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Superior Court of California
County of Los Angeles
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David W. Slayton, Executive Officer / Clerk of Court
By: R. Lozano Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ANTHONY CORTEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

BUCA RESTAURANTS 2, INC., d.b.a.
BUCA DI BEPPO; a Minnesota Corporation;
and DOES 1 through 100,

Defendants.

CASE NO. 24STCV07648

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197, 1198);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 1194, 1198);**
- (3) **FAILURE TO PAY REPORTING
TIME PAY (LABOR CODE §§ 204,
1198);**
- (4) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (5) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (6) **FAILURE TO REIMBURSE ALL
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE §§
2802, 2804);**
- (7) **WAGE STATEMENT PENALTIES
(LABOR CODE § 226 *et seq.*);**
- (8) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (9) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**

**(10) CIVIL PENALTIES UNDER
THE PRIVATE ATTORNEYS
GENERAL ACT (LABOR
CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Anthony Cortez (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendant Buca Restaurants 2, Inc., d.b.a. Buca di Beppo, a Minnesota
4 corporation, and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and
5 belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages and penalties under California Business and Professions
9 Code § 17200 *et. Seq.*, Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 558, 1194, 1194.2,
10 1197, 1198, 2802, 2804, and 2698 *et seq.*, and Industrial Welfare Commission Wage Order 5
11 (“Wage Order 5”), in addition to seeking injunctive relief, declaratory relief, and restitution. This
12 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
13 jurisdiction over Defendants’ violations of the California Labor Code because the amount in
14 controversy exceeds this Court’s jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
18 occurred in Los Angeles County. Defendants own, maintain offices, transact business, have an
19 agent or agents within Los Angeles County, and/or otherwise are found within Los Angeles
20 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was, and currently is, a California resident. Within the statute of limitations periods
24 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
25 exempt employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices
26 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
27 by California Business and Professions Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226,
28 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802, 2804, and Wage Order

1 5, which sets employment standards for the public housekeeping industry, including restaurants.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the during
3 the applicable statute of limitations for each cause of action pled herein and continuing to the
4 present, Defendants did (and continue to do) business preparing and selling food through their
5 restaurants and employed Plaintiff and other, similarly-situated non-exempt employees within
6 Los Angeles County, and the State of California and, therefore, were (and are) doing business in
7 Los Angeles County and the State of California.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner,
9 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
11 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
12 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
13 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
14 and proximately caused Plaintiff and the Classes (as defined in Paragraph 16) to be subject to the
15 unlawful employment practices, wrongs, injuries and damages complained of herein.

16 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
17 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

18 7. At all relevant times, each of said Defendants participated in the doing of the acts
19 hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
20 and each of them, were the agents, servants, and employees of each and every one of the other
21 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
22 within the course and scope of said agency and employment. Defendants, and each of them,
23 approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions
24 complained of herein.

25 8. At all times mentioned herein, Defendants, and each of them, were members of
26 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
27 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
28 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all

members of the Classes.

GENERAL FACTUAL ALLEGATIONS

9. Defendants own and operate multiple Buca di Beppo restaurant locations throughout California. Plaintiff worked for Defendants as a non-exempt employee in the position of “Busser/Server” (or similarly titled position) at their Universal CityWalk, Los Angeles location from approximately September 2019, until approximately March 27, 2023.

10. During his employment with Defendants, and upon information and belief, Plaintiff alleges that Defendants fail to pay Plaintiff and other non-exempt employees for all hours worked. Specifically, Defendants required Plaintiff and other non-exempt employees to work through their purported breaks while off-the-clock, resulting in Plaintiff and other non-exempt employees not being paid for all their hours actually worked. Additionally, upon information and belief, Plaintiff alleges that Defendants’ supervisors and management would call Plaintiff and other non-exempt employees on their days off and/or while they were off-the-clock to discuss work-related matters. As a result, Plaintiff alleges that Defendants failed to pay Plaintiff and other non-exempt employees for all minimum and overtime wages that they are owed.

11. Upon information and belief, Defendants have also failed to compensate Plaintiff and other non-exempt employees for all required reporting time pay. Plaintiff and other non-exempt employees were regularly called into work as “on-call” shift employees but were not always put to work. When this happened, upon information and belief, Defendants did not compensate Plaintiff and other non-exempt employees for at least two hours of work and/or half of their usually scheduled hours at their regular rate of pay. Plaintiff alleges that this policy and practice is in violation of the reporting time pay requirements under California law, including Wage Order 5, § 5, and as a result, Defendants have failed to pay Plaintiff and other non-exempt employees for all required reporting time pay.

12. In addition, Defendants’ meal period policies/practices failed to provide Plaintiff and other non-exempt employees with all legally compliant meal periods because they failed to provide Plaintiff and other non-exempt employees with a timely, duty-free, and uninterrupted 30-minute meal period commencing before the end of the fifth hour of work, and/or a second 30-

1 minute meal period for shifts of over 10.0 hours. Moreover, upon information and belief,
2 Defendants did not require Plaintiff and other non-exempt employees to record their meal periods.
3 Instead, upon information and belief, Defendants automatically deducted 30 minutes from the
4 total hours worked for each shift worked regardless of whether the employee took a full 30-minute
5 compliant meal period. On those occasions when Plaintiff was not provided with all legally
6 compliant meal periods to which he was entitled, Defendants failed to always compensate
7 Plaintiff with the required meal period premium for each workday in which he experienced a meal
8 period violation as mandated by Labor Code § 226.7.

9 13. Plaintiff was also not authorized and permitted to take all required and legally-
10 compliant rest periods due to Defendants' rest period policies/practices. Specifically, Plaintiff
11 was not always authorized and permitted to take all legally compliant rest periods of a net ten
12 minutes due to work demands imposed by Defendants. Upon information and belief, Plaintiff and
13 other non-exempt employees were required to work through their 10-minute rest period due to
14 the demand of their job responsibilities. As a result, Defendants failed to relinquish control over
15 Plaintiff during their rest periods and dictated how they spent at least a portion of their 10-minute
16 rest period, and therefore failed to authorize and permit 10 minutes of "net rest time." On those
17 occasions when Plaintiff was not provided with all legally required and compliant rest periods to
18 which he was entitled, Defendants failed to always compensate Plaintiff with the required rest
19 period premium for each workday in which he experienced a rest period violation as mandated
20 by Labor Code § 226.7.

21 14. Defendants also failed to reimburse Plaintiff and other non-exempt employees for
22 use of their personal cellular phones for work activities. Upon information and belief, Defendants
23 required Plaintiff and other non-exempt employees to communicate with coworkers and their
24 supervisors through their personal cellular phones; however, Defendants failed to reimburse
25 Plaintiff and other non-exempt employees for the use of their personal cellular phones for business
26 purposes.

27 15. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees
28 for all minimum wages, overtime wages, and meal and rest period premium wages owed,

Defendants maintained inaccurate payroll records and failed to issue accurate, compliant, itemized wage statements. As a further result of Defendants' failure to pay Plaintiff and other non-exempt employees for all minimum wages, overtime wages, and meal and rest period premium wages owed, Defendants failed to pay all wages to Plaintiff and other formerly employed non-exempt employees at the separation of their employment.

CLASS ACTION ALLEGATIONS

16. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping practices during the four years immediately preceding the filing of this action through the present.
- b. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than 8 hours in a workday and/or more than 40 hours in a workweek and: (i) were subject to Defendants' timekeeping practices; and/or (ii) worked more than 40 hours in a workweek and were not paid overtime wages for such time worked, during the four years immediately preceding the filing of this action through the present.
- c. The Reporting Time Class consists of all of Defendants' current and former non-exempt employees in California who were "on-call" and reported to work and were provided less than two hours of work and/or less than half their regularly scheduled hours worked, on at least one occasion during the four years immediately preceding the filing of this action to the present.
- d. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 5.0 hours; and/or (ii) worked at least one shift in excess of 10.0 hours, at any time during the four years immediately preceding the filing of this action to the present.
- e. The Rest Period Class consists of all Defendants' current and former non-exempt

employees in California who worked a shift in excess of 3.5 hours, during the four years immediately preceding the filing of this action to the present.

f. The Employee Expense Class consists of all of Defendants' current and former non-exempt employees in California who were not reimbursed for the use of their personal cellular phones, during the four years immediately preceding the filing of this action through the present.

g. The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class who received a wage statement during the one year immediately preceding the filing of this action through the present.

h. The Waiting Time Penalty Class consists of Defendants' formerly employed members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class, during the three years immediately preceding the filing of this action through the present.

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes and Subclasses are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

18. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

i. Whether Defendants' timekeeping policies and/or practices resulted in the failure to properly compensate members of the Overtime Class and Minimum Wage Class for all hours worked;

ii. Whether Defendants provided all reporting time pay to members of the Reporting Time Class pursuant to Wage Order 5 § 5, Labor Code §§ 204 and 1198;

- 1 iii. Whether Defendants provided all legally compliant meal periods to members of
2 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 3 iv. Whether Defendants authorized and permitted all legally compliant rest periods to
4 members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 5 v. Whether Defendants provided meal and rest period premium payments for non-
6 compliant meal and rest periods;
- 7 vi. Whether Defendants’ policies and/or practices regarding business expenditures
8 resulted in the failure to properly reimburse members of the Employee Expense
9 Class;
- 10 vii. Whether Defendants furnished legally compliant wage statements to members of
11 the Wage Statement Class pursuant to Labor Code § 226; and
- 12 viii. Whether Defendants’ policies and/or practices for the timing and amount of
13 payment of final wages to members of the Waiting Time Class at the time of
14 separation from employment were unlawful.

15 19. **Predominance of Common Questions:** Common questions of law and fact
16 predominate over questions that affect only individual members of the Classes. The common
17 questions of law set forth above are numerous and substantial and stem from Defendants’ policies
18 and/or practices applicable to each individual class member, including but not limited to
19 Defendants’ failure to implement lawful meal and rest period policies/practices, failure to provide
20 accurate wage statements, and/or failure to pay all wages owed at the termination of employment.
21 As such, the common questions predominate over individual questions concerning each
22 individual class member’s showing as to their eligibility for recovery or as to the amount of their
23 damages.

24 20. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
25 Plaintiff was employed by Defendants as a non-exempt employee in California during the
26 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
27 herein, Plaintiff, like the members of the Classes, was not properly paid all minimum and overtime
28 wages owed, was not provided all required meal periods, was not authorized and permitted all

rest periods, did not receive premium pay for meal and rest period violations, was not provided with accurate, itemized wage statements, and was not paid all wages owing at the termination of employment.

21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

22. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be

dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 16 are maintainable as classes under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

23. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

24. Wage Order 5, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class for all hours worked, including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 5.

25. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

26. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and members of the Minimum Wage Class seek penalties pursuant to Wage Order 5 § 20(A) and California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and

Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2; attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages and/or penalties pursuant to California Labor Code § 558(a).

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and 1198, which provide that non-exempt employees are entitled to all overtime wages and compensation for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

29. At all times relevant herein, Defendants were required to properly compensate non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay" for work in excess of 8 hours per work day and/or in excess of 40 hours of work in a workweek. Defendants caused Plaintiff and members of the Overtime Class to work overtime hours, but failed to credit these employees with all overtime hours actually worked.

30. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class members in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 218.6, 510, 558, 1194, and 1198; Civil Code §§ 3287 and 3289, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

FAILURE TO PAY REPORTING TIME PAY

(AGAINST ALL DEFENDANTS)

31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

32. Wage Order 5, § 5 provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employees regular rate of pay, which shall not be less than the minimum wage. Wage Order 5, § 5 establishes a guarantee of at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.

33. As alleged herein, Defendants have failed to pay Plaintiff and the Reporting Time Class required reporting time pay, when Plaintiff and Reporting Time Class members were called into work for a shift but were not put to work and/or were sent home after less than half their usual or schedule day’s work, in violation of Wage Order 5, § 5 and Labor Code §§ 204 and 1198.

34. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Reporting Time Class in a civil action for the unpaid amount of reporting time pay, including interest thereon, attorney’s fees and costs of suit according to California Labor Code §§ 204, 218.5, 218.6, and 1198, Civil Code §§ 3287 and 3289, and Code of Civil Procedure § 1021.5.

FOURTH CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

36. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 5, § 11. Despite Defendants’ violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

37. As a result, Defendants are responsible for paying premium compensation for meal

period violations including interest thereon, statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, 558, Wage Order 5, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

38. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

39. Wage Order 5, § 12 and California Labor Code §§ 226.7, 516 and 558 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. Despite Defendants' failure to authorize and permit Plaintiff and members of the Rest Period Class to take all legally complaint rest periods as alleged herein, Defendants did not pay these individuals an additional hour of pay at their respective regular rate for the rest periods that they failed to authorize and permit them to take, as required by Labor Code § 226.7.

40. Defendants' policies and practices described herein are unlawful and create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interests thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 226.7, 516, 558, Wage Order 5, and Civil Code §§ 3287(b) and 3289.

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENDITURES

(AGAINST ALL DEFENDANTS)

41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

42. At all relevant times herein, Defendants were subject to Labor Code § 2802, which states that, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or obedience to the directions of the employer."

43. At all relevant times herein, Defendants were subject to Labor Code § 2804, which states that, "[a]ny contract or agreement, express or implied, made by any employee to waive the

benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

44. Due to Defendants’ unlawful policy and practice of requiring employees to use their personal cellular phones for work purposes and failing to compensate employees for the use of their personal cellular phones, Defendants have violated Labor Code § 2802.

45. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, and Wage Order 5, § 9, Plaintiff and members of the Employee Expense Class were damaged in sums, which will be shown according to proof.

46. Plaintiff and members of the Employee Expense Class are entitled to attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

47. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue from the date on which they incurred the necessary expenditure.

SEVENTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

48. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

49. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements in violation of Labor Code § 226 *et seq.*

50. Defendants’ failures in furnishing Plaintiff and Wage Statement Class members with complete and accurate itemized wage statements resulted in injury, as said failures deprived them of the information necessary to identify the discrepancies in Defendants’ reported data, and deprived them of the information required to be included under Labor Code § 226(a).

51. Defendants’ failures create an entitlement to recovery by Plaintiff and members of

the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226 et seq., including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 *et seq.*

EIGHTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

52. Plaintiff realleges and incorporates by reference all previous paragraphs.

53. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages earned immediately at the time of termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

54. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at the time of their separation which include, among other things, underpaid minimum wages and overtime wages and meal and rest period premiums. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all wages was willful within the meaning of Labor Code § 203.

55. Defendants' willful failure to timely pay Plaintiff and members of the Waiting Time Class their earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

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1 **NINTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

4 56. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 57. Defendants have engaged and continue to engage in unfair and/or unlawful
6 business practices in California in violation of California Business and Professions Code § 17200
7 *et seq.*, by: (a) failing to pay Plaintiff and members of the Minimum Wage Class and Overtime
8 Class all minimum and overtime wages owed; (b) failing to pay Plaintiff and members of the
9 Reporting Time Class all reporting time pay; (c) failing to provide Plaintiff and members of the
10 Meal Period Class with all meal periods to which they are entitled, and failing to pay them all
11 meal period premium payments; (d) failing to authorize and permit Plaintiff and members of the
12 Rest Period Class all rest periods to which they are entitled, and failing to pay them rest period
13 premium payments; (e) failing to reimburse Plaintiff and all members of the Employee Expense
14 Class for all necessary business expenses; (f) failing to issue accurate and itemized wage
15 statements to the Wage Statement Class; and (g) failing to pay all final wages owed to employees
16 upon their separation from employment with Defendants.

17 58. Defendants' utilization of these unfair and/or unlawful business practices deprived
18 Plaintiff and continues to deprive members of the Classes of compensation to which they are
19 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
20 over Defendants' competitors who have been and/or are currently employing workers and
21 attempting to do so in honest compliance with applicable wage and hour laws.

22 59. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
23 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
24 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
25 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

26 60. The acts complained of herein occurred within the last four years immediately
27 preceding the filing of the Complaint in this action.

28 61. Plaintiff was compelled to retain the services of counsel to file this court action to

1 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
2 of Defendants' current non-exempt employees, and to enforce important rights affecting the
3 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
4 which he is entitled to recover under Code of Civil Procedure § 1021.5.

5 **TENTH CAUSE OF ACTION**

6 **PRIVATE ATTORNEYS GENERAL ACT**

7 **(AGAINST ALL DEFENDANTS)**

8 62. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 63. Defendants have committed several Labor Code violations against Plaintiff,
10 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
11 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
12 employees, brings this representative action against Defendants to recover the civil penalties due
13 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
14 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
15 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
16 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
17 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
18 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
19 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
20 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
21 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
22 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
23 subsequent violation per employee per pay period for those violations of the Labor Code for which
24 no civil penalty is specifically provided, based on the following Labor Code violations:

25 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
26 Wage Class, and other aggrieved employees in violation of Labor Code §§
27 1182.12, 1194, 1194.2, 1197, and 1198;

28 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all

1 earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194,
2 and 1198;

3 c. Failing to pay Plaintiff, the Reporting Time Class, and other aggrieved employees
4 all owed reporting time pay in violation of Labor Code §§ 204 and 1198;

5 d. Failing to provide all legally required meal periods, and failure to pay meal period
6 premium wages, to Plaintiff, the Meal Period Class, and other aggrieved
7 employees at the regular rate of compensation in violation of Labor Code §§ 226.7,
8 512, 558, and 1198;

9 e. Failing to authorize and permit all legally required rest periods, and failure to pay
10 rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved
11 employees at the regular rate of compensation in violation of Labor Code §§ 226.7,
12 516, 558, and 1198;

13 f. Failing to indemnify Plaintiff, the Employee Expense Class, and other aggrieved
14 employees for all necessary work expenses incurred in violation of Labor Code §§
15 2802 and 2804;

16 g. Failing to timely pay all final wages and compensation earned by Plaintiff, the
17 Waiting Time Class, and other aggrieved employees at the time of separation in
18 violation of Labor Code §§ 201, 202, and 203;

19 h. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
20 employees with complete, accurate, itemized wage statements in violation of
21 Labor Code § 226;

22 i. Failing to pay Plaintiff and other aggrieved employees all earned wages at least
23 twice during each calendar month in violation of Labor Code § 204; and

24 j. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
25 employees in violation of Labor Code § 1174 and 1198.

26 64. On March 25, 2024, Plaintiff notified Defendants via certified mail, and notified
27 the California Labor and Workforce Development Agency (“LWDA”) via its website, of
28 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for

civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 63 (a)-(j). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

65. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699(c).

66. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for payment of reporting time pay according to proof, pursuant to Labor Code §§ 204 and 1198 and Wage Order 5, § 5;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
8. Upon the Fifth Cause of Action, for compensatory, consequential, general and

special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558

9. Upon the Sixth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

10. Upon the Seventh Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;

11. Upon the Eighth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203; and

12. Upon the Ninth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

13. Upon the Tenth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations identified in Paragraph 63 (a)-(j);

14. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and 2802(c) and Civil Code §§ 3287 and 3289;

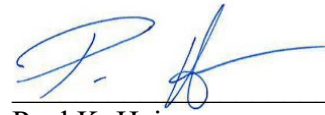
15. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226, 1194, 2699(g), 2802(c), and Code of Civil Procedure § 1021.5; and

1 16. For such other and further relief, the Court may deem just and proper.

2
3 Dated: May 30, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

4
5 By: _____



Paul K. Haines
Attorneys for Plaintiff

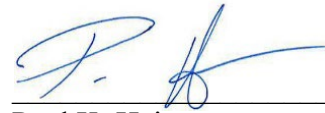
6
7
8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

10
11 Dated: May 30, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

12
13 By: _____



Paul K. Haines
Attorneys for Plaintiff

PROOF OF SERVICE

Anthony Cortez v. Buca Restaurants 2, Inc.

Los Angeles County Superior Court Case No. 24STCV07648

[illegible]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is [X] 2155 Campus Drive, Suite 180, El Segundo, California 90245.

On May 30, 2024, I served the foregoing document(s) described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested party(ies) in this action as follows:

Jesse M. Caryl, Bar No. 208687

Email: jcaryl@bcklegal.com

BENT CARYL & KROLL, LLP

6300 Wilshire Boulevard, Suite 1415

Los Angeles, California 90048

Telephone: (323) 315-0510

Facsimile: (323) 774-6021

Attorneys for Defendant, BUCA RESTAURANTS 2, INC., d.b.a. BUCA DI BEPPO

[X] (VIA ELECTRONIC MAIL) Pursuant to California Rule of Court 2.251(c)(3), I caused the document described above to be sent to the persons at the electronic service addresses listed above via third party cloud service First Legal.

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

Executed on May 30, 2024, at El Segundo, California.

Aaron Clark

Aaron Clark