameda, State of California. PLAINTIFF worked for DEFENDANTS from approximately **September 2023 to January 2024** in job positions as a cook and chef. As part of his duties, PLAINTIFF engaged in performing tasks of buying food supplies, cleaning of the kitchen, loading and unloading supplies, receiving food orders, preparing and cooking of food items at DEFENDANTS' business located at **4567 Livermore Outlets Dr., Livermore, CA 94551**.

B. DEFENDANTS

8. PLAINTIFF is informed and believes, and thereon alleges, that PHO AO SEN is owned by defendants, HANH DINH ("HANH"), and YEN NGUYEN ("YEN") and is a type of business covered under IWC Wage Order No. 5-2001 covering the "Public Housekeeping Industry" The IWC Orders are codified at Title 8, California Code of Regulations, Section 11010, *et seq.*

9. PLAINTIFF is informed and believes, and thereon alleges, that Defendants, HANH and YEN, are residents of the County of Alameda. HANH and YEN are individuals and owners of PHO AO SEN who control the scheduling of work hours and payment of wages and tips. Defendants, HANH and YEN are personally liable for certain claims alleged herein pursuant to Labor Code §558.1 because they were either the "employer" or a "other person" acting on behalf of PHO AO SEN, as an owner,

1 director, officer, or managing agent of PHO AO SEN who violated or caused to be violated Labor Code
2 laws regarding payment of wages, overtime and meal and rest breaks. *Seviour-Iloff v. LaPaille* (2022)
3 80 Cal.App.5th 427.

4 10. At all times alleged herein, DEFENDANTS, HANH, and YEN had operated and
5 became the successors-in-interests, joint venture, and/or the alter egos of Defendant, PHO AO SEN by
6 virtue of, among other reasons, the intermingling of corporate funds with personal funds, application
7 of corporate funds and assets to personal use and overall treatment of the corporation as one and the
8 same as HANH, and YEN, for themselves, and controlled, dominated and operated PHO AO SEN
9 without any separate identity, observation of corporate formalities or other manner of division. A
10 finding that an alter ego relationship existed and exists is necessary to avoid unjust enrichment without
11 which PLAINTIFF will not be adequately compensated for her damages. There is such unity of interest
12 and ownership that the separate personalities of HANH DINH, and YEN NGUYEN with PHO AO
13 SEN, no longer exist and if the acts are treated as those of the corporation alone, an inequitable result
14 will follow. DEFENDANTS, HANH DINH, and YEN NGUYEN are owners and supervisors that
15 exercised control over the wages, hours or working conditions of PLAINTIFF. In addition, PHO AO
16 SEN carried on business without retaining substantial capital in such a way that it was and is likely to
17 have no sufficient assets available to meet its debts to PLAINTIFF, and it is inequitable that
18 DEFENDANTS should be shielded under such an organization to escape personal liability. The
19 attempt to do corporate business without providing a sufficient basis of financial responsibility is an
20 abuse of the separate entity and ineffectual to exempt DEFENDANTS, HANH and YEN from corporate
21 debts. DEFENDANTS, HANH and YEN in all respects acted as the employer and/or joint employer
22 of PLAINTIFF and its non-exempt employees and exercised control over the wages, hours or working
23 conditions of PLAINTIFF and other employee and liable for unpaid wages pursuant to Labor Code §
24 558.

25 11. PLAINTIFF is informed and believes, and based thereon alleges, that each Defendant
26 acted in all respects pertinent to this action as the agent of the other DEFENDANT, carried out a joint
27 scheme, venture, business plan or policy in all respects pertinent hereto, and the acts of each defendant
28

are legally attributable to the other DEFENDANT. Furthermore, DEFENDANTS in all respects acted as the employer and/or joint employer of PLAINTIFF.

12. The true names and capacities, whether individual, corporate, associate, or otherwise, of DEFENDANTS sued herein as DOES 1 to 50, inclusive, are currently unknown to PLAINTIFFS, who therefore sues DEFENDANTS by such fictitious names under California Code of Civil Procedure § 474. PLAINTIFFS are informed and believes, and based thereon alleges, that each of the DEFENDANTS designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. PLAINTIFFS will seek leave of court to amend this Complaint to reflect the true names and capacities of the DEFENDANTS designated hereinafter as DOES when such identities become known.

13. Venue as to each Defendant is proper in this judicial district, pursuant to California Code of Civil Procedure § 395. On information and belief, DEFENDANTS operate and are doing business in Alameda County, and each Defendant is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a direct effect on PLAINTIFF and those similarly situated within the State of California.

III. GENERAL ALLEGATIONS

14. PLAINTIFF, TIEN MAI and other employees of DEFENDANTS are and were employed as non-exempt employees within the meaning of the California Labor Code and the implementing rules and regulations of IWC California Wage Orders. Upon information and belief, DEFENDANTS maintain restaurant businesses that operate Monday – Sunday (9:00 a.m. – 9:00 p.m. or 9:00 a.m. – 8:00 p.m.).

15. PLAINTIFF and DEFENDANTS' non-exempt employees were not paid for hours worked when working more than eight (8) hours in any given day and/or more than forty (40) hours in any given week.

16. PLAINTIFF and DEFENDANTS' non-exempt employees also often worked split shifts in their job duties in which they would work two shifts interrupted by non-paid non-working hours consisting of more than 1 hour up to 2 hours. They would then return to work a second shift. Aggrieved

employees were not compensated of one hour's pay at minimum wage for each day in which they worked a split-shift.

17. PLAINTIFF and DEFENDANTS' non-exempt employees were never provided with written notice of the employer's information, wage information, workers compensation, paid sick leave laws at the time of hire or during their employment period which caused confusion as to the actual hourly rate paid to them.

18. Upon information and belief, during the relevant time frame, DEFENDANTS maintained and enforced a restaurant schedule and policies for serving food and drinks quickly to diners that encouraged and required PLAINTIFF and DEFENDANTS' non-exempt employees to be on duty and working without being permitted to take lawful meal periods and rest breaks. DEFENDANTS' restaurant demands often required PLAINTIFF and DEFENDANTS' non-exempt employees to interrupt, shorten or miss their lawful meal periods of thirty (30) uninterrupted minutes and were not relieved of all duty. PLAINTIFF and DEFENDANTS' non-exempt employees were only required to clock in and out at the beginning and end of their work shift but not for meal periods.

19. PLAINTIFF and DEFENDANTS' non-exempt employees never received a second meal period when they worked a shift that lasted longer than ten (10) hours, and did not receive one hour of pay since DEFENDANT never informed them of this law.

20. PLAINTIFF and DEFENDANTS' non-exempt employees never signed a meal break waiver form or on duty agreement.

21. DEFENDANTS failed to record or failed to correctly and accurately record meal period start times and end times for their employees, or otherwise failed to properly track their meal period start times and end times as required by the Labor Code and Wage Orders.

22. Neither PLAINTIFF nor DEFENDANTS' non-exempt employees ever received a meal break premium for a missed, shortened or late meal period.

23. Neither PLAINTIFF nor DEFENDANTS' non-exempt employees ever received a rest break premium for a missed, shortened or late rest period.

24. As a result of these illegal policies and practices, DEFENDANTS engaged in and enforced the following additional unlawful practices and policies against PLAINTIFF:

- (a) failing to pay PLAINTIFF and DEFENDANTS' non-exempt employees who were discharged, in accordance with the requirements of Labor Code §§ 201, 202, 203; and
- (b) failing to maintain accurate records of PLAINTIFF's and DEFENDANTS' non-exempt employees earned wages and work periods in violation of Labor Code §§ 226 and 1174(d) and Section 7 of the applicable IWC Wage Orders.

25. On information and belief, PLAINTIFF alleges that DEFENDANTS' actions as described throughout this Complaint were willful.

26. DEFENDANTS have made it difficult to account with precision for the unlawfully withheld meal and rest period compensation owed to PLAINTIFF, during the liability period, because they did not implement and preserve a record-keeping method as required for non-exempt employees by California Labor Code sections 226, 1174(d), and section 7 of the California Wage Orders. DEFENDANTS have failed to comply with Labor Code section 226(a) by accurately reporting total hours worked by PLAINTIFF and DEFENDANTS' non-exempt employees. PLAINTIFF and DEFENDANTS' non-exempt employees are therefore entitled to penalties not to exceed \$4,000 pursuant to Labor Code section 226(b).

27. DEFENDANTS have failed to comply with section 7 of the California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code section 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by PLAINTIFF and DEFENDANTS' non-exempt employees.

FIRST CAUSE OF ACTION
FOR FAILURE TO PAY OVERTIME WAGES
[CALIFORNIA LABOR CODE §§ 510, 1194 and 1198]
(Against All DEFENDANTS)

1 28. PLAINTIFF re-alleges and incorporates by reference, the paragraphs previously
2 alleged in this Complaint.

3 29. Labor Code §§ 510, 1194 and 1198 provide that employees in California shall not
4 be employed more than eight hours in any work day, and/or more than forty hours in any
5 workweek, or work a seventh (7th) day in a work week unless they receive additional compensation
6 beyond their regular wages in amounts specified by law.

7 30. Labor Code § 1194 provides that an employee who has not been paid overtime
8 compensation as required by Section 1198 may recover the unpaid balance of the full amount of
9 such overtime compensation, together with costs of suit, as well as liquidated damages in an
10 amount equal to the overtime compensation unlawfully withheld, and interest thereon, in a civil
11 action. The action may be maintained directly against the employer in his name without first filing
12 a claim with the Department of Labor Standards and Enforcement.

13 31. At all times relevant hereto, IWC Wage Order No. 5-2001 applied, and applies, to
14 PLAINTIFF's employment with DEFENDANTS.

15 32. At all times relevant hereto, IWC Wage Order No. 5-2001 (3)(A) provides for
16 payment of overtime wages equal to one and one-half times an employee's regular rate of pay for
17 all hours worked over 8 hours a day and/or forty (40) hours in a work week.

18 33. At all times relevant hereto, IWC Wage Order No. 5-2001 (3)(A) provides for
19 payment of overtime wage equal to one and one-half (1 ½) times an employee's regular rate of
20 pay for all hours worked over eight (8) hours up to and including twelve (12) hours in any workday,
21 and for the first eight (8) hours on the seventh (7th) consecutive day of work in a work week.

22 34. At all times relevant hereto, IWC Wage Order No. 5-2001 (3)(A) provides for
23 payment of overtime wage equal to double the employee's regular rate of pay for all hours worked
24 over twelve (12) hours in any workday, and for all hours worked over eight (8) hours on the
25 seventh (7th) consecutive day of work in a work week.

26 35. DEFENDANTS, and each of them, have intentionally and improperly failed to pay
27 wages for all hours worked including failing to pay overtime wages, that resulted in an
28

underpayment of wages to PLAINTIFF and DEFENDANTS' non-exempt employees while benefiting DEFENDANTS and to avoid payment of overtime wages and other benefits in violation of California Code of Regulations and the guidelines set forth by the Division of Labor Standards and Enforcement.

36. At all times relevant hereto, from time to time, PLAINTIFF and DEFENDANTS' non-exempt employees have worked more than eight (8) hours in a workday, and/or more than forty (40) hours in a workweek, as an employee of DEFENDANTS.

37. At all times relevant hereto, from time to time, PLAINTIFF and DEFENDANTS' non-exempt employees have worked more than twelve (12) hours in a workday, and/or more than eight (8) hours on the seventh (7th) consecutive workday in a workweek.

38. At all times relevant hereto, the DEFENDANTS, and each of them, failed to pay to PLAINTIFF and DEFENDANTS' non-exempt employees overtime compensation for the hours they have worked in excess of the maximum hours permissible by law as required by Labor Code §§ 1194, 1197 and 1198 and the provisions of IWC order No. 5-2001, Cal. Code of Regulations Title 8 § 11050.

39. By virtue of the DEFENDANTS' unlawful failure to pay additional compensation to PLAINTIFF and DEFENDANTS' non-exempt employees for overtime hours, PLAINTIFF and DEFENDANTS' non-exempt employees have suffered, damages in amounts which are presently unknown to PLAINTIFF, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

40. DEFENDANTS, and each of them, acted intentionally, oppressively and maliciously toward PLAINTIFF and DEFENDANTS' non-exempt employees with a conscious disregard of the PLAINTIFF' rights, or the consequences suffered by PLAINTIFF, with the intent of depriving PLAINTIFF of property and legal rights and otherwise causing PLAINTIFF injury.

41. PLAINTIFF requests recovery of overtime compensation according to proof, interest, attorneys' fees and costs pursuant to Labor Code §§ 218.5 and 1194(a), as well as the assessment of any statutory penalties against these DEFENDANTS, and each of them, and any

1 additional sums as provided by the Labor Code and/or other statutes.

2 42. Further, PLAINTIFF is entitled to seek and recover reasonable attorneys' fees and
3 costs pursuant to Labor Code §§ 210 and 1194.

4 **SECOND CAUSE OF ACTION**

5 **FOR FAILURE TO PAY MINIMUM WAGES**

6 **[CALIFORNIA LABOR CODE §§ 1182.11-1182.13, 1194(a), 1194.2, 1197, 1197.1 (Unpaid**

7 **Minimum Wages) and Wage Order 5-2001**

8 **CALIFORNIA CODE OF REGULATION, Title 8, §11050]]**

9 **(Against All Defendants)**

10 43. PLAINTIFF incorporates by reference and re-allege as if fully stated herein the
11 material allegations set out in the paragraphs above.

12 44. At all relevant times, California Labor Code §§ 1182.11-1182.13, 1194, 1197, and
13 1197.1 provide that the minimum wage for employees fixed by the Industrial Welfare Commission
14 is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum
15 so fixed is unlawful.

16 45. Wage Order No. 5, issued by the Industrial Welfare Commission, regulates wages
17 and other working conditions in California for employees in the Public Housekeeping Industry,
18 including restaurants. It provides that an employer must pay an employee who works a split shift
19 one hour's pay at the minimum wage, in addition to the minimum wage for that workday, except
20 when the employee resides at the place of employment. A split shift is defined as "a work schedule,
21 which is interrupted by non-paid non-working periods established by the employer, other than bona
22 fide rest or meal breaks." It also defines a shift as "designated hours of work designated by an
23 employee, with a designated beginning time and quitting time." (IWC Wage Order No. 5 Section
24 (2)(R); California Code of Regulations §§ 11050(2)(Q); 11050(2)(R); 11050(4)(C).)

25 46. During the relevant time period, PLAINTIFF and DEFENDANTS' non-exempt
26 employees worked split shifts in which employees would be required to work two shifts interrupted
27 by non-paid non-working hours consisting of more than 1 hour up to 2 hours.

1 47. During the relevant time period, PLAINTIFF and DEFENDANTS' non-exempt
2 employees were not paid the legal minimum wage for all actual hours worked since they were paid
3 a flat salary each pay period which falls below the legal minimum wage. This payment scheme
4 resulted in a daily wage less than the legal minimum wage and failed to compensate PLAINTIFF
5 and DEFENDANTS' non-exempt employees for daily overtime and double-time to which they
6 were entitled.

7 48. Defendants have failed to pay minimum wage to PLAINTIFF as required, pursuant
8 to California Labor Code §§ 1194, 1197, and 1197.1, by failing to pay split shift wages and by
9 paying an hourly rate below the California minimum wage rate.

10 49. Pursuant to those sections, PLAINTIFF and DEFENDANTS' non-exempt employees
11 are entitled to recover the unpaid balance of their minimum wage compensation as well as interest,
12 costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully
13 unpaid and interest thereon.

14 50. Pursuant to California Labor Code §§ 1197.1, PLAINTIFF is entitled to recover a
15 penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00
16 for each subsequent failure to pay each employee minimum wages.

17 51. Pursuant to California Labor Code § 1194.2, PLAINTIFF is entitled to recover
18 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

19 52. Finally, PLAINTIFF is entitled to seek and recover reasonable attorneys' fees and costs
20 pursuant to Labor Code §§ 218.5, 210 and 1194.

21 **THIRD CAUSE OF ACTION**
22 **FOR FAILURE TO PERMIT MEAL PERIODS**
23 **[CALIFORNIA LABOR CODE §§ 226.7 and 512, and**
24 **CALIFORNIA CODE OF REGULATION, Title 8, §11050]**
25 **(Against All DEFENDANTS)**

26 53. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth
27 herein, the paragraphs previously alleged in this Complaint.
28

1 54. Labor Code §§ 226.7 and 512 and Cal. Code of Regulations, Title 8, § 11050(11)(A),
2 provides that no employer shall employ any person for a work period of more than five (5) hours
3 without a meal period of not less than thirty (30) minutes.

4 55. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
5 period of more than five (5) hours without providing a meal break of not less than thirty (30)
6 minutes in which the employee is relieved of all of his or her duties. An employer may not employ
7 an employee for a work period of more than ten (10) hours per day without providing the employee
8 with a second meal period of not less than thirty (30) minutes, except that if the total hours worked
9 is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the
10 employer and the employee only if the first meal period was not waived.

11 56. Despite said requirements of the IWC wage orders applicable to PLAINTIFF's
12 employment by DEFENDANTS and Labor Code § 512 and Labor Code § 226.7, PLAINTIFF was not
13 authorized to have second meal periods and was not relieved of all duties during any meal periods she
14 did take.

15 57. During the relevant time period, DEFENDANTS failed to provide PLAINTIFF in his
16 role as a non-exempt cook and chef, first and second uninterrupted meal periods of not less than thirty
17 (30) minutes pursuant to the IWC wage orders applicable to her employment by DEFENDANTS.
18 DEFENDANTS implemented and enforced policies and practices which pressured or required
19 PLAINTIFF and DEFENDANTS' non-exempt employees to work during their meal periods, to forego
20 their meal periods, and/or to return to work from meal periods prior to thirty (30) uninterrupted minutes.
21 As a proximate result of the violations, PLAINTIFF and DEFENDANTS' non-exempt employees have
22 been damaged in an amount according to proof at time of trial.

23 58. Labor Code § 226.7 and Cal. Code of Regulations, Title 8, § 11050(11)(B), provides that
24 if an employer fails to provide an employee a meal period in accordance with this section, the employer
25 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
26 workday that the meal period is not provided.

1 59. DEFENDANTS, and each of them, have intentionally and improperly denied meal
2 periods to PLAINTIFF in violation of Labor Code §§ 226.7 and 512 and Cal. Code of Regulations, Title
3 8, § 11050(11)(A) and other regulations and statutes.

4 60. At all times relevant hereto, PLAINTIFF has worked more than five (5) hours in a
5 workday.

6 61. At all times relevant hereto, the DEFENDANTS, and each of them, failed to
7 authorize and permit meal periods and prevented the taking of meal periods as required by Labor
8 Code §§ 226.7 and 512 and Cal. Code of Regulations, Title 8, §11050(11)(A). DEFENDANTS
9 further failed to record start and end times of meal periods.

10 62. By virtue of the DEFENDANTS' unlawful failure to provide meal periods and
11 prevention of same to PLAINTIFF, PLAINTIFF has suffered damages in amounts which are
12 presently unknown to PLAINTIFF, but which exceed the jurisdictional limits of this Court and
13 which will be ascertained according to proof at trial.

14 63. PLAINTIFF requests recovery of meal period compensation pursuant to Labor Code §§
15 226.7 and Cal. Code of Regulations, Title 8, §11050(11)(D), as well as the assessment of any statutory
16 penalties against these DEFENDANTS, and each of them, in a sum as provided by the Labor Code
17 and/or other statutes. Further, the PLAINTIFF is entitled to seek and recover reasonable attorneys'
18 fees and costs pursuant to Labor Code §§ 218.5 and 1194.

19 64. Defendants, HANH and YEN have individual liability under Labor Code §558.1 as
20 the owner/officer/director/managing agent who caused the violation alleged herein.

21 **FOURTH CAUSE OF ACTION**
22 **FOR FAILURE TO PERMIT REST PERIODS**
23 **[CALIFORNIA LABOR CODE §§ 226.7 and 512]**
24 **(Against All DEFENDANTS)**

25 65. PLAINTIFF re-alleges and incorporates by reference the paragraphs previously
26 alleged in this Complaint.

27 66. Labor Code §§ 226.7 and Cal. Code of Regulations, Title 8, § 11050(12)(A),
28

1 provides that employers authorize and permit all employees to take rest periods at the rate of ten
2 (10) minutes net rest time per 3.5 hours worked.

3 67. Labor Code §§ 226.7 and Cal. Code of Regulations, Title 8, § 11050(12)(D),
4 provides that if an employer fails to provide an employee rest periods in accordance with this
5 section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
6 compensation for each workday that the rest period is not provided.

7 68. DEFENDANTS, and each of them, have intentionally and improperly denied rest
8 periods to PLAINTIFF in violation of Labor Code §§ 226.7 and 512 and Cal. Code of Regulations,
9 Title 8, § 11050(12)(A).

10 69. During the times relevant hereto, PLAINTIFF has worked more than four hours in
11 a workday.

12 70. During the times relevant hereto, the DEFENDANTS, and each of them, failed to
13 provide rest periods and actually prevented rest periods as required by Labor Code §§ 226.7 and
14 Cal. Code of Regulations, Title 8, § 11050(12)(A). DEFENDANTS failed to relieve PLAINTIFF
15 of her job duties and failed to relinquish control over how PLAINTIFF spent time during rest
16 breaks.

17 71. By virtue of the DEFENDANTS' unlawful failure to provide rest periods to the
18 PLAINTIFF has suffered damages in amounts which are presently unknown to the PLAINTIFF,
19 but which exceed the jurisdictional limits of this Court and which will be ascertained according to
20 proof at trial.

21 72. PLAINTIFF is informed and believes, and based upon that information and belief
22 allege, that DEFENDANTS, and each of them, knew or should have known that PLAINTIFF was
23 entitled to rest periods and purposely elected not to provide rest periods.

24 73. DEFENDANTS, and each of them, acted intentionally, oppressively and
25 maliciously toward PLAINTIFF with a conscious disregard of his rights, or the consequences to
26 PLAINTIFF, with the intent of depriving PLAINTIFF of property and legal rights and otherwise
27 causing PLAINTIFF injury.

1 74. PLAINTIFF requests recovery of rest period compensation pursuant to Labor Code
2 §§ 226.7 and Cal. Code of Regulations, Title 8, § 11050(12)(B), as well as the assessment of any
3 statutory penalties against these DEFENDANTS, and each of them, in a sum as provided by the
4 Labor Code and/or other statutes.

5 75. Defendants, HANH and YEN have individual liability under Labor Code §558.1 as
6 the owner/officer/director/managing agent who caused the violation alleged herein.

7 **FIFTH CAUSE OF ACTION**
8 **FOR FAILURE TO FURNISH PROPER ITEMIZED STATEMENTS**

9 **[CALIFORNIA LABOR CODE § 226]**

10 **(Against All DEFENDANTS)**

11 76. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth
12 herein, the paragraphs previously alleged in this Complaint.

13 77. California Labor Code § 226(a) states that every employer shall, semi-monthly or
14 at the time of each payment of wages, furnish each of his or her employees an accurate itemized
15 statement in writing showing substantial detailed information, including but not limited to, gross
16 and net wages earned, total hours worked, and all applicable hourly rates and the corresponding
17 number of hours worked at each hourly rate. IWC Wage Order 4 § 7(B) similarly requires
18 employers semimonthly or at the time of each payment of wages to furnish to each employee an
19 accurate itemized statement in writing. These required disclosures of information are essential to
20 enable employees to determine whether they have been paid in compliance with the law.

21 78. Labor Code § 226 requires employers to list on an itemized wage statement “all
22 amounts earned and now owing, not just those amounts actually paid.” *Naranjo v. Spectrum*
23 *Security Services, Inc.*, (2022) 13 Cal.5th 93.

24 79. The employer’s failure to list wages that an employee earned but was not paid
25 “deprives the employee of information needed to evaluate whether the payment is correct, and in
26 so doing results in injury under the terms of the statute.” Extra pay for missed breaks constitutes
27 “wages” that must be reported on statutorily required wage statements during employment and
28

1 paid within statutory deadlines when an employee leaves the job. *Naranjo v. Spectrum Security*
2 *Services, Inc.*, (2022) 13 Cal.5th 93, 120.

3 80. Throughout the liability period, DEFENDANTS intentionally failed to furnish to
4 PLAINTIFF, upon each payment of wages, proper and lawful itemized statements accurately
5 showing: the name of the employee, the name and address of the legal entity that is the employer,
6 the accurate total hours worked, the applicable hourly rates in effect during each pay period and
7 the corresponding hours worked at each hourly rate, the calculation of the pay as well as overtime
8 with the split shift pay included in the regular hourly rate amongst other statutory requirements of
9 Labor Code § 226 and the applicable Wage Orders.

10 81. As a result of DEFENDANTS' conduct, PLAINTIFF has suffered injury in that,
11 among other things, the lack of the required information hindered her from determining the accurate
12 amount of wages owed to him and led him to believe he was not entitled to be paid wages for
13 overtime, missed meal and rest breaks, or for each hour of labor he performed, although he was so
14 entitled. The absence of accurate wage statements has prevented timely challenges to
15 DEFENDANTS' unlawful pay practices, caused difficulty and expense in attempting to reconstruct
16 time and pay records, and resulted in the submission by Defendant of inaccurate information about
17 wages and deductions from wages to state and federal government agencies. As a result of
18 DEFENDANTS' conduct, PLAINTIFF has suffered injury because the legal right to receive
19 accurate wage statements was violated and PLAINTIFF cannot promptly and easily determine from
20 the wage statements alone the correct gross wages, and overtime wages.

21 82. Under Code section 226, subsection (e) and based on DEFENDANTS' conduct as
22 alleged herein, PLAINTIFF is entitled to fifty dollars (\$50) for the initial pay period in which a
23 wage and hour statement violation occurred, and one hundred dollars (\$100) per employee for
24 each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand
25 dollars (\$4,000); plus an award of costs and reasonable attorney's fees.

26 83. Defendants, HANH and YEN have individual liability under Labor Code §558.1 as
27 the owner/officer/director/managing agent who caused the violation alleged herein.
28

SIXTH CAUSE OF ACTION
FOR FAILURE TO PAY ALL WAGES DUE UPON ENDING EMPLOYMENT
[CALIFORNIA LABOR CODE §§ 201-203]
(Against All DEFENDANTS)

84. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

85. Labor Code section 201 provides “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

86. Labor Code section 202 provides “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

87. PLAINTIFF was discharged from or quit his employment with DEFENDANTS within the applicable statute of limitations and DEFENDANTS failed and refused, and continue to fail and refuse to pay the final wages due and owing to PLAINTIFF.

88. DEFENDANTS failed to pay PLAINTIFF without abatement, all wages as defined by applicable California law. Among other things, PLAINTIFF was not paid any of the minimum wage, overtime compensation, meal period and rest breaks premium referred to in this Complaint. DEFENDANTS’ failure to pay said wages within the required time was willful within the meaning of Labor Code §§ 201, 202, 203.

89. Extra pay for missed breaks constitutes “wages” that must be reported on statutorily required wage statements during employment and paid within statutory deadlines when an employee leaves the job. The extra pay is “designed to compensate for the unlawful deprivation of a guaranteed break” but “also compensates for the work the employee performed during the break period. *Naranjo v. Spectrum Security Services, Inc.*, (2022) 13 Cal.5th 93, 120.

90. Defendant, HANH and YEN have individual liability under Labor Code §558.1 as

1 the owner/officer/director/managing agent who caused the violation alleged herein.

2 91. Therefore, PLAINTIFF is entitled to one day's wages for each day she was not
3 timely paid all said wages due, up to a maximum of thirty (30) days' wages for PLAINTIFF.
4 Because PLAINTIFF was never ever paid the minimum and overtime wages to which she was
5 entitled, referred to in this Complaint, PLAINTIFF is entitled to thirty (30) days of wages.

6 **SEVENTH EIGHTH CAUSE OF ACTION**

7 **PENALTIES PURSUANT TO PRIVATE ATTORNEY GENERALS' ACT**

8 **[Individual and Representative Claim via CALIFORNIA LABOR CODE §§ 2698 and 2699]**

9 **(Against All DEFENDANTS)**

10 92. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein, the
11 paragraphs previously alleged in this Complaint.

12 93. As a result of the acts previously alleged, including violations of the sections of the California
13 Labor Code alleged above, PLAINTIFF seek penalties under Labor Code §§ 2698 and 2699.

14 94. From at least **March 27, 2023** through to the present, (the "Civil Penalty Period"),
15 DEFENDANTS violated Labor Code Sections 201, 202, 203, 218, 218.6, 221, 224, 226, 247.5, 256, 351,
16 353, 511, 512, 558, 558.1, 1174, 1182.11-1182.13, 1194, 1197, 1197.1, 1198, 2751, and 2810.5 against
17 PLAINTIFF and other former and current employees in the State of California.

18 95. PLAINTIFF, as "aggrieved employees" within the meaning of California Labor Code
19 sections 2698 et seq., acting on behalf of themselves, and other former and current non-exempt employees of
20 DEFENDANTS, bring this action to recover the civil penalties provided for under the Labor Code Private
21 Attorney General Act of 2004 (hereafter, "PAGA")

22 96. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf of
23 themselves and other similarly aggrieved current or former employees, to bring a civil action to recover civil
24 penalties pursuant to the procedures specified in Labor Code Section 2699.3 without having to obtain a
25 formal class certification from the court.
26
27
28

1 97. As prescribed by the Labor Code, PLAINTIFF gave written notice by letter dated **March 27,**
2 **2024,** via certified U.S. Mail, to DEFENDANTS and to the LWDA via online submission of PLAINTIFFS’
3 allegations of DEFENDANTS’ violations of the Labor Code. (See Lab. Code § 2699.3(a)(1).) It has been more
4 than 65 days since notice was provided to the LWDA and PLAINTIFFS have not been notified that the LWDA
5 intends to investigate this matter. Therefore, PLAINTIFF may proceed and may include in the Complaint a
6 claim for penalties pursuant to Labor Code §§ 2699, et seq.

7 98. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFFs are entitled to recover civil
8 penalties for DEFENDANTS’ violations of Labor Code Sections 201, 202, 203, 221, 224, 226, 247.5, 351,
9 432, 510, 558, 1174, 1194, 1197, 1198.5, and 2751 in the following amounts:

10 99. For violation of Labor Code Sections 1197, one hundred dollars (\$100) for each underpaid
11 employee for each pay period the employee was underpaid, and two hundred fifty dollars (\$250) for each
12 subsequent violation for each underpaid employee for each pay period [penalty amounts established by Labor
13 Code Section 1197.1]
14

15 100. For violation of Labor Code Sections 510 and 1194, fifty dollars (\$50) for each underpaid
16 employee for each pay period the employee was underpaid, and one hundred dollars (\$100) for each
17 subsequent violation for each underpaid employee for each pay period [penalty amounts established by Labor
18 Code Section 558].

19 101. For violation of Labor Code Section 2751, one hundred dollars (\$100) for each underpaid
20 employee for each pay period the employee was underpaid, and two hundred dollars (\$200) for each
21 subsequent violation for each underpaid employee for each pay period [penalty amounts established by
22 Labor Code Section 2699(f)(2)].
23

24 102. For violation of Labor Code Section 2810.5, one hundred dollars (\$100) for each employee
25 for each pay period the employee was not provided with the “Wage Theft” notice, and two hundred dollars
26 (\$200) for each subsequent violation for each employee for each pay period [penalty amounts established by
27 Labor Code Section 2699(f)(2)].
28

1 (d) Waiting period wages and penalties.

2 ON THE SECOND CAUSE OF ACTION:

3 (a) For compensatory damages;

4 (b) For liquidated damages;

5 (c) For interest on any compensatory damages; and

6 (d) For statutory penalties and attorney's fees.

7 ON THE THIRD CAUSE OF ACTION:

8 (a) For statutory penalties, including one hour of pay for each workday that a
9 meal period was not provided;

10 (b) For interest of 7% on any compensatory damages for unpaid premium
11 wages owed under Labor Code § 226.7. *Naranjo v. Spectrum Security*
12 *Services, Inc.* (2022) 13 Cal.5th 93;

13 (c) For attorneys' fees and costs as allowed by the Court.

14 ON THE FOURTH CAUSE OF ACTION:

15 (a) For statutory penalties, including one hour of pay for each workday in
16 which a legally compliant rest period was not provided;

17 (b) For interest of 7% on any compensatory damages for unpaid premium
18 wages owed under Labor Code § 226.7. *Naranjo v. Spectrum Security*
19 *Services, Inc.* (2022) 13 Cal.5th 93;

20 (c) For attorneys' fees and costs as allowed by the Court.

21 ON THE FIFTH CAUSE OF ACTION:

22 (a) For statutory penalties;

23 (b) For interest on any compensatory damages;

24 (c) For attorneys' fees and costs. *Betancourt v. OS Restaurant Services, LLC*
25 (2022) 83 Cal.App.5th 132

26 ON THE SIXTH CAUSE OF ACTION:

27 (a) For compensatory damages;

- 1 (b) For interest on any compensatory damages;
2 (c) For statutory penalties and attorneys' fees; *Betancourt v. OS Restaurant*
3 *Services, LLC* (2022) 83 Cal.App.5th 132 and;
4 (d) Waiting period wages and penalties.

5 ON THE SEVENTH CAUSE OF ACTION:

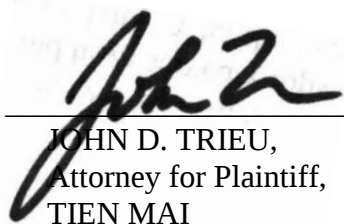
- 6 (a) That DEFENDANTS be ordered to pay civil penalties pursuant to violations
7 of Labor Code §§ 2698 and 2699, in the amount of \$100 for the first
8 violation per employee per pay period, and \$200 for subsequent violations
9 per employee per pay period to be allocated 75% to the LWDA and 25% to
10 the affected employees.
11 (b) That DEFENDANTS be ordered to pay civil penalties pursuant to violations
12 of Labor Code §§ 500-556 (which includes both meal and rest period
13 premiums and overtime) that include an amount sufficient to recover
14 underpaid wages to the affected employees.

15 ON ALL CAUSES OF ACTION:

- 16 (a) For reasonable attorneys' fees;
17 (b) For costs of suit and,
18 (c) For such other and further relief as this Court may deem just and proper.
19

20 Dated: June 26, 2024

LAW OFFICES OF JOHN D. TRIEU, APC

21
22 By: 

JOHN D. TRIEU,
Attorney for Plaintiff,
TIEN MAI