

1 Elliot J. Siegel (Bar No. 286798)
2 elliot@kingsiegel.com
3 Julian Burns King (Bar No. 298617)
4 julian@kingsiegel.com
5 **KING & SIEGEL LLP**
6 724 South Spring Street, Suite 201
Los Angeles, California 90014
tel: (213) 465-4802
fax: (213) 465-4803

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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By: Sen Yeung Shu, DEPUTY

7 Michael Y. Yadegaran (Bar No. 309669)
8 michael@avenue.law
9 **AVENUE LAW APC**
401 Wilshire Blvd., 12th Floor
Santa Monica, CA 90401
10 tel: (310) 882-7960
11 fax: (310) 882-7962

12 Attorneys for Plaintiff and Putative Class

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN BERNARDINO**

15
16 **Antony Monterroso**, individually and on behalf
of all similarly situated individuals,

17 Plaintiff,

18 vs.

19
20 **Shiki Sushi, Teppan, Grill and Sport Bar,**
21 **Inc.**, a California corporation; **Tim Nguyen**, an
individual; and **Does 1-10**, inclusive;

22 Defendants.
23
24
25
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CASE NO. CIVSB2409818

CLASS ACTION COMPLAINT FOR:

- 1) Failure to Pay Minimum Wages;
- 2) Failure to Pay Overtime Wages;
- 3) Failure to Provide Meal Periods;
- 4) Failure to Provide Rest Periods;
- 5) Failure to Provide and Maintain Complete and Accurate Wage Statements;
- 6) Failure to Reimburse Necessary Business Expenses;
- 7) PAGA Penalties; and
- 8) Violation of California Business & Professions Code §§ 17200, et seq.

Jury Trial Requested

1 Plaintiff, Antony Monterroso hereby brings this action on behalf of himself and all other similarly
2 situated current and former employees, by and through his counsel of record, alleges as follows:

3 **PARTIES**

4 1. At all relevant times for this Complaint, Plaintiff **Antony Monterroso**, (“Plaintiff”) is a
5 resident of Los Angeles County, California. Plaintiff worked for Defendants from approximately 2021 to
6 2023 as non-exempt employee at their locations at 27461 San Bernardino Ave #190, Redlands, CA 92374
7 and 996 E Hospitality Ln, San Bernardino, CA 92408. Plaintiff was subject to the policies and practices
8 described in this complaint at all times during his employment at Defendants.

9 2. Defendant **Shiki Sushi, Teppan, Grill and Sport Bar, Inc.** (“Shiki Sushi”), is a
10 California corporation with a principal place of business of 27461 San Bernardino Avenue, Suite 190,
11 Redlands, CA 92374. **Shiki Sushi** operates restaurants in San Bernardino, California, including Shiki
12 Sushi Teppan BBQ & Sports Bar San Bernardino and Shiki Sushi Sportsbar Redlands. On information and
13 belief, employs at least 50 hourly, non-exempt employees.

14 3. Defendant **Tim Nguyen** (“Nguyen” or hereinafter “Defendants” with Defendant Shiki
15 Sushi) is the Chief Executive Office, Secretary, and Chief Financial Officer. Upon information and belief,
16 he is a resident of the County of San Bernardino in the State of California. Upon information and belief,
17 as Mr. Nguyen is a managing agent, director, and/or officer of Defendants and because he caused or
18 directed the acts described herein, he is personally liable for the Labor Code violations set forth in this
19 Complaint under Labor Code section 558.1.

20 4. Plaintiff is not currently aware of the names and true identities of defendants Does 1-10.
21 Plaintiff reserves the right to amend this complaint to allege their true names and capacities when this
22 information is available. Each Doe defendant is responsible for the damages alleged pursuant to each of
23 the causes of action asserted, either through its own conduct, or vicariously through the conduct of others.
24 All further references in this complaint to any of the named Defendants includes the fictitiously named
25 defendants.

26 5. At all times alleged, each Defendant was an agent, servant, joint employer, employee,
27 partner, and/or joint venture of every other Defendant and was acting within the scope of the Defendants’
28 relationship. Moreover, the conduct of every Defendant was ratified by each other Defendant.

1 **VENUE AND JURISDICTION**

2 6. The court has jurisdiction over all causes of action in this complaint pursuant to Article VI,
3 § 10 of the California Constitution. No federal question is at issue; Plaintiff relies solely on California
4 statutes and law, including the Labor Code and the Business & Professions Code. Because putative class
5 members were employed by Defendants, the policies and practices complained of herein were
6 implemented in San Bernardino, and Defendants transact business within San Bernardino County,
7 Defendant is within the jurisdiction of the court for service of process. Moreover, Business & Professions
8 Code § 17204 provides that any person acting on their own behalf may bring an action in any court of
9 competent jurisdiction.

10 7. Venue as to Defendant is proper in this Superior Court pursuant to California Code of Civil
11 Procedure § 395. Defendants transact business and/or have offices in this county, employ putative class
12 members in this County, and the acts and omissions alleged herein took place in this county. Moreover,
13 this action is brought on behalf of the State of California as a private attorney general and has jurisdiction
14 in this venue.

15 **CLASS ACTION ALLEGATIONS**

16 8. As a matter of uniform and systemic policy, Defendants failed to authorize and/or permit
17 non-exempt employees to take bona fide meal and rest breaks pursuant to Labor Code § 226.7.

18 9. Defendants have consistently denied their non-exempt employees the opportunities to take
19 compliant 30-minute meal periods in accordance with California's Labor Code. Upon information and
20 belief, Class Members, including Plaintiff, were required to interrupt their meal periods to service
21 customers, answer phone calls, otherwise interrupt or cut short their meal periods, or remain on duty and
22 under Defendants' control during their meal periods to perform other tasks at Defendants' directions due
23 to Defendants' policies and practices, including their scheduling and staffing practices and policies.
24 Defendants further required Class Members to remain on premises (or remain at the ready and on-call if
25 they left the premises) during meal periods.

26 10. As a matter of uniform and systemic policy, Defendants failed to authorize or permit Class
27 Members to take rest periods, by expressly requiring them to work through them or failing to provide
28 enough coverage to allow Class Members to take rest periods without violating Defendants' policies and

practices, including their scheduling and staffing practices and policies. Accordingly, Defendants failed to authorize and permit compliant rest periods as required by law.

11. In failing to authorize and/or permit meal and rest periods, Defendants have also implemented a uniform policy of denying compensation in lieu of meal and rest periods to its non-exempt employees, notwithstanding its actual knowledge that such employees were uniformly denied compliant meal and rest periods.

12. As a matter of uniform and systemic policy, Employees were further not paid all wages due when they were forced to interrupt, cut short, or work through their meal periods because they remained off the clock for their meal periods despite having to perform work for Defendants. Upon information and belief, Defendants failed to pay all wages due employees based on other practices and policies not currently known to Plaintiff.

13. As a matter of uniform and systemic policy, Defendants also failed to pay all required overtime compensation to employees, either by not including the time employees spent working on their meal periods as compensable time and by refusing to pay applicable overtime rates for time worked in excess of 8 hours per day (*i.e.*, Defendants refused to, at a minimum, pay overtime for work performed in excess of 40 hours per week).

14. As a matter of uniform and systemic policy, Defendants failed to provide its non-exempt employees with accurate itemized wage statements in accordance with California's Labor Code by failing to include applicable rates of pay (including tipped pay), meal and rest premium payments, and overtime pay and hours, among other deficiencies. Additionally, Defendants failed to produce records in response to Plaintiff request under Labor Code §§ 226, 1174, and 1198.5 and, under information and belief, have a policy of refusing to respond to such requests.

15. Plaintiff therefore brings this action on behalf of himself and as a class action on behalf of the following defined Class:

Non-Exempt Employee Class:

All persons who worked at least one 3.5-hour shift as a non-exempt employee of Defendants in the State of California from the period four years prior to the filing of the Action and the date of trial.

16. Common methods of proof exist for determining these issues on a class-wide basis,

including but not limited to, Defendants' employment records, payroll records, timesheets, policies, and disciplinary records.

17. **Numerosity.** Plaintiff is informed and believes that, during the class period, at least 120 Class Members have been employed as non-exempt employees by Defendants within the state of California. The number of Class Members is sufficiently numerous such that joinder of all members is impossible or impracticable.

18. **Typicality.** Plaintiff's claims are typical of all Class Members. Plaintiff, like all other Class Members, was subjected to the policies and practices set forth above. Plaintiff's job duties were typical of Class Members in all relevant respects.

19. **Adequacy.** There are no material conflicts between the claims of the representative Plaintiff and Class Members that would make class certification inappropriate. Plaintiff understands his obligation to inform the Court of any relationship, conflicts, or differences with any Class Member. Plaintiff will fairly and adequately protect the interests of the Class Members. Plaintiff is invested in redressing Defendants' illegal practices on behalf of all Class Members. Moreover, Plaintiff has retained competent counsel experienced in both class action and employment litigation. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement, and will vigorously assert the claims of all Class Members. Plaintiff have incurred, and will continue to incur, costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

20. **Existence and Predominance of Common Issues.** Common questions of law and fact exist as to all Class Members and predominate over issues affecting individual Class Members, including, but not limited to:

- a. Whether Defendants had a common policy and/or practice of depriving Plaintiff and Class Members of required minimum and overtime wages;
- b. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff and Class Members required minimum and overtime wages;
- c. Whether Defendants had a common policy and/or practice of depriving Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;

- 1 d. Whether Defendants unlawfully and/or willfully deprived Plaintiff and Class
2 Members of compliant, off-duty meal and/or rest periods;
- 3 e. Whether Defendants have a common policy and/or practice of failing to maintain
4 accurate payroll records in the State of California;
- 5 f. Whether Defendants unlawfully and/or willfully failed to maintain accurate payroll
6 records in the State of California;
- 7 g. Whether Defendants have a common policy and/or practice of failing to provide
8 accurate wage statements reflecting hours worked and wages earned to Plaintiff and
9 Class Members;
- 10 h. Whether Defendants unlawfully and/or willfully failed to provide accurate wage
11 statements reflecting hours worked and wages earned to Plaintiff and Class
12 Members;
- 13 i. Whether Defendants have a common policy and/or practice of failing to reimburse
14 Plaintiff and Class Members for reasonable business expenses;
- 15 j. Whether Defendants unlawfully and/or willfully failed to reimburse Plaintiff and
16 Class Members for reasonable business expenses;
- 17 k. Whether Plaintiff and Class Members sustained damages as a result of any of the
18 aforementioned violations, and, if so, the proper measure of those damages,
19 including interest, penalties, costs, attorneys' fees, and equitable relief; and
- 20 l. Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof. Code
21 § 17200, et seq., by violating the above provisions of law.

22 21. **Superiority.** A class action is superior to other available means for the fair and efficient
23 adjudication of this dispute. The damages suffered by individual Class Members, while substantial, are
24 small compared to the burden and expense of individual prosecution of the complex and expensive
25 litigation necessary to address Defendants' conduct. Even if Class Members themselves could afford
26 individual litigation, the court system would be overwhelmed by individual lawsuits if all Class Members
27 sought redress. In addition, individualized litigation increases the delay and expense to all parties and to
28 the court system resulting from the complex legal and factual issues of this case. Individualized litigation

1 also presents a potential for inconsistent or contradictory judgments. By contrast, the class action device
2 presents far fewer management difficulties; it allows the hearing of claims which might otherwise go
3 unaddressed because of the relative expense of bringing individual lawsuits, and it provides the benefits of
4 single adjudication, economies of scale, and comprehensive supervision by a single court. Plaintiff
5 contemplates providing notice to members of the Class identified through Defendants' records.

6 **CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 ***California Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198***

9 ***Failure to Pay Minimum Wages for All Hours Worked***

10 **(Plaintiff and Class Against Defendants)**

11 22. Plaintiff repeats and incorporates by reference all allegations contained in the preceding
12 paragraphs as if fully set forth herein.

13 23. California law requires employers to compensate employees for all time that an employee
14 is "suffered or permitted to work," which includes all time "when any employer 'directs, commands or
15 restrains' an employee." *See, e.g., Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 583 (2000), as modified
16 (May 10, 2000); see also Code Regs. tit. 8, § 11070 ("‘Hours worked’ means the time during which an
17 employee is subject to the control of an employer and includes all the time the employee is suffered or
18 permitted to work, whether or not required to do so.").

19 24. Defendants failed to compensate Plaintiff and the Class for all hours worked because
20 Defendants had a policy and/or practice whereby they required and/or pressured Class Members to work
21 under Defendants' control while off-the-clock.

22 25. This included requiring its non-exempt employees to work through their legally mandated
23 meal period or remain on duty and under Defendants' control during their meal periods to perform other
24 tasks at Defendants' directions due to Defendants' policies and practices. Defendants further failed to pay
25 Plaintiff and Class Members any wages for time engaged in this off-the-clock work.

26 26. Upon information and belief, Defendants took other actions that resulted in the failure to
27 pay all wages due to Class Members that are presently unknown to Plaintiff.

28 27. Accordingly, Defendants failed to pay Plaintiff or Class Members for all hours worked

1 where they were under the control of Defendants.

2 28. As a result of Defendants' failure and refusal to comply with California law, Plaintiff and
3 Class Members are entitled to recover actual and liquidated damages for the unpaid time, plus injunctive
4 relief and reasonable attorney's fees and costs. Lab. Code §§ 1194, 1197.1.

5 **SECOND CAUSE OF ACTION**

6 ***California Labor Code §§ 510 and 1198***

7 ***Unpaid Overtime***

8 **(Plaintiff and Class Against Defendants)**

9 29. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth
10 herein.

11 30. California Labor Code §§ 510 and 1198 provide that it is unlawful to employ persons
12 without compensating them at a rate of pay either time-and-one-half or two-times that person's regular
13 rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

14 31. Plaintiff and Class Members who work more than eight hours in a day or more than forty
15 hours in a workweek are to be paid at the rate of time and one-half (1½) for all hours worked in excess of
16 eight hours in a day or more than forty hours in a workweek. An employee's regular rate of pay includes
17 all remuneration for employment paid to, or on behalf of, the employee, including commissions, non-
18 discretionary bonuses and incentive pay. *Alvarado v. Dart Container Corp. of California*, 4 Cal. 5th 542, 573
19 (2018), as modified (Apr. 25, 2018).

20 32. Throughout the Class Period, Plaintiff and other Class Members were not paid overtime
21 premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve hours in a
22 day, in excess of eight hours on the seventh consecutive day of work in a workweek, and in excess of forty
23 hours in a week due to the off-the-clock work identified above.

24 33. As Class Members sometimes worked shifts of more than eight hours a day or forty hours
25 a week, this off-the-clock work should have been adequately compensated at their appropriate overtime
26 rate of pay.

27 34. Additionally, Defendants failed to pay overtime to Class Members who worked more than
28 40 hours in a week by policy and practice.

35. Defendants knew or should have known that Plaintiff and Class Members did not receive overtime compensation.

36. Accordingly, Defendants' failure to pay overtime compensation resulted in Plaintiff and Class Members being deprived of earned overtime wages. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

California Labor Code §§ 226.7, 512(a), and 1198

Meal Period Violations

(Plaintiff and Class Against Defendants)

37. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth herein.

38. At all times relevant to this complaint, Defendants knew they were obligated to provide legally-compliant meal breaks to its non-exempt employees pursuant to Labor Code §§ 512 and 226.7. Labor Code § 512(a) states in pertinent part: "[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes."

39. Labor Code section 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC. "An off-duty meal period, therefore, is one in which the employee is relieved of all duty during the 30-minute meal period . . . an employer's obligation is to provide an off-duty meal period: an uninterrupted 30-minute period during which the employee is relieved of all duty." *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1035 (2012).

40. Defendants' policies and practices served to deprive the Class of a full 30-minute break period free of employer control or relieved of all duties.

41. Upon information and belief, Class Members, including Plaintiff, were required to interrupt their meal periods to service customers, answer phone calls, otherwise interrupt or cut short

1 their meal periods, or remain on duty and under Defendants' control during their meal periods to perform
2 other tasks at Defendants' directions due to Defendants' policies and practices, including their scheduling
3 and staffing practices and policies. Defendants further required Class Members to remain on premises (or
4 remain at the ready and on-call if they left the premises) during meal periods.

5 42. Accordingly, Plaintiff and Class Members were uniformly denied meal periods as a result
6 of Defendants' formal policies and practices. By failing to consistently provide uninterrupted, off-duty 30-
7 minute meal periods, Defendants violated the Labor Code as to Plaintiff and Class Members.

8 43. Pursuant to Labor Code § 226.7(b), Plaintiff and Class Members are entitled to recover
9 from Defendants an additional hour of pay at their regular rates of pay for each shift in which a required
10 meal period was not provided.

11 **FOURTH CAUSE OF ACTION**

12 ***Labor Code §§ 226.7 and 1198***

13 ***Failure to Provide Rest Periods or Premium Pay in Lieu Thereof***

14 **(Plaintiff and Class Against Defendants)**

15 44. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth
16 herein.

17 45. At all times relevant to this complaint, Defendants knew they were obligated to provide
18 compliant rest breaks to its non-exempt employees pursuant to Labor Code § 226.7.

19 46. Labor Code § 226.7 provides:

20 (a) No employer shall require any employee to work during any meal or rest
21 period mandated by an applicable order of the Industrial Welfare Commission.

22 (b) If any employer fails to provide an employee a meal period or rest period
23 in accordance with an applicable order of the Industrial Welfare Commission, the
24 employer shall pay the employee one additional hour of pay at the employee's
25 regular rate of compensation for each work day that the meal or rest period is not
26 provided.

27 47. Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require an employee
28 to work during any rest or meal period mandated by an applicable order of the IWC, including Wage Order
No. 1. Employers must authorize and permit employees to be relieved of all duty during their rest and meal

1 periods: “A rest period, in short, must be a period of rest.”¹ *Augustus v. ABM Sec. Servs., Inc.*, 385 P.3d
2 823, 834 (2016).

3 48. Employees must also be free to leave the employer’s premises during their rest period. *See*
4 *id.* at 270 (“In the context of a 10-minute break that employers must provide during the work period, a
5 broad and intrusive degree of control exists when an employer requires employees to remain on call and
6 respond during breaks. An employee on call cannot take a brief walk—five minutes out, five minutes
7 back—if at the farthest extent of the walk he or he is not in a position to respond.”); *see also* Department
8 of Industrial Relations, “Rest Periods,” available at https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm
9 (“Q. Can my employer require that I stay on the work premises during my rest period? A. No, your
10 employer cannot impose any restraints not inherent in the rest period requirement itself.”).

11 49. Upon information and belief, Defendants failed to authorize or permit all required
12 compliant paid rest periods for shifts between 3.5 and ten hours, or subjected employees to interrupted or
13 shortened rest periods. Defendants further failed to authorize or permit a compliant second and third rest
14 period for shifts in excess of 6 and 10 hours, respectively.

15 50. Pursuant to Wage Order No. 4 and Labor Code § 226.7(b), Plaintiff and Class Members
16 are entitled to recover from Defendants an additional hour of pay at their regular rates of pay for each shift
17 that a compliant rest period was not provided. Defendants were aware that their actions were a violation
18 of applicable law but consistently refused to pay premium pay as required by law.

19 **FIFTH CAUSE OF ACTION**

20 ***Labor Code §§ 226. 226.3, and 1174***

21 ***Failure to Provide Complete and Accurate Wage Statements***

22 **(Plaintiff and Class Against Defendants)**

23 51. Plaintiff repeats and incorporates by reference all allegations contained in the preceding
24 paragraphs as if fully set forth herein.

25 _____
26 ¹ Employees must also be free to leave the premises. *Augustus*, 2 Cal. 5th at 270; *see also*
27 Department of Industrial Relations, “Rest Periods/Lactation Accommodations,” available at
28 https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm (“Q. Can my employer require that I stay on the work
premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the
rest period requirement itself.”)

52. Labor Code § 226 requires employers to furnish employees with an accurate, itemized statement in writing showing, among other things, (1) gross wages earned; (2) total hours worked by the employee (for hourly-paid, non-exempt employees); (3) all deductions; (4) net wages earned; (5) the inclusive dates of the period for which the employee is paid; (6) the name of the employee and the last four digits of his or his social security number; (7) the name and address of the legal entity that is the employer; and (8) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

53. At all times relevant to this complaint, Defendants' failure to pay premium wages for missed meal and/or rest periods further ensured that Class Members' wage statements inaccurately reflected gross and net wages earned. Defendants' failure to compensate all hours worked and/or pay all required overtime rates further left the wage statements they provided to employees to be inaccurate. Additionally, Defendants simply failed to include Class members hourly rate on their paystubs.

54. Defendants have also failed to keep accurate payroll records for Plaintiff and Class Members in accordance with Labor Code § 1174.

55. Defendants' failure to keep and maintain accurate payroll records reflecting hours worked and wages earned has impeded Plaintiff and Class Members' ability to calculate unpaid wages earned.

56. Injury. Defendants knowingly and intentionally failed to comply with Labor Code § 226, causing injury and damages to Plaintiff and Class Members. Plaintiff and all those similarly situated were injured by these failures because, among other things, they were confused about whether they were paid properly and/or they were misinformed about how much compensation was owed. These damages include, but are not limited to, costs incurred calculating the correct net wages for each pay period and the amount of employment taxes that were not paid to state and federal tax authorities.

57. Relief. Labor Code § 226(e)(1) provides that an employee suffering injury as a result of not being provided with an accurate itemized wage statement is entitled to recover the greater of all actual damages suffered or fifty (\$50) dollars for the initial violation and one hundred (\$100) dollars for each subsequent violation, up to \$4,000. Pursuant to Labor Code §§ 226(e) and (g), Plaintiff and all others similarly situated are entitled to injunctive relief to ensure Defendant's compliance with Labor Code § 226, as well as attorney's fees and costs of suit.

1 58. Labor Code § 226 additionally provides that employers “shall afford current and former
2 employees the right to inspect or receive a copy of records pertaining to their employment, upon
3 reasonable request to the employer” and that employers “shall comply with the request as soon as
4 practicable, but no later than 21 calendar days from the date of the request.” Labor Code § 226 also
5 requires that Defendants provide

6 59. Labor Code § 1198.5 provides that “[u]pon a written request from a current or former
7 employee, or her or her representative, the employer shall also provide a copy of the personnel records, at
8 a charge not to exceed the actual cost of reproduction, not later than 30 calendar days from the date the
9 employer receives the request . . .”

10 60. Labor Code § 432 provides that “[i]f an employee or applicant signs any instrument
11 relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon
12 request.”

13 61. Labor Code § 1174 requires employers to maintain payroll records showing the hours
14 worked daily by all employees, for a time not less than three years. Industrial Wage Order No. 5, Section
15 7 requires that an employer maintain “time records showing when the employee begins and ends each
16 work period” and make those records available to any employee upon reasonable request. *Id.*

17 62. Plaintiff, through counsel, requested copies of his records kept in accordance with Labor
18 Code §§ 226, 432, 1174, and 1198.5.

19 63. Defendants did not provide Plaintiff with all records required to be produced by these
20 statutes by the 30-day deadline.

21 64. Upon information and belief, Defendants have a policy and practice of denying requests for
22 employee records to their current and former employees in California that violates Labor Code §§ 226,
23 432, 1174, and 1198.5 and the Wage Orders.

24 65. Labor Code § 226(f) and (h) sets forth that if an employer fails to permit a current or former
25 employee to inspect or copy records required to be kept under that section within 21 days of a request to
26 inspect, that employer is liable to the employee for a penalty of \$750, and the employee is entitled to bring
27 an action for injunctive relief to enforce compliance and shall be entitled to an award of costs and
28 reasonable attorney’s fees in doing so. Labor Code § 1198.5(k) sets forth that if an employer fails to permit

1 a current or former employee to inspect or copy records relating to the employee's performance or to any
2 grievance concerning the employee within 30 days of a request to inspect, that employer is liable to the
3 employee for a penalty of \$750, and the employee is entitled to bring an action for injunctive relief to
4 enforce compliance and shall be entitled to an award of costs and reasonable attorney's fees in doing so.

5 **SIXTH CAUSE OF ACTION**

6 ***California Labor Code § 2802***

7 ***Failure to Reimburse Necessary Business Expenses***

8 **(Plaintiff and Class Against Defendants)**

9 66. Plaintiff repeats, repleads, and incorporates by reference, as though fully set forth in this
10 paragraph, all the allegations of this Complaint.

11 67. Labor Code section 2802 provides that "[a]n employer shall indemnify his or his employee
12 for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge
13 of his or his duties, or of his or his obedience to the directions of the employer." Lab. Code § 2802. The
14 purpose of Labor Code § 2802 is to prevent employers from passing off their cost of doing business on to
15 their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137 (2014).

16 68. Defendants required non-exempt employees to utilize their personal cell phones for work-
17 related purposes, including answering texts and calls from their supervisors, being schedule or re-
18 scheduling future work, being assigned tasks, and general administrative matters. Defendants failed to
19 compensate their non-exempt employees for reasonable costs associated with utilizing their personal cell
20 phones for work-related purposes despite requiring the use of the device and/or applications that required
21 a data plan. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 ("We hold that when
22 employees must use their personal cell phones for work related calls, Labor Code section 2802 requires
23 the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or
24 limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.").

25 69. Upon information and belief, Defendants also failed Class Members to pay for other
26 business costs required to be reimbursed, such as for incurred gas and mileage when travelling between
27 restaurants on a given shift.

28 70. By unlawfully failing to reimburse Plaintiff and Class Members, Defendants are liable for a

reasonable portion of the incurred expenses, to be determined upon trial, plus reasonable attorneys' fees and costs. Lab. Code § 2802.

SEVENTH CAUSE OF ACTION

Labor Code §§ 558, 2698, et seq.

Private Attorneys General Act ("PAGA") Penalties

(Plaintiff and Class Against Defendants)

71. Plaintiff incorporates by reference all the allegations of this Complaint as though fully set forth herein.

72. Entitlement to Penalties. Under the California Private Attorneys General Act ("PAGA"), Labor Code § 2698, *et seq.*, an aggrieved employee may bring a representative action as a private attorney general, on behalf of himself and other current or former employees as well as the general public, to recover penalties for an employer's violations of the Labor Code and IWC Wage Orders. These penalties are in addition to any other relief available under the Labor Code and are allocated seventy-five percent to the Labor and Workforce Development Agency and twenty-five percent to the affected employees.

73. These penalties may be "stacked" separately for each of Defendants' violations of the Labor Code. *See, e.g., Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17 n.77 (C.D. Cal. June 22, 2012) ("[F]ederal courts applying California law have concluded that stacking is appropriate."); *see also O'Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at *7 (N.D. Cal. June 30, 2016) ("Finally, Plaintiff ignore the potential for stacking of PAGA penalties related to wage-and-hour claims other than the gratuities and expense reimbursement claim, i.e., meal and rest breaks, minimum wage and overtime, and workers' compensation.").

74. Plaintiff is an "aggrieved employee" under PAGA, as he was employed by Defendants during the applicable statutory period and suffered the Labor Code violations alleged herein. Accordingly, he seeks to recover, on behalf of himself and all other current and former aggrieved employees of Defendants, the civil penalties provided by PAGA, including civil penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1182.12, 1174, 1194, 1194.2, 1197, 1198, 1401, and 2802, plus reasonable attorneys' fees and costs.

75. Representative Action. Plaintiff seeks to recover the PAGA civil penalties through a

1 representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*,
2 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required, but Plaintiff may
3 choose to seek certification of the PAGA claims.

4 76. Labor Code § 2699(a), which is part of PAGA, provides:

5
6 Notwithstanding any other provision of law, any provision of this code that
7 provides for a civil penalty to be assessed and collected by the Labor and
8 Workforce Development Agency or any of its departments, divisions,
9 commissions, boards, agencies, or employees, for a violation of this code, may, as
10 an alternative, be recovered through a civil action brought by an aggrieved
11 employee on behalf of themselves or themselves and other current or former
12 employees pursuant to the procedures specified in § 2699(a).

13 77. Penalties. Labor Code § 2699(f), which is part of PAGA, provides:

14
15 For all provisions of this code except those for which a civil penalty is specifically
16 provided, there is established a civil penalty for a violation of these provisions, as
17 follows: . . . (2) If, at the time of the alleged violation, the person employs one or
18 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
19 employee per pay period for the initial violation and two hundred dollars (\$200)
20 for each aggrieved employee per pay period for each subsequent violation.

21 78. Based on the foregoing, Plaintiff and aggrieved employees are entitled to civil penalties, to
22 be paid by Defendants and allocated as required by PAGA in the following formula: (a) in an amount set
23 forth as a civil penalty in the underlying statute; or (b) \$100 per initial violation per employee per pay
24 period, and \$200 for each subsequent violation per employee per pay period. Plaintiff, the aggrieved
25 employees, and the State of California are entitled to recover the maximum civil penalties allowed by law
26 for the violations of the Labor Code and IWC Wage Orders as alleged in this Complaint.

27 79. Plaintiff is also entitled to recover for himself, other aggrieved employees, and the State of
28 California, civil penalties pursuant to Labor Code § 210 (entirely independent and apart from, any other
penalty provided in this article) in the amount of \$100 per employee per initial violation of the timely
payment requirements of Labor Code § 240 (semimonthly payments) and \$200 per employee for each
subsequent violation, plus 25% of the amount unlawfully withheld, and Labor Code § 558 in the amount
\$50 per underpaid employee for each pay period for which the employee was underpaid and for each
subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for
which the employee was underpaid.

1 80. Procedural Requirements Met. Plaintiff electronically filed a notice of claims with the
2 LWDA contemporaneously with this Complaint and sent a copy to Defendants by certified mail. Plaintiff
3 has not received notice from the LWDA that it was exercising jurisdiction over the allegations set forth in
4 the notice. As of 65 days from date of electronic filing, all requirements for administrative exhaustion for
5 bringing these PAGA claims will have been met. Labor Code § 2699.3(a)(2).

6 **EIGHTH CAUSE OF ACTION**

7 *California Business & Professions Code §§ 17200, et seq.*

8 *Unlawful Business Practices*

9 **(Plaintiff and Class Against Defendants)**

10 81. Plaintiff repeats and incorporate by reference every allegation in this complaint as if fully
11 set forth herein.

12 82. Defendants are “persons” as defined by California Business & Professions Code § 17201,
13 as they are a natural person, corporations, firms, partnerships, joint stock companies, and/or associations.

14 83. Unlawful Business Practices. Defendants’ knowing violations of the Labor Code
15 constitutes an unlawful business practice as set forth in Business & Professions Code § 17200, et seq.

16 84. Defendants’ failure to abide by the laws discussed herein provided Defendants an unfair
17 advantage over their competitors at the expense of their workers. Instead, Defendants cuts corners in the
18 name of higher profits and at the expense of employee well-being. Defendants’ actions thereby constitute
19 an unfair, fraudulent, and/or unlawful business practice under Business & Professions Code § 17200, et
20 seq.

21 85. Relief. Plaintiff brings this cause of action seeking equitable and injunctive relief to stop
22 Defendant’s willful and ongoing misconduct, and to seek restitution of the amounts Defendants acquired
23 through the unfair, unlawful, and fraudulent business practices described herein. In addition, Plaintiff
24 seeks an award of costs and attorneys’ fees pursuant to California Code of Civil Procedure § 1021.5.

25 **DEMAND FOR JURY TRIAL**

26 Pursuant to California Code of Civil Procedure § 631, Plaintiff demands a trial by jury on all issues
27 so triable.
28

1
2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff respectfully prays judgment as follows:

4 A. For an Order:

5 a. Certifying the Class;

6 b. Appointing Plaintiff as representative of the Class;

7 c. Appointing Plaintiff's counsel as Class Counsel;

8 B. For actual and liquidated damages according to proof at trial;

9 C. For statutory and civil penalties and special damages, according to proof at trial;

10 D. For pre- and post-judgment interest on monetary damages;

11 E. For preliminary and permanent injunctive relief;

12 F. For reasonable attorney's fees and costs and expert fees and costs as allowed by law; and

13 G. For such other relief as this Court deems just and proper.

14
15 Dated: March 22, 2024

Respectfully submitted,

16 **KING & SIEGEL LLP**

17
18 By: *Elliot J. Siegel*
19 Elliot J. Siegel, Esq.
20 Attorneys for Plaintiffs

21 Dated: March 22, 2024

AVENUE LAW APC

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23 
24 Michael Yadegaran, Esq.
25 Attorneys for Plaintiffs
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