

D.LAW, INC.  
Emil Davtyan (SBN 299363)  
emil@d.law  
David Yeremian (SBN 226337)  
d.yeremian@d.law  
Roman Shkodnik (SBN 285152)  
r.shkodnik@d.law  
880 E Broadway  
Glendale, CA 91205  
Telephone: (818) 962-6465  
Facsimile: (818) 962-6469

Attorneys for Plaintiff BARRY VINCENT ADAMS,  
on behalf of himself and others similarly situated

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**05/30/2024** at 04:31:00 PM  
Clerk of the Superior Court  
By Isaiah Irizarry, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SAN DIEGO**

BARRY VINCENT ADAMS, on behalf of  
himself and others similarly situated,

Plaintiff,

vs.

376 5<sup>TH</sup> LLC dba HUNTRESS STEAK &  
WHISKEY SOCIETY, a California limited  
liability company; RMD GROUP, LLC, a  
California limited liability company; and  
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2024-00014140-CU-OE-CTL

CLASS ACTION

Assigned for All Purposes To:

Hon. Matthew C. Braner

Dept.: C-60

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Recovery of Reporting Time Pay;
4. Meal-Period Liability Under Labor Code § 226.7;
5. Rest-Break Liability Under Labor Code § 226.7;
6. Failure to Pay Vacation Wages;
7. Failure to Comply with Labor Code §§ 245 *et seq.* and 246;
8. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
9. Violation of Labor Code § 226(a);
10. Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5;
11. Failure to Pay Wages Due, Negotiable, and Payable in Cash on Demand Under Labor Code §§ 212 and 225.5;
12. Penalties Pursuant to Labor Code § 203;
13. Violation of Business & Professions Code § 17200 *et seq.*; and
14. Penalties Pursuant to Labor Code § 2699, *et seq.*

**DEMAND FOR JURY TRIAL**

1 Plaintiff BARRY VINCENT ADAMS, (hereinafter “Plaintiff”) on behalf of himself and  
2 all others similarly situated (collectively, “Employees”; individually, “Employee”) complains of  
3 Defendants, and each of them, as follows:

#### 4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all current and former  
6 Employees within the State of California who, at any time four (4) years prior to the filing of this  
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants 376 5<sup>TH</sup> LLC dba  
8 HUNTRESS STEAK & WHISKEY SOCIETY, a California limited liability company; RMD  
9 GROUP, LLC, a California limited liability company; and DOES 1 through 50 (all defendants  
10 being collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each  
11 of them, violated various provisions of the California Labor Code, relevant orders of the Industrial  
12 Welfare Commission (IWC) and California Business & Professions Code, and seeks redress  
13 therefore.

14 2. Plaintiff is a resident of California and during the time period relevant to this  
15 Complaint was employed by Defendants as a non-exempt hourly employee within the State of  
16 California at Defendants’ facilities and offices in California. Plaintiff and the other Class members  
17 worked for Defendants in San Diego County, and in other nonexempt positions, throughout  
18 California and, and consistently worked at Defendants’ behest without being paid all wages due.  
19 More specifically, Plaintiff and the other similarly situated Class members were employed by  
20 Defendants and worked at Defendants’ offices and other facilities where the conduct giving rise to  
21 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff  
22 was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was  
23 subjected to the same policies and practices, and (3) endured similar violations at the hands of  
24 Defendants as the other Employee Class members who served in similar and related positions.

25 3. Defendants required Plaintiff and the Employees in the Class to perform work  
26 while remaining under Defendants’ control before and after being on the clock for their daily work  
27 shift. Defendants thus failed to pay Plaintiff and the Class members for all hours worked and  
28 provided them with inaccurate wage statements that prevented Plaintiff and the Class from

1 learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Class  
2 with lawful meal and rest periods, as employees were not provided with the opportunity to take  
3 timely, uninterrupted, and duty-free meal and rest periods as required by the Labor Code.

#### 4 **THE PARTIES**

##### 5 **A. The Plaintiff**

6 4. Plaintiff BARRY VINCENT ADAMS has resided in California and during the time  
7 period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee  
8 within the State of California.

##### 9 **B. The Defendants**

10 5. Defendant 376 5<sup>TH</sup> LLC dba HUNTRESS STEAK & WHISKEY SOCIETY is a  
11 California limited liability company with its principle executive offices in San Diego, California  
12 and has been listed as the employer on Plaintiff's paystubs during the relevant time period. 376  
13 5<sup>TH</sup> LLC dba HUNTRESS STEAK & WHISKEY SOCIETY lists a California address with the  
14 California Secretary of State and employs Plaintiff and the Class members at Defendants' offices  
15 and facilities in San Diego, California, and throughout California and conducts business  
16 throughout California.

17 6. Defendant RMD GROUP, LLC is a California limited liability company with its  
18 principle executive office in San Diego, California, and is listed on Plaintiff's personnel file  
19 during the relevant time period. RDM GROUP, LLC lists a California address in San Diego,  
20 California with the California Secretary of State, and employs Class members in San Diego  
21 County, including at Defendants' offices and facilities in San Diego, California, and throughout  
22 California and conducts business throughout California.

23 7. 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 8. 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, or suffered or  
9 permitted Employees to work, or engaged, thereby creating a common law employment  
10 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly  
11 employed Employees.

#### 12 **JURISDICTION AND VENUE**

13 9. This Court has jurisdiction over this Action pursuant to California Code of Civil  
14 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought  
15 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California  
16 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district  
17 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the  
18 obligations and liabilities giving rise to this lawsuit occurred at least in part in San Diego County  
19 and Defendants maintain and operate company offices and facilities in San Diego County, and  
20 employ Plaintiff and other Class members in San Diego County and throughout California.

#### 21 **FACTUAL BACKGROUND**

22 10. The Employees who comprise the Class and Collective, including Plaintiff, are  
23 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire  
24 Employees who work in nonexempt positions at the direction of Defendants in the State of  
25 California. Plaintiff and the Class members were either not paid by Defendants for all hours  
26 worked or were not paid at the appropriate minimum, regular, and overtime rates. Specifically,  
27 Plaintiff and Employees were not paid for the time that they worked “pre-shift” without  
28 compensation by performing work tasks such as taking out the trash. Moreover, Employees were

1 not paid for the time spent answering work-related phone calls while off-the-clock. In addition,  
2 Plaintiff contends that Defendants altered time punches to avoid paying overtime. Plaintiff also  
3 contends that Defendants failed to pay Plaintiff and the Class members all wages due and owing,  
4 failed to provide meal and rest breaks, and failed to furnish accurate wage statements, all in  
5 violation of various provisions of the California Labor Code and applicable Wage Orders.  
6 Additionally, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive  
7 pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to  
8 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or  
9 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating  
10 the overtime wage rate. Therefore, during times when Plaintiff and Employees worked overtime  
11 and received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,  
12 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

13 11. Additionally, from at least four (4) years prior to the filing of this lawsuit and  
14 continuing to the present, Defendants' policies and practices required Employees to call in or  
15 show up to work but were not put to work or worked less than half said employee's usual or  
16 scheduled day's work. On such days when Defendants required Plaintiff and the Class members to  
17 report to work only to be sent home, they were not paid half of said Employees' usual or  
18 scheduled day's work in violation of California law.

19 12. From at least four (4) years prior to the filing of this lawsuit and continuing to the  
20 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,  
21 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to  
22 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or  
23 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating  
24 sick pay. Therefore, during times when Employees worked overtime and received  
25 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed  
26 to pay all sick pay by paying a lower overtime rate than required.

27 13. From at least four (4) years prior to the filing of this lawsuit and continuing to the  
28 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,

1 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to  
2 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or  
3 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating  
4 vacation pay. Therefore, during times when Employees worked overtime and received  
5 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed  
6 to pay all vacation pay by paying a lower overtime rate than required.

7       14. During the course of Plaintiff and the Class members' employment with  
8 Defendants, they were not paid all wages they were owed, including for all work performed and  
9 for all overtime hours worked and were forced to work during their meal and rest breaks.  
10 Defendants also failed to maintain timekeeping records for Plaintiff that would permit him to  
11 discover the nature and extent of Defendants' unlawful rounding.

12       15. As a matter of uniform Company policy, Plaintiff and the Class members were  
13 required to work during their meal and rest breaks which were not compensated by Defendants in  
14 violation of the California Labor Code. Plaintiff and the Class members were also not paid  
15 regular wages and overtime for the time they were required to comply with other requirements  
16 imposed upon them, which they had to complete while working through their meal and rest  
17 breaks and without compensation. As a result, Plaintiff and the Class members worked shifts over  
18 eight (8) hours in a day and over forty (40) hours in a work week, but they were not paid at the  
19 appropriate overtime rate for all such hours, including by being required to perform work duties  
20 and tasks without pay and while off-the-clock. As a result, Plaintiff and the Class members  
21 worked substantial overtime hours during their employment with Defendants for which they were  
22 not compensated, in violation of the California Labor Code, applicable IWC Wage Orders.

23       16. As a result of the above described daily work demands and pressures to work  
24 through breaks, and the other wage violations they endured at Defendants' hands, Plaintiff and the  
25 Class members were not properly paid for all wages earned and for all wages owed to them by  
26 Defendants, including when working more than eight (8) hours in any given day and/or more than  
27 forty (40) hours in any given week. As a result of Defendants' unlawful policies and practices,  
28 Plaintiff and Class members incurred overtime hours worked for which they were not adequately

1 and completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and  
2 the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the  
3 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular  
4 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the  
5 Labor Code, applicable IWC Wage Orders.

6 17. Therefore, from at least four (4) years prior to the filing of this lawsuit and  
7 continuing to the present, Defendants had a consistent policy or practice of failing to pay  
8 Employees for all hours worked and failing to pay minimum wage for all time worked as required  
9 by California Law.

10 18. Additionally from at least four (4) years prior to the filing of this lawsuit and  
11 continuing to the present, Defendants had a consistent policy or practice of failing to pay  
12 Employees overtime compensation at premium overtime rates for all hours worked in excess of  
13 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in  
14 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding  
15 sections of IWC Wage Orders.

16 19. Additionally from at least four (4) years prior to the filing of this lawsuit and  
17 continuing to the present, Defendants have regularly required Employees to work shifts in excess  
18 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty  
19 (30) minutes and shifts in excess of ten (10) hours without providing them with second meal  
20 periods of not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one  
21 hour of wages at each Employee’s effective regular rate of pay, for each meal period that  
22 Defendants failed to provide or deficiently provided.

23 20. From at least four (4) years prior to the filing of this lawsuit and continuing to the  
24 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less  
25 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did  
26 Defendant pay Employees premium pay for each day on which requisite rest breaks were not  
27 provided or were deficiently provided at one hour of wages at each Employee’s effective regular  
28 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

1           21.     Additionally, from at least four (4) years prior to the filing of this lawsuit, and  
2 continuing to the present, Defendants have consistently failed to provide Employees with timely,  
3 accurate, and itemized wage statements as required by California wage-and-hour laws.  
4 Specifically, the wage statements given to Employees, by Defendants, failed to include the above  
5 requirements enumerated above. Employees' wage statements did not include: the total hours  
6 worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable  
7 hourly rates in effect during the pay period and the corresponding number of hours worked at each  
8 such rate in violation of Labor Code § 226 (a)(9). The wage statements provided to Employees  
9 were confusing and required Employees to engage in discovery and refer to outside sources to  
10 verify whether their pay was correct and potentially resulting in a miscalculation by the  
11 Employees. Additionally, Specifically, Defendants failed in their affirmative obligation to keep  
12 accurate records of the correct overtime wages based on proper regular rate calculations that  
13 included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned,  
14 and the total amount of compensation of their Employees. Moreover, the wage statements given to  
15 Employees by Defendants failed to accurately account for wages, overtime, and premium pay for  
16 deficient meal periods and rest breaks, all of which Defendants knew or reasonably should have  
17 known were owed to Employees, as alleged hereinabove. The wage statements provided to  
18 Employees were confusing and required Employees to engage in discovery and refer to outside  
19 sources to verify whether their pay was correct and potentially resulting in a miscalculation by the  
20 Employees.

21           22.     Additionally, from at least four (4) years prior to the filing of this lawsuit, and  
22 continuing to the present, Defendants have consistently failed to provide Employees with timely,  
23 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

24           23.     From at least four (4) years prior to the filing of this lawsuit and continuing to the  
25 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the  
26 performance of their job duties for Defendants including, but not limited to, the cost of cellphone  
27 usage and protective gear, such as rubber dishwashing gloves, which were necessary to perform  
28 their duties under Defendants' employ in violation of Labor Code § 2802.

1           24.     Additionally, from at least three (3) years prior to the filing of this lawsuit, and  
2 continuing to the present, Defendants have consistently failed to keep accurate time and wage  
3 records as required by California wage-and-hour laws.

4           25.     Additionally, from at least four (4) years prior to filing this lawsuit and continuing  
5 to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to  
6 Employees at the time of their termination or within seventy-two (72) hours of their resignation, as  
7 required by California wage-and-hour laws.

8           26.     Defendants failed to pay Plaintiff and Class members with an order, check, draft,  
9 note, memorandum, or other acknowledgment of indebtedness that was payable on demand  
10 without discount at some established place of business in the state. Defendants' issued pay cards  
11 to Plaintiff and Class members for wages earned. These cards were useable for a fee, were not  
12 fully cashable, were not usable at all financial institutions, and did not have a provision for use and  
13 payment in California at no cost to the employee. Therefore, Defendants failed to provide Plaintiff  
14 and Class members with checks, drafts, notes, memoranda, or other acknowledgments of  
15 indebtedness that were payable on demand without discount as required by Labor Code § 212.

16           27.     Defendants also failed to provide suitable seating to Plaintiff and the Class members.  
17 Plaintiff worked in the lab. Throughout his shifts, Plaintiff would be required to stand for long  
18 periods. Defendants should have provided Plaintiff with suitable seating at his assigned location,  
19 such as a chair or a stool or the like, and such seating would in no way have interfered with the  
20 performance of Plaintiff's job duties. California Labor Code §1198 makes it illegal to employ an  
21 employee under conditions of labor that are prohibited by the applicable Wage Order. By failing to  
22 provide Plaintiff and Class members with suitable seats in violation of Wage Order 5-2001, § 14,  
23 Defendants violated California Labor Code § 1198. Plaintiff has been injured because he was  
24 employed by Defendants and was not provided with suitable seating, in violation of Lab. Code §  
25 1198 and the appropriate Wage Order 5-2001, § 14. He was harmed by Defendants' failure to  
26 provide seats because he was required to stand for extended periods of time despite the fact that the  
27 nature of his work did not require that he remain standing at all times.

28           28.     In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor

Code §§ 201, 202, 203, 204, 210, 212, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802.

29. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code.

### CLASS ALLEGATIONS

30. Plaintiff brings this class action on behalf of himself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows: all individuals employed by Defendants within the State of California at any time within four (4) years of the filing of this lawsuit.

31. Further, Plaintiff seeks to represent the following Subclasses composed of and defined as follows:

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

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

c. Subclass 3. Recovery of Reporting Time Pay. All Class members who were subject to Defendants' policy and/or practice of not compensating reporting time pay.

d. Subclass 4. Vacation Wages Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their vacation wages.

e. Subclass 5. Sick Pay Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their sick pay wages.

f. Subclass 6. Meal Period Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

g. Subclass 7. Rest Break Subclass. All Class members who were subject to

1 Defendants' policy and/or practice of failing to authorize and permit Employees to take  
2 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction  
3 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

4 h. Subclass 8. Payroll Records Subclass. All Class members who were subject to  
5 Defendants' policy and/or practice of failing to keep accurate time and wage records as required  
6 by California wage-and-hour laws.

7 i. Subclass 9. Wage Statement Subclass. All Class members who, within the  
8 applicable limitations period, were not provided with accurate itemized wage statements.

9 j. Subclass 10. Failure to Reimburse for Necessary Business Expenditures. All Class  
10 members who were subject to Defendants' failure to reimburse for expenses necessarily incurred  
11 in the performance of Employees job duties for Defendants.

12 k. Subclass 11. Pay Card Subclass. All Class members employed by Defendants in  
13 California who were paid by pay card (or similar means) at any time during the relevant time  
14 period.

15 l. Subclass 12. Termination Pay Subclass. All Class members who, within the  
16 applicable limitations period, either voluntarily or involuntarily separated from their employment  
17 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon  
18 termination.

19 m. Subclass 13. UCL Subclass. All Class members who are owed restitution as a  
20 result of Defendants' business acts and practices, to the extent such acts and practices are found to  
21 be unlawful, deceptive, and/or unfair.

22 32. Plaintiff reserves the right under California Rule of Court 3.765 to amend or  
23 modify the class description with greater particularity or further division into subclasses or  
24 limitation to particular issues.

25 33. This action has been brought and may properly be maintained as a class action  
26 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community  
27 of interest in litigation and proposed class is easily ascertainable.

28 ///

1           **A.       Numerosity**

2           34.     The potential members of the class as defined are so numerous that joinder of all  
3 the member of the class is impracticable. While the precise number of class members has not been  
4 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the  
5 time period relevant to this lawsuit, employed more than 100 individuals within the State of  
6 California.

7           35.     Accounting for employee turnover during the relevant time period increases this  
8 number substantially. Plaintiff alleges that Defendants' employment records will provide  
9 information as to the number and location of all class members.

10          **B.       Commonality**

11          36.     There are questions of law and fact common to the class that predominate over any  
12 questions affecting only individual class members. These common questions of law and fact  
13 include:

- 14          a.     Whether Defendants failed to pay Employees minimum wages;
- 15          b.     Whether Defendants failed to pay Employees wages for all hours worked;
- 16          c.     Whether Defendants failed to pay Employees overtime as required under Labor  
17 Code § 510;
- 18          d.     Whether Defendants failed to pay Employees reporting time pay;
- 19          e.     Whether Defendants failed to pay Employees vacation wages as required under  
20 Labor Code § 227.3;
- 21          f.     Whether Defendants failed to pay Employees sick pay as required under Labor  
22 Code § 245;
- 23          g.     Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable  
24 IWC Wage Orders, by failing to provide Employees with requisite meal periods or  
25 premium pay in lieu thereof;
- 26          h.     Whether Defendants violated Labor Code § 226.7, and the applicable IWC Wage  
27 Orders, by failing to provide Employees with requisite rest breaks or premium pay  
28 in lieu thereof;

- i. Whether Defendants violated Labor Code § 226(a);
- j. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- k. Whether Defendants failed to reimburse Employees for necessary business expenses;
- l. Whether Defendants failed to pay wages due, negotiable, and payable in cash on demand;
- m. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- n. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*;
- 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**

37. The claims of the named plaintiff are typical of those of the other Employees. Employees all sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

**D. Adequacy of Representation**

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

**E. Superiority of Class Action**

39. 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 has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

40. Class action treatment will allow those persons similarly situated to litigate their

claims in the manner that is most efficient and economical for the parties and the judicial system.  
Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

**FIRST CAUSE OF ACTION**  
**FAILURE TO PAY MINIMUM WAGES**  
**(Against All Defendants)**

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

42. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of misstating Employees time records and failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with working during meal breaks, working “pre-shift” without compensation by performing work duties, such as taking out the trash, at management’s request, and receiving phone calls while off-the-clock. Additionally, Defendants had a consistent policy of failing to pay Employees for hours worked during alleged meal periods for which Employees were consistently denied, as also addressed herein. Defendants thus regularly failed to pay minimum wages to Plaintiff and Class members. Moreover, Defendants did not pay Plaintiff and Employees at the applicable minimum wage for all hours worked. Defendants’ uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

43. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states:

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

44. The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are therefore entitled to double the minimum wage during the relevant period.

///

1           45.     The minimum wage provisions of California Labor Code are enforceable by private  
2 civil action pursuant to California Labor Code § 1194(a) which states:

3                 Notwithstanding any agreement to work for a lesser wage, any  
4 employee receiving less than the legal minimum wage or the legal  
5 overtime compensation applicable to the employee is entitled to  
6 recover in a civil action the unpaid balance of the full amount of this  
7 minimum wage or overtime compensation, including interest  
8 thereon, reasonable attorney's fees and costs of suit.

9           46.     As described in California Labor Code §§ 1185 and 1194.2, any action for wages  
10 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

11           47.     California Labor Code § 1194.2 also provides for the following remedies:  
12 In any action under Section 1194 . . . to recover wages because of  
13 the payment of a wage less than the minimum wages fixed by an  
14 order of the commission, an employee shall be entitled to recover  
15 liquidated damages in an amount equal to the wages unlawfully  
16 unpaid and interest thereon.

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

20           49.     Wherefore, Employees are entitled to recover the unpaid minimum wages  
21 (including double minimum wages), liquidated damages in an amount equal to the minimum  
22 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant  
23 to California Labor Code § 1194(a).

## 24                                 **SECOND CAUSE OF ACTION**

### 25                                 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

#### 26                                 **(Against All Defendants)**

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

          51.     By their conduct, as set forth herein, Defendants violated California Labor Code §  
510 (and 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

1 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours  
2 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight  
3 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not  
4 paying Employees wages for all hours worked including time off the clock working “pre-shift”  
5 without compensation by performing work duties, such as taking out the trash, at management’s  
6 request and receiving phone calls while off-the-clock. In addition, Plaintiff contends that  
7 Defendants altered time punches to avoid paying overtime. Employees regularly worked over 8  
8 hours on a given day without receiving overtime compensation.

9         52. Furthermore, on information and belief, Defendants did not pay Plaintiff and  
10 Employees the correct overtime rate for the recorded overtime hours that they generated. In  
11 addition to an hourly wage, Defendants paid Plaintiff and Employees nondiscretionary  
12 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and  
13 belief, Defendants failed to incorporate all remunerations, including nondiscretionary  
14 commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular  
15 rate of pay for purposes of calculating the overtime wage rate.

16         53. Therefore, during times when Plaintiff and Employees worked overtime and  
17 received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,  
18 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

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

25         55. Employees have been damaged by these violations of California Labor Code §§  
26 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

27         56. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the  
28 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for

1 the full amount of all their unpaid wages and overtime compensation, with interest, plus their  
2 reasonable attorneys' fees and costs.

3 **THIRD CAUSE OF ACTION**  
4 **RECOVERY OF REPORTING TIME PAY**  
5 **(Against All Defendants)**

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

8 58. The IWC Wage Orders require that reporting time pay be provided to any  
9 employee who is required to report for work and does report but is not put to work or is furnished  
10 less than half of said employee's usual or scheduled day's work.

11 59. Plaintiff is informed and believes and thereon alleges that all or substantially all of  
12 Defendants' hourly paid employees are subject to Defendants' policies and practices requiring  
13 them to call in or otherwise show up to work but are not being paid half said Employee's usual or  
14 scheduled day's work when working less than half of said employee's usual or scheduled day's  
15 work.

16 60. Therefore, Employees are owed the unpaid balance of said wages pursuant to the  
17 Wage Order according to proof at trial, interest pursuant to Labor Code §§ 218.6 and 1994(a),  
18 Civil Code §§ 3287 and 3289, and reasonable attorneys' fees and costs and/or penalties pursuant  
19 to Labor Code § 558(a).

20 **FOURTH CAUSE OF ACTION**  
21 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**  
22 **(Against All Defendants)**

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

25 62. Employees regularly worked shifts greater than five (5) hours and greater than ten  
26 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of  
27 more than five (5) hours without providing him or her with a meal period of not less than thirty  
28 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second

1 meal period of not less than thirty (30) minutes.

2 63. Defendants failed to provide Employees with meal periods as required under the  
3 Labor Code. Employees were consistently required to work through their meal periods which they  
4 were consistently denied. Employees were also required to take meal periods after working well  
5 beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more  
6 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal  
7 period as required by law.

8 64. Moreover, Defendants failed to compensate Employees for each meal period not  
9 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and  
10 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an  
11 employee a meal period in accordance with this section, the employer shall pay the employee one  
12 hour of pay at the employee's regular rate of compensation for each workday that the meal period  
13 is not provided. Defendants failed to compensate the Employees in the Class for each meal period  
14 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11  
15 and 20 of the applicable IWC Wage Order. Additionally, as detailed above, when Defendants did  
16 pay meal period premiums, they did so at the normal regular rate of pay without factoring in all  
17 forms or remuneration/compensation or by otherwise incorrectly calculating the regular rate.

18 65. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in  
19 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal  
20 period not provided or deficiently provided, a sum to be proven at trial.

21 **FIFTH CAUSE OF ACTION**

22 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

23 **(Against All Defendants)**

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

26 67. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the  
27 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of  
28 not less than ten (10) minutes for each consecutive four (4) hour shift.

1           68.     Defendants failed to provide Employees with timely rest breaks of not less than ten  
2 (10) minutes for each consecutive four (4) hour shift.

3           69.     Moreover, Defendants failed to compensate Employees for each rest period not  
4 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC  
5 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in  
6 accordance with this section, the employer shall pay the employee one hour of pay at the  
7 employee's regular rate of compensation for each workday that the rest period is not provided.  
8 Defendants failed to compensate the Employees in the Class for each rest period not provided or  
9 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage  
10 Order. Additionally, as detailed above, when Defendants did pay rest period premiums, they did  
11 so at the normal regular rate of pay without factoring in all forms or remuneration/compensation  
12 or by otherwise incorrectly calculating the regular rate.

13           70.     Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in  
14 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day  
15 worked without the required rest breaks, a sum to be proven at trial.

16                               **SIXTH CAUSE OF ACTION**  
17                               **FAILURE TO PAY VACATION WAGES**  
18                               **(Against All Defendants)**

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

21           72.     Pursuant to California Labor Code § 227.3, whenever a contract of employment or  
22 employment policy provides for paid vacation and an employee is terminated without having  
23 taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate  
24 in accordance with said contract of employment or policy respecting eligibility or time served.

25           73.     Defendants paid nondiscretionary commissions, incentive pay, and/or  
26 nondiscretionary bonuses to Employees but Defendants failed to include these forms of  
27 remuneration in the regular rate of pay upon which vacation wages were calculated and paid.

28           74.     Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor

1 Code § 227.3.

2 **SEVENTH CAUSE OF ACTION**

3 **FAILURE TO COMPLY WITH LABOR CODE §§ 245 *ET SEQ.* AND 246**

4 **(Against All Defendants)**

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

7 76. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time  
8 to Employees, including at the amount, terms, and rate of compensation set forth in said law. At  
9 times relevant, Defendants have failed compute the amount due for paid sick time in conformance  
10 with the pay calculation under California Labor Code § 246(1).

11 77. Defendants paid nondiscretionary commissions, incentive pay, and/or  
12 nondiscretionary bonuses to Employees but Defendants failed to include these forms of  
13 remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than  
14 calculating the amount of paid sick time due when sick time is used according to the requirements  
15 set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower  
16 rate, in violation of the law.

17 78. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor  
18 Code §§ 245 *et seq.* and 246.

19 **EIGHTH CAUSE OF ACTION**

20 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

21 **IN VIOLATION OF LABOR CODE § 2802**

22 **(Against All Defendants)**

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

25 80. Under Labor Code § 2802(a), an employer must indemnify its employees for all  
26 necessary expenditures or losses incurred by the employee in direct consequence of the discharge  
27 of his or her duties, or of his or her obedience to the directions of the employer.

28 81. Employees incurred necessary expenditures in the performance of their job duties

1 for Defendants, namely the cost of cell phone usage and protective gear, such as rubber  
2 dishwashing gloves, which were necessary to perform their duties under Defendants' employ.  
3 From four (4) years prior to the original filing of this lawsuit and continuing to the present,  
4 Defendants consistently failed to reimburse Employees for these necessarily incurred business  
5 expenses.

6 82. As a result of the unlawful acts of Defendants, Employees have been deprived of  
7 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,  
8 plus interest and penalties thereon, attorneys' fees, and costs.

9 **NINTH CAUSE OF ACTION**  
10 **VIOLATION OF LABOR CODE § 226(a)**  
11 **(Against All Defendants)**

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

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

21 85. Defendants failed to provide Employees with accurate itemized wage statements in  
22 writing, as required by the Labor Code. Specifically, the wage statements given to Employees, by  
23 Defendants, failed to include the above requirements enumerated above. Employees' wage  
24 statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and  
25 failed to accurately set forth all applicable hourly rates in effect during the pay period and the  
26 corresponding number of hours worked at each such rate in violation of Labor Code § 226 (a)(9).  
27 The wage statements provided to Employees were confusing and required Employees to engage in  
28 discovery and refer to outside sources to verify whether their pay was correct and potentially

1 resulting in a miscalculation by the Employees. Additionally, Specifically, Defendants failed in  
2 their affirmative obligation to keep accurate records of the correct overtime wages based on proper  
3 regular rate calculations that included nondiscretionary commissions, incentive pay, and/or  
4 nondiscretionary bonuses earned, and the total amount of compensation of their Employees.  
5 Moreover, the wage statements given to Employees by Defendants failed to accurately account for  
6 wages, overtime, and premium pay for deficient meal periods and rest breaks, all of which  
7 Defendants knew or reasonably should have known were owed to Employees, as alleged  
8 hereinabove. The wage statements provided to Employees were confusing and required  
9 Employees to engage in discovery and refer to outside sources to verify whether their pay was  
10 correct and potentially resulting in a miscalculation by the Employees.

11         86. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),  
12 Employees suffered injuries, including among other things confusion over whether they received  
13 all wages owed them, the difficulty and expense involved in reconstructing pay records, and  
14 forcing them to make mathematical computations to analyze whether the wages paid in fact  
15 compensated them correctly for all hours worked.

16         87. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover  
17 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation  
18 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not  
19 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an  
20 award of costs and reasonable attorneys' fees.

21         88. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a  
22 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for  
23 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each  
24 employee for each pay period.

25         89. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and  
26 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be  
27 shown according to proof.

28 ///

**TENTH CAUSE OF ACTION**  
**FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE §§ 1174**  
**AND 1174.5**  
**(Against All Defendants)**

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

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

92. During the course of Plaintiff's and Employees' employment, Defendants consistently failed to maintain accurate time and wage records for Plaintiff and Employees as required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages, overtime, and premium pay as discussed above.

93. Accordingly, Defendants are liable for civil penalties pursuant to the California Labor Code § 1174.5. for the three (3) years prior to the filing of this Complaint.

**ELEVENTH CAUSE OF ACTION**  
**FAILURE TO PAY WAGES DUE, NEGOTIABLE, AND PAYABLE IN CASH ON**  
**DEMAND UNDER LABOR CODE §§ 212 AND 225.5**  
**(Against All Defendants)**

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

95. Labor Code § 212 states that no employer "shall issue in payment of wages due ... any order, check, draft, note, memorandum, or other acknowledgement of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state."

96. Defendants failed to pay Plaintiff and Class members with an order, check, draft, note, memorandum, or other acknowledgment of indebtedness that was payable on demand,

1 without discount at some established place of business in the state. Defendants issued pay cards to  
2 Plaintiff and Class members for wages earned. These pay cards were useable for a fee and did not  
3 have a provision for use and payment in California at no cost to the employee. The pay cards  
4 provided to Plaintiff and Class members required Plaintiff and class Members to incur fees, were  
5 not fully cashable, and were not usable at all financial institutions. Therefore, Defendants failed to  
6 provide Plaintiff and Class members with checks, drafts, notes, or other acknowledgments of  
7 indebtedness that were payable on demand without discount as required by Labor Code § 212.

8         97. Pursuant to Labor Code §§ 212 and 225.2, Defendants are liable for civil penalties  
9 including one hundred dollars (\$100) for the initial violation for each failure to pay each employee  
10 pursuant to section 212, two hundred and fifty dollars (\$250) for each subsequent violation for  
11 each failure to pay each employee pursuant to section 212, plus 25% of the amount unlawfully  
12 withheld. Such a pattern, practice, and uniform administration of corporate policy regarding illegal  
13 employee compensation as described herein is unlawful and creates an entitlement to recovery by  
14 Plaintiff and Class members in a civil action for damages and wages owed and for costs and  
15 attorneys' fees.

16         98. Plaintiff is seeking penalties against Defendants under Labor Code § 212, and any  
17 other applicable statute allowing recovery of penalties as alleged herein in an amount to be shown  
18 according to proof.

19                                 **TWELFTH CAUSE OF ACTION**  
20                                 **VIOLATION OF LABOR CODE § 203**  
21                                 **(Against All Defendants)**

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

24         100. Numerous Employees are no longer employed by Defendants; they either quit  
25 Defendants' employ or were fired therefrom.

26         101. Defendants failed to pay these Employees all wages due and certain at the time of  
27 termination or within seventy-two (72) hours of resignation.

28         102. The wages withheld from these Employees by Defendants remained due and owing

1 for more than thirty (30) days from the date of separation of employment.

2 103. Defendants' failure to pay wages, as alleged above, was willful in that Defendants  
3 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties  
4 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up  
5 to thirty (30) days from the date they were due.

6 **THIRTEENTH CAUSE OF ACTION**  
7 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***  
8 **(Against All Defendants)**

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

11 105. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim  
12 pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in  
13 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the  
14 general public. Plaintiff seeks to enforce important rights affecting the public interest within the  
15 meaning of Code of Civil Procedure § 1021.5.

16 106. Plaintiff is a "person" within the meaning of Business & Professions Code  
17 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive  
18 relief, restitution, and other appropriate equitable relief.

19 107. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair  
20 business practices.

21 108. Wage-and-hour laws express fundamental public policies. Paying employees their  
22 wages and overtime, providing them with meal and rest periods, etc., are fundamental public  
23 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously  
24 to enforce minimum labor standards, to ensure that employees are not required or permitted to  
25 work under substandard and unlawful conditions, and to protect law-abiding employers and their  
26 employees from competitors who lower costs to themselves by failing to comply with minimum  
27 labor standards.

28 109. Defendants have violated statutes and public policies. Through the conduct alleged

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

6 110. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in  
7 violation of the Business & Professions Code § 17200 *et seq.*

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

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

14 113. Unless restrained by this Court, Defendants will continue to engage in such  
15 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court  
16 should make such orders or judgments, including the appointment of a receiver, as may be  
17 necessary to prevent the use by Defendants or their agents or employees of any unlawful or  
18 deceptive practice prohibited by the Business & Professions Code, including but not limited to the  
19 disgorgement of such profits as may be necessary to restore Employees to the money Defendants  
20 have unlawfully failed to pay.

21 **FOURTEENTH CAUSE OF ACTION**

22 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**

23 **(Against All Defendants)**

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

26 115. Plaintiff and Employees are aggrieved employees as defined under Labor Code §  
27 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the  
28 alleged violators, Defendants.

1           116. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants’  
2 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the  
3 penalty provisions, without limitation, based on the following California Labor Code sections:  
4 201, 202, 203, 204, 210, 212, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510,  
5 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*  
6 and 2802.

7           117. The penalties shall be allocated as follows: 75% to the Labor and Workforce  
8 Development Agency (LWDA) and 25% to the affected employee.

9           118. Employees also seek any and all penalties and remedies set forth in Labor Code §  
10 558, which states:

11           (a) Any employer or other person acting on behalf of an  
12 employer who violates, or causes to be violated, a section of this  
13 chapter or any provision regulating hours and days of work in any  
14 order of the Industrial Welfare Commission shall be subject to a civil  
15 penalty as follows: (1) For any initial violation, fifty dollars (\$50)  
16 for each underpaid employee for each pay period for which the  
17 employee was underpaid in addition to an amount sufficient to  
recover underpaid wages. (2) For each subsequent violation, one  
hundred dollars (\$100) for each underpaid employee for each pay  
period for which the employee was underpaid in addition to an  
amount sufficient to recover underpaid wages. (3) Wages recovered  
pursuant to this section shall be paid to the affected employee.

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

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

26           119. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of  
27 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)  
28 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee

1 for each violation in a subsequent citation, for which the employer fails to provide the employee a  
2 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the  
3 extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

4 120. Plaintiff has exhausted his administrative remedy by sending a certified letter to the  
5 LWDA and Defendants postmarked on March 26, 2024. The LWDA has not provided notice of its  
6 intent to investigate the alleged violations within 65 calendar days of the postmark date of the  
7 letters.

### 8 **RELIEF REQUESTED**

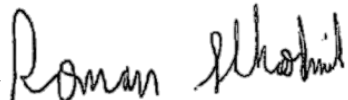
9 WHEREFORE, Plaintiff prays for the following relief:

- 10 1. For an order certifying this action as a class action;
- 11 2. For compensatory damages in the amount of the unpaid minimum wages for work  
12 performed by Employees and unpaid overtime compensation from at least four (4) years prior to  
13 the filing of this action, as may be proven;
- 14 3. For liquidated damages in the amount equal to the unpaid minimum wage and  
15 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 16 4. For compensatory damages in the amount of the hourly wage made by Employees  
17 for each missed or deficient meal period where no premium pay was paid therefor from four (4)  
18 years prior to the filing of this action, as may be proven;
- 19 5. For compensatory damages in the amount of the hourly wage made by Employees  
20 for each day requisite rest breaks were not provided or were deficiently provided and where no  
21 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may  
22 be proven;
- 23 6. For recovery of the unpaid balance of the full amount of the reporting time pay due  
24 pursuant to the applicable Wage Order, as may be proven;
- 25 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 26 8. For penalties pursuant to Labor Code § 226.3, as may be proven;
- 27 9. For penalties pursuant to Labor Code § 203 for all Employees who quit or were  
28 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

10. For penalties pursuant to Labor Code § 227.3, as may be proven;
11. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;
12. For penalties pursuant to Labor Code § 1174.5, as may be proven;
13. For penalties pursuant to Labor Code § 225.5, as may be proven;
14. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;
15. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;
16. For compensatory damages in the amount of all previously unreimbursed business expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants from four (4) years prior to the original filing of this action, as may be proven;
17. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;
18. For all general, special, and incidental damages as may be proven;
19. For an award of pre-judgment and post-judgment interest;
20. For an award providing for the payment of the costs of this suit;
21. For an award of attorneys' fees; and
22. For such other and further relief as this Court may deem proper and just.

DATED: May 30, 2024

D.LAW, INC.

By   
David Yeremian  
Roman Shkodnik  
Attorneys for Plaintiff  
BARRY VINCENT ADAMS  
and the putative class

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DATED: May 30, 2024

By   
David Yeremian  
Roman Shkodnik  
Attorneys for Plaintiff  
**BARRY VINCENT ADAMS**  
and the putative class

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

**376 5TH LLC dba HUNTRESS STEAK & WHISKEY SOCIETY**  
Michael Georgopoulos, Agent for Service  
614 Fifth Ave.  
San Diego, CA 92101

**[X] (BY MAIL)** I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

**[X] (STATE)** I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Natalia Bermudes  
Natalia Bermudes