

MARALLE MESSRELIAN (SBN 316974)

maralle@mmlawapc.com

MM LAW, APC

500 N. Brand Blvd., Ste 2000

Glendale, CA 91203

Telephone (818) 810-7747

Facsimile (818) 230-9018

Attorneys for Plaintiff,

JOSE I. SORIANO RODRIGUEZ, and all others similarly situated

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

05/28/2024

Clerk of the Court

BY: AUSTIN LAM

Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

(UNLIMITED JURISDICTION)

JOSE I. SORIANO RODRIGUEZ, on behalf
of himself and all others similarly situated, and
the general public, and as an “Aggrieved
Employee” on behalf of other “Aggrieved
Employees” under the Private Attorneys
General Act of 2004,

Plaintiff,

vs.

EVENTS MANAGEMENT, INC. DBA
MCCALLS CATERING & EVENTS, a
California corporation; and DOES 1 to 25,
inclusive,

Defendant(s).

Case No.:

CGC-24-615022

CLASS ACTION

COMPLAINT FOR:

- 1) Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 6) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 7) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203);
- 8) Civil Penalties (Lab. Code §§ 2698, *et seq.*); and
- 9) Unfair Competition (Bus. & Prof. Code, § 17200q.)

JURY TRIAL DEMANDED

1 Plaintiff, JOSE I. SORIANO RODRIGUEZ (hereafter “Plaintiff”), on behalf of
2 himself and all others similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class and representative action based on alleged violations
5 of the California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter
6 “the Wage Order”), and the California Business and Professions Code against EVENTS
7 MANAGEMENT, INC. DBA MCCALLS CATERING & EVENTS, a California corporation,
8 and DOES 1 to 25, inclusive, (collectively “MCCALLS” or “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated workers for unpaid wages, statutory penalties, interest, and
11 related relief. These claims are based on Defendants’ failures to:

12 (A) Pay all wages, including minimum, regular, overtime and doubletime
13 wages, earned for all hours worked at the correct rates of pay;

14 (B) Provide all meal periods;

15 (C) Authorize and permit all rest breaks;

16 (D) Pay premium wages for unprovided meal periods;

17 (E) Pay premium wages for unprovided rest breaks;

18 (F) Indemnify for necessary work-related expenditures;

19 (G) Issue only accurate and complete itemized wage statements; and

20 (H) Timely pay wages during and upon termination of employment.

21 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
22 restitution, statutory penalties, civil penalties, attorneys’ fees, costs, and related relief through
23 this class action.

24 **II. THE PARTIES**

25 3. Plaintiff Jose I. Soriano Rodriguez is a resident of Daly City, California. At all
26 relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of
27 Regulations Section 11050 and an “Aggrieved Employee” within the meaning of Labor Code
28 Section 2699(c).

1 4. Defendant EVENTS MANAGEMENT, INC. DBA MCCALLS CATERING &
2 EVENTS is a corporation organized and existing under the laws of California and a citizen of
3 California based on Plaintiff's information and belief.

4 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
5 participation in the conduct alleged herein, of the defendants sued as DOES 1-25, inclusive, but
6 is informed and believes and thereon alleges that said defendants are legally responsible for the
7 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
8 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE
9 defendants when ascertained.

10 6. Plaintiff is informed and believes and thereon alleges that, at all relevant times
11 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
12 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
13 and scope of such agency or employment, and with the approval and ratification of each of the
14 other Defendants.

15 7. At all relevant times, in perpetrating the acts and omissions alleged herein,
16 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a
17 lack of a practice which resulted in Defendants not compensating Plaintiff and the other Class
18 Members or otherwise complying with their rights in accordance with applicable California
19 labor laws as alleged herein.

20 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
21 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice,
22 or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the
23 below-described class in accordance with applicable laws as alleged herein.

24 **III. CLASS ALLEGATIONS**

25 9. This action has been brought and may be maintained as a class action pursuant
26 to California Code of Civil Procedure section 382 because there is a well-defined community
27 of interest among the persons who comprise the readily ascertainable class defined below and
28 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case

1 as a class action.

2 10. **Class Definition:** The Class is defined as follows: All persons Defendants
3 employed in California as hourly, non-exempt employees, at any time during the period
4 beginning four years prior to the filing of this action and ending on the date that final judgment
5 is entered in this action (“Class” or “Class Members”).

6 11. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves
7 the right to amend or modify the class definition with greater specificity, by further division
8 into subclasses and/or by limitation to particular issues.

9 12. **Numerosity:** The Class Members are so numerous that the individual joinder
10 of each individual Class Member is impractical. While Plaintiff does not currently know the
11 exact number of Class Members, Plaintiff is informed and believes that the actual number
12 exceeds the minimum required for numerosity under California laws.

13 13. **Commonality and Predominance:** Common questions of law and fact exist as
14 to all Class Members and predominate over any questions which affect only individual Class
15 Members. These questions include, but are not limited to:

16 A. Whether Defendants failed to pay all wages earned to Class Members for
17 all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime,
18 meal period premium and rest period premium wages;

19 B. Whether Defendants failed to provide the Class Members with all meal
20 periods in compliance with California law;

21 C. Whether Defendants failed to authorize and permit the Class Members to
22 take all rest periods in compliance with California law;

23 D. Whether Defendants failed to indemnify the Class Members for the
24 reasonable expenses they incurred during the course of performing their duties;

25 E. Whether Defendants knowingly and intentionally failed to provide the
26 class with accurate and complete itemized wage statements;

27 F. Whether Defendants willfully failed to provide the class with timely
28 wages during and upon termination of employment;

1 G. Whether Defendants engaged in unfair competition within the meaning of
2 Business and Professions Code sections 17200, et seq., with respect to the Class; and

3 H. Whether Class Members are entitled to restitution of money or property
4 that Defendants may have acquired from them through alleged Labor Code violations.

5 14. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
6 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
7 practice, or lack thereof, which resulted in Defendants failing to comply with the California
8 Labor Code, the Wage Order, and the Business and Professions Code.

9 15. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
10 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of
11 absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of
12 Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class
13 Members.

14 16. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in
15 that they have no known conflicts of interest with Plaintiff or absent Class Members, are
16 experienced in class action litigation, and are dedicated to vigorously prosecuting this action
17 on behalf of Plaintiff and absent Class Members.

18 17. **Superiority:** A class action is vastly superior to other available means for fair
19 and efficient adjudication of Class Members' claims and would be beneficial to the parties and
20 the Court. Class action treatment will allow a number of similarly situated persons to
21 simultaneously and efficiently prosecute their common claims in a single forum without the
22 unnecessary duplication of effort and expense that numerous individual actions would entail.
23 In addition, the monetary amounts due to many individual Class Members are likely to be
24 relatively small and would thus make it difficult, if not impossible, for individual Class
25 Members to both seek and obtain relief. Moreover, a class action will serve an important
26 public interest by permitting Class Members to effectively pursue the recovery of monies
27 owed to them. Further, a class action will prevent the potential for inconsistent or
28 contradictory judgments inherent in individual litigation.

1 **IV. STATEMENT OF FACTS**

2 18. Wage Order 5-2001 applies to “all persons employed in the public
3 housekeeping industry,” where “Public Housekeeping Industry” includes “catering, banquet,
4 box lunch service, and similar establishments which prepare food for consumption on or off
5 the premises (Id., §§ 1 & 2(P)(2)). At all relevant times during the applicable limitations
6 period, MCCALLS, Plaintiff, and the Class Members were covered by Wage Order 5-2001
7 because MCCALLS operated a catering business. Accordingly, Plaintiff and the Class
8 Members are entitled to the protections provided under the Wage Order.

9 19. MCCALLS first began to employ Plaintiff as a cook and kitchen prep in or
10 around March 2023. During his employment tenure, Plaintiff worked at MCCALL’s facility
11 located at 1798 Bryant Street, San Francisco, CA 94110, as well as one of MCCALL’s
12 restaurants, Café 5, located inside the SF MOMA Museum located at 151 Third St. in San
13 Francisco, CA 94103. Plaintiff’s work schedule varied. When working at the Bryant Street
14 facility, Plaintiff generally worked Monday through Friday from approximately 9:00/10:00
15 a.m. to 4:00 p.m. When there were events scheduled, Plaintiff would work anywhere from
16 9:00/10:00 a.m. until 12:00 a.m./1:00 a.m. When Plaintiff was instructed to work at Café 5,
17 Plaintiff generally worked from approximately 9:00 a.m. to 4:20 p.m. but his schedule at Café
18 5 changed a lot. Plaintiff’s employment ended on or around March 1, 2024.

19 20. At all relevant times, MCCALLS issued wages to Plaintiff and all of the other
20 Class Members on a biweekly basis and paid them by the hour. At all relevant times,
21 MCCALLS classified Plaintiff and all of the other Class Members as non-exempt employees
22 entitled to the protections of the Labor Code and the Wage Order. Plaintiff’s latest rate of pay
23 was \$20/hour.

24 21. MCCALLS failed to pay Plaintiff and the other Class Members for all time
25 worked or subject to its control. To the extent employees such as Plaintiff and others worked
26 through their meal periods while “off the clock”, and those meal periods were interrupted, they
27 were not compensated for that time, which would be akin to a minimum wage violation. “Off
28 the clock” work also included Plaintiff receiving phone calls or text message on his personal

1 cell phone from management, including Serina and Tim, before or after his shifts to discuss
2 scheduling and work-related issues.

3 22. Due to the above “off the clock” violations, MCCALLS failed to pay Plaintiff
4 and the Class Members properly-calculated overtime wages. The Class Members’ actual work
5 hours, which included the “off the clock” work as described above, entitled them to overtime,
6 however, it was not company policy to keep accurate track of all hours worked and to pay
7 employees the accurate amount of overtime, especially since the “off the clock” work was not
8 factored into the equation. Furthermore, any incentive payments and/or bonus payments were
9 not factored into employees’ regular rate of pay for purposes of deciphering the correct
10 overtime rate of pay. In addition, any bonus and/or incentive payments were not factored into
11 the correct meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021)
12 11 Cal. 5th 858, 863.

13 23. In addition, MCCALLS did not timely and accurately provide the credit card
14 and cash tips to Plaintiff and the other Class Members. As such, Roriguez and the other Class
15 Members were not given accurate tips to which they were entitled in violation of California
16 Labor Code Section 351 and 353.

17 24. MCCALLS failed to authorize and permit Plaintiff and others with 10-minute
18 rest periods for every four hours of work, or majority portion thereof, throughout their
19 employment. MCCALLS did not completely relieve Plaintiff and others of all duty during
20 said rest periods. MCCALLS did not pay to Plaintiff and others one additional hour of pay at
21 their regular rate of compensation for each workday that one or more statutory rest periods
22 was not provided. It was not part of the company policy for employees such as Plaintiff to take
23 at least two rest breaks per shift. The concept of rest breaks was not consistently implemented
24 as it was not company policy. Moreover, it would not have been possible for employees such
25 as Plaintiff to take such rest breaks due to being understaffed and due to a heavy workload,
26 especially in the fast-paced catering/restaurant industry. Throughout his employment, Plaintiff
27 never took rest breaks and was never instructed by management to take a rest break. As such,
28 the culture as well as the policies and procedures of MCCALLS did not lend itself to the

1 employees receiving consistent statutory rest breaks wherein they were relieved of all work
2 duties. The environment at MCCALLS was not conducive to receiving multiple statutory rest
3 breaks under California law and timely, statutory rest breaks were not authorized or enforced.

4 25. MCCALLS failed to provide Plaintiff and the other Class Members the
5 requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout
6 their employment. MCCALLS did not completely relieve Plaintiff and other employees of all
7 duty during said meal periods. MCCALLS did not pay to Plaintiff and its hourly, non-exempt
8 employees one additional hour of pay at their regular rate of compensation for each workday
9 that one or more statutory meal periods was not provided. The hourly, non-exempt employees
10 would often not be able to receive timely meal periods before the 5th hour worked that were
11 actually uninterrupted. The latter was due to the workload and due to being in a fast-paced
12 catering/restaurant environment. When Plaintiff would be on his meal period, MCCALLS
13 chefs/managers, including chefs Mario, Angel, and Joseph at the Bryant facility and chef
14 David at Café 5, would interrupt Plaintiff with work instructions. Moreover, throughout
15 Plaintiff's employment, the chefs would instruct Plaintiff to punch out for his meal period and
16 continue working. Like the rest breaks, receiving a thirty-minute uninterrupted and timely
17 meal break was not part of the company culture and was not enforced by MCCALLS.
18 Consequently, it was the normal practice and custom of MCCALLS not to authorize, permit,
19 and enforce timely statutory meal periods. To the extent that MCCALLS argues that
20 employees receive meal break premium pay for missed meal periods, that argument is
21 inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations
22 themselves, irrespective of whether an employee received the premium payment for a missed,
23 short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated,
24 "section 226.7 does not give employers a lawful choice between providing either meal and rest
25 breaks or an additional hour of pay." See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53
26 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the
27 violation; the employer has still committed a violation even if the remedy for the violation has
28 been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As

1 such, the work environment and culture at MCCALLS was not conducive to receiving
2 consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest
3 break premiums paid were not compensated at the weighted average regular rate, inclusive of
4 bonuses and/or incentive payments as well as overtime compensation.

5 26. MCCALLS failed to reimburse Plaintiff and the other Class Members for
6 business expenses they incurred in direct consequence of the discharge of their duties. At the
7 onset of Plaintiff's employment, MCCALLS instructed Plaintiff and the others that each
8 employee had to bring their own kitchen tools/cooking utensils. As such, Plaintiff purchased
9 and brought to work knives, peelers, tongs, and corkscrews, among others, in order to perform
10 his work. However, MCCALLS did not reimburse Plaintiff for these expenses. MCCALLS
11 also required Plaintiff and the other Class Members to use their own personal cell phones to
12 communicate with management concerning work matters. MCCALLS did not reimburse
13 Plaintiff or the other employees for their mobile phone expenses. Accordingly, MCCALLS
14 was in violation of California Labor Code sections 2800 and 2802.

15 27. MCCALLS failed to pay its employees all wages due to them within any time
16 period specified by California Labor Code section 204, including the minimum wages and
17 overtime as described above as well as meal/rest break premiums.

18 28. MCCALLS did not provide Plaintiff and the other Class Members accurate,
19 itemized wage statements. Wage statements must include all hours worked, overtime hours
20 worked, all applicable hourly rates, the correct legal name and correct address of employer
21 entity, gross wages earned, all deductions, net wages earned, reimbursement for business
22 expenses, the correct start and end of the applicable pay period, the employee ID numbers or
23 social security numbers, among other items. Labor Code § 226(a)(2). MCCALLS issued wage
24 statements that inaccurately reflected total hours worked, gross and net wages earned, and the
25 number of hours worked at each hourly rate because of MCCALLS's failure to properly pay
26 wages as explained herein. Labor Code §§ 226(a)(1), (2), (5), (9). MCCALLS's failure to
27 maintain accurate records as to the hours worked daily by employees also constitutes a
28 violation of Labor Code section 1174(d).

1 29. Finally, because MCCALLS did not properly pay all wages earned as explained
2 herein, MCCALLS also failed to pay final wages owed to Plaintiff and the other Class
3 Members in violation of Labor Code section 203. These earned but unpaid wages include
4 minimum wages and compensation for all hours worked, overtime compensation, premium
5 pay for missed meal and rest breaks, and business expense reimbursement, among others.

6 30. MCCALLS has also violated Labor Code section 558 and engaged in business
7 practices which violate Business and Professions Code Section 17200.

8 31. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
9 unlawful practices and policies, Plaintiff and the Class Members were:

- 10 A. Not provided with all timely and off duty meal periods;
11 B. Not authorized and permitted to take all rest break periods;
12 C. Not paid one hour's pay for each workday in which Defendants failed to
13 authorize and permit them to take one or more timely rest periods;
14 D. Not paid one hour's pay for each workday in which Defendants failed to
15 provide them with one or more timely meal periods;
16 E. Not paid all wages earned, including, but not limited to, minimum,
17 regular, overtime, and doubletime wages;
18 F. Not indemnified for all necessary business expenditures incurred during
19 the discharge of their duties;
20 G. Not provided with accurate and complete wage statements;
21 H. Not timely paid all earned and unpaid wages during their employment
22 and at the time their employment ended.

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

25 **AT THE CORRECT RATES OF PAY**

26 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

27 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

28 32. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

1 33. At all relevant times, Plaintiff and the Class Members have been employees of
2 Defendants and entitled to the benefits and protections of California Labor Code §§ 510, 1194,
3 1197, and 1198, and the Wage Order.

4 34. Section 2(K) of Wage Order 5-2001 defines “hours worked” as “the time during
5 which an employee is subject to the control of an employer, and includes all the time the
6 employee is suffered or permitted to work, whether or not required to do so.”

7 35. Section 3 of the Wage Order states:

8 (A) Daily Overtime - General Provisions

9 (1) The following overtime provisions are applicable to
10 employees 18 years of age or over and to employees 16 or
11 17 years of age who are not required by law to attend
12 school and are not otherwise prohibited by law from
13 engaging in the subject work. Such employees shall not
14 be employed more than eight (8) hours in any workday or
15 more than 40 hours in any workweek unless the employee
16 receives one and one-half (1 ½) times such employee’s
17 regular rate of pay for all hours worked over 40 hours in
18 the workweek. Eight (8) hours of labor constitutes a day’s
19 work. Employment beyond eight (8) hours in any
20 workday or more than six (6) days in any workweek is
21 permissible provided the employee is compensated for
22 such overtime at not less than:

18 (a) One and one-half (1 ½) times the employee’s
19 regular rate of pay for all hours worked in excess
20 of eight (8) hours up to and including 12 hours in
21 any workday, and for the first eight (8) hours
22 worked on the seventh (7th) consecutive day of
23 work in a workweek.

22 (b) Double the employee’s regular rate of pay for
23 all hours worked in excess of 12 hours in any
24 workday and for all hours worked in excess of
25 eight (8) hours on the seventh (7th) consecutive
26 day of work in a workweek.

26 (c) The overtime rate of compensation required to
27 be paid to a nonexempt full-time salaried
28 employee shall be computed by using the
employee’s regular hourly salary as one-fortieth
(1/40) of the employee’s weekly salary.

1 36. Section 4 of the Wage Order requires an employer to pay non-exempt employees
2 at least the minimum wage set forth therein for all hours worked, which consist of all hours that
3 an employer has actual or constructive knowledge that employees are working.

4 37. Labor Code section 510 states:

5 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
6 in one workday and any work in excess of 40 hours in any one workweek and
7 the first eight hours worked on the seventh day of work in any one workweek
8 shall be compensated at the rate of no less than one and one-half times the
9 regular rate of pay for an employee. Any work in excess of 12 hours in one day
10 shall be compensated at the rate of no less than twice the regular rate of pay for
11 an employee. In addition, any work in excess of eight hours on any seventh day
12 of a workweek shall be compensated at the rate of no less than twice the regular
13 rate of pay of an employee. Nothing in this section requires an employer to
14 combine more than one rate of overtime compensation in order to calculate the
15 amount to be paid to an employee for any hour of overtime work.

16 38. California Labor Code § 1194 invalidates any agreement between an employer
17 and an employee to work for less than the minimum wage required under the applicable Wage
18 Order.

19 39. California Labor Code § 1197 makes it unlawful for an employer to pay an
20 employee less than the minimum wage required under the applicable Wage Order for all hours
21 worked during a payroll period.

22 40. California Labor Code § 1198 makes it unlawful for an employer to employ an
23 employee under conditions that violate the Wage Order.

24 41. In conjunction, these provisions of the California Labor Code require employers
25 to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates
26 for all hours worked, including unrecorded hours when the employer knew or reasonably should
27 have known that employees were working during those hours. (*See Morillion v. Royal Packing*
28 *Co.* (2000) 22 Cal.4th 575, 585.)

 42. With respect to overtime wages, the regular rate of pay under California law
must include “all remuneration for employment paid to, on behalf of, the employee.” O.L.
2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to
bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893,

1 904–05. Bonuses must be included in the regular rate whether they are the sole source of the
2 employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§
3 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379.

4 43. As described above, at all relevant times during the applicable limitations
5 period, Defendants failed to compensate Plaintiff and the Class Members for all hours worked,
6 including, but not limited to minimum, regular, overtime and doubletime wages for all
7 minimum, regular, overtime and doubletime hours, respectively, that they worked at the
8 correct rates of pay.

9 44. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
10 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
11 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
12 rates of pay as required by California law.

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REST BREAKS**

15 **(Lab. Code §§ 226.7 and 1198)**

16 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

17 45. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

18 46. At all relevant times during the applicable limitations period, Plaintiff and the
19 Class Members have been employees of Defendants and entitled to the benefits and
20 protections of California Labor Code §§ 226.7 and 1198, and the Wage Order.

21 47. In relevant part, Labor Code § 1198 states,

22 “The maximum hours of work and the standard conditions of labor
23 fixed by the commission shall be the maximum hours of work and the
24 standard conditions of labor for employees. The employment of any
employee for longer hours than those fixed by the order or under
conditions of labor prohibited by the order is unlawful.”

25 48. In relevant part, Section 12 of the Wage Order states:

26 Rest Periods:

27 (A) Every employer shall authorize and permit all employees to take
28 rest periods, which insofar as practicable shall be in the middle of each
work period. The authorized rest period time shall be based on the total
hours worked daily at the rate of ten (10) minutes net rest time per four

(4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

49. In addition, Labor Code Section 226.7 states

(a) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(b) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

50. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

51. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

52. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they

1 failed to authorize and permit them to take 10-minute rest periods every four hours worked or
2 major fraction thereof.

3 53. Plaintiff is informed and believes and thereon alleges that, at all relevant times
4 within the applicable limitations period, Defendants had a policy, practice, or a lack of a
5 policy which resulted in Defendants not authorizing and permitting Plaintiff and the Class
6 Members to take all rest breaks required by California law.

7 54. Defendants failed to provide Plaintiff with all required rest breaks in
8 accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at
9 relevant times within the applicable limitations period, Defendants had a policy, practice, or a
10 lack of a policy which resulted in Defendants not providing the Class Members with all rest
11 breaks required by California law.

12 55. Defendants failed to pay Plaintiff the additional wages required by California
13 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes
14 and thereon alleges that, at relevant times within the applicable limitations period, Defendants
15 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not
16 providing the Class Members with additional wages for all rest breaks not provided to them as
17 required by California Labor Code § 226.7.

18 56. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
19 have suffered damages in amounts subject to proof to the extent they were not paid additional
20 wages owed for all rest breaks not provided to them.

21 57. By reason of the above, Plaintiff and the Class Members are entitled to
22 premium wages for workdays in which one or more rest breaks were not provided to them
23 pursuant to California Labor Code § 226.7.

24 **THIRD CAUSE OF ACTION**

25 **FAILURE TO PROVIDE MEAL PERIODS**

26 **(Lab. Code §§ 226.7, 512, and 1198)**

27 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

28 58. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

1 59. At all relevant times during the applicable limitations period, Plaintiff and the
2 Class Members have been employees of Defendants and entitled to the benefits and
3 protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

4 60. In relevant part, Labor Code § 1198 states,

5 “The maximum hours of work and the standard conditions of labor
6 fixed by the commission shall be the maximum hours of work and the
7 standard conditions of labor for employees. The employment of any
8 employee for longer hours than those fixed by the order or under
9 conditions of labor prohibited by the order is unlawful.”

10 61. In relevant part, Labor Code Section 512 states

11 “An employer may not employ an employee for a work period of more
12 than five hours per day without providing the employee with a meal
13 period of not less than 30 minutes, except that if the total work period
14 per day of the employee is no more than six hours, the meal period may
15 be waived by mutual consent of both the employer and employee. An
16 employer may not employ an employee for a work period of more than
17 10 hours per day without providing the employee with a second meal
18 period of not less than 30 minutes, except that if the total hours worked
19 is no more than 12 hours, the second meal period may be waived by
20 mutual consent of the employer and the employee only if the first meal
21 period was not waived.”

22 62. In relevant part, Section 11 of the Wage Order states:

23 Meal Periods:

24 (A) No employer shall employ any person for a work period of more
25 than five (5) hours without a meal period of not less than 30
26 minutes, except that when a work period of not more than six (6)
27 hours will complete the day’s work the meal period may be
28 waived by mutual consent of the employer and the employee...

 (B) If an employer fails to provide an employee a meal period in
accordance with the applicable provisions of this order, the
employer shall pay the employee one (1) hour of pay at the
employee’s regular rate of compensation for each workday that
the meal period is not provided.

 63. In relevant part, California Labor Code § 226.7 states:

 (a) An employer shall not require an employee to work
during a meal or rest period mandated pursuant to an
applicable statute, or applicable regulation, standard,
or order of the Industrial Welfare Commission, the

Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

64. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than ten (10) hours in a workday.

65. As described above, Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

66. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Class Members with all timely and off-duty meal periods required by California law.

67. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

68. By reason of the above, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more meal periods were not provided to them pursuant to California Labor Code § 226.7.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO INDEMNIFY**

3 **(Lab. Code §§ 1198 & 2802)**

4 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

5 69. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 70. At all relevant times, Plaintiff and the Class Members were employees of
7 Defendants and entitled to the benefits and protections of the California Labor Code §§ 1198
8 and 2802, and the Wage Order.

9 71. In pertinent part, California Labor Code § 2802(a) states: “An employer shall
10 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in
11 direct consequence of the discharge of his or her duties.” Additionally, the Wage Order states,

12 (A) When uniforms are required by the employer to be worn by the employee as
13 a condition of employment, such uniforms shall be provided and maintained by
14 the employer.

15 ...

16 (B) When tools or equipment are required by the employer or are necessary to
17 the performance of a job, such tools and equipment shall be provided and
18 maintained by the employer, except that an employee whose wages are at least
19 two (2) times the minimum wage provided herein may be required to provide
20 and maintain hand tools and equipment customarily required by the particular
21 trade or craft in conformity with Labor Code Section 2802.

22 Wage Order, § 9(A) and (B).

23 72. California Labor Code § 1198 prohibits employers from employing their
24 employees under conditions prohibited by the Wage Order.

25 73. As described above, at all relevant times, Defendants required Plaintiff and the
26 Class Members to incur certain business expenses in the course of performing their duties,
27 including but not limited to purchasing kitchen tools (knives, peelers, tongs, corkscrews, among
28 others) and using their own personal cell phones to communicate with ownership/management
concerning work matters. However, Defendants did not reimburse Plaintiff and the Class
Members for their kitchen tools and mobile phone expenses.

74. Plaintiff is informed and believes and thereon alleges that, at all relevant times,

1 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
2 Defendants' failure to indemnify Plaintiff and the Class Members for the reasonable expenses
3 they incurred during the course of performing their duties.

4 75. Accordingly, with respect to this cause of action, on behalf of himself and the
5 Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys'
6 fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

9 **(California Labor Code Section 226)**

10 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

11 76. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

12 77. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members
13 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate
14 itemized statement showing:

15 A. Gross wages earned;

16 B. Total hours worked by the employee, except for any employee whose
17 compensation is solely based on a salary and who is exempt from payment of overtime under
18 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

19 C. The number of piece rate units earned and any applicable piece rate if the
20 employee is paid on a piece-rate basis;

21 D. All deductions, provided that all deductions made on written orders of the
22 Employee may be aggregated and shown as one item;

23 E. Net wages earned;

24 F. The inclusive dates of the period for which the employee is paid;

25 G. The name of the employee and his or her social security number, except
26 that by January 1, 2008, only the last four digits of his or her social security number or an
27 employee identification number other than a social security number may be shown on the
28 itemized statement;

1 H. The name and address of the legal entity that is the employer; and

2 I. All applicable hourly rates in effect during the pay period and the

3 corresponding number of hours worked at each hourly rate by the employee.

4 78. Pursuant to California Labor Code § 226, an employee is deemed to suffer

5 injury if the employer fails to provide a wage statement. Also, an employee is deemed to

6 suffer injury if the employer fails to provide accurate and complete information as required by

7 California Labor Code § 226(a) and the employee cannot “promptly and easily determine”

8 from the wage statement alone one or more of the following:

9 A. The amount of the gross wages or net wages paid to the employee during

10 the pay period or any of the other information required to be provided on the itemized wage

11 statement pursuant to California Labor Code § 226(a);

12 B. Which deductions the employer made from gross wages to determine the

13 net wages paid to the employee during the pay period;

14 C. The name and address of the employer and, if the employer is a farm

15 labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the

16 name and address of the legal entity that secured the services of the employer during the pay

17 period;

18 D. The name of the employee and only the last four digits of his or her social

19 security number or an employee identification number other than a social security number; and

20 E. The number of piece-rate units earned and the piece rate.

21 79. “Promptly and easily determine,” as stated in California Labor Code § 226(e),

22 means a reasonable person would be able to readily ascertain the information without

23 reference to other documents or information.

24 80. As alleged herein, at all relevant times during the applicable limitations period,

25 Defendants violated California Labor Code section 226 because they did not properly and

26 accurately itemize each employee’s gross wages earned, net wages earned, the total hours

27 worked, the corresponding number of hours worked at each rate by the employee and other

28 requirements of California Labor Code section 226. Defendants failed to state in the wage

1 statements they issued to Plaintiff and the other Class Members all their hours worked and
2 wages earned, including, but not limited to, regular and overtime wages for off-the-clock work
3 (as described above). Defendants knowingly and intentionally did not issue either as a
4 detachable part of the check, draft, or voucher paying the employee's wages, or separately if
5 wages are paid by personal check or cash, statements to Plaintiff and the Class Members that
6 state all overtime wages earned, all minimum wages earned, all regular wages earned, all meal
7 period premium wages earned, all rest break premium wages earned, gross wages earned, net
8 wages earned, all hourly rates, and all hours worked at each rate of pay.

9 81. Defendants' failure to provide Plaintiff and the other Class Members with
10 accurate wage statements was knowing and intentional. Defendants had the ability to provide
11 Plaintiff and the other Class Members with accurate wage statements but intentionally
12 provided wage statements that Defendants knew were not accurate.

13 82. As a result of being provided with inaccurate wage statements by Defendants,
14 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive
15 accurate wage statements were violated and they were misled about the amount of wages they
16 had actually earned and were owed. In addition, the absence of accurate information on their
17 wage statements prevented immediate challenges to Defendants' unlawful pay practices, has
18 required discovery and mathematical computations to determine the amounts of wages owed,
19 has caused difficulty and expense in attempting to reconstruct time and pay records and/or has
20 led to the submission of inaccurate information about wages to state and federal government
21 agencies. Further, Plaintiff and the other Class Members were not able to ascertain from the
22 wage statements whether Defendants complied with their obligations under California Labor
23 Code section 226(a).

24 83. Pursuant to California Labor Code § 226(e), Plaintiff and the class are entitled
25 to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay
26 period in which a violation of California Labor Code § 226(a) occurred and one hundred
27 dollars for each violation of California Labor Code § 226(a) in a subsequent pay period, not to
28 exceed an aggregate penalty of four thousand dollars (\$4,000) per class member, and are also

1 entitled to an award of costs and reasonable attorneys' fees.

2 **SIXTH CAUSE OF ACTION**
3 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**
4 **(Lab. Code §§ 204)**

5 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

6 84. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

7 85. California Labor Code Section 204 establishes the fundamental right of all
8 employees in the State of California to be paid wages in a timely fashion for their work.

9 86. At all times relevant during the liability period, Defendants failed to pay
10 Plaintiff and the Class Members the full amount of all owed wages when due as required by
11 California Labor Code Section 204.

12 87. Defendants failed to pay Plaintiff and the Class Members all wages earned each
13 pay period. Plaintiff is informed, believes, and thereon alleges, that all times relevant during the
14 liability period, Defendants maintained a policy or practice of not paying Plaintiff and the Class
15 Members wages for all hours worked, including overtime hours and premium pay for missed
16 rest breaks and meal breaks.

17 88. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
18 have suffered damages in an amount, subject to proof, to the extent he was not paid all wages
19 each pay period. The precise amount of unpaid wages is not presently known to Plaintiff but
20 can be determined directly from Defendants' records or indirectly based on information from
21 Defendants' records.

22 89. Under this cause of action, Plaintiff prays for penalties on behalf of himself and
23 Class Members due under the statutes alleged along with any allowable interest, penalties,
24 attorney's fees, and costs according to proof at trial.

25 ///

26 ///

27 ///

28 ///

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

3 **(California Labor Code Sections 201-203)**

4 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

5 90. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 91. At all relevant times during the applicable limitations period, Plaintiff and the
7 Class have been employees of Defendants and entitled to the benefits and protections of
8 California Labor Code §§ 201–203, and the Wage Order.

9 92. Labor Code § 201 provides that all earned and unpaid wages of an employee
10 who is discharged are due and payable immediately at the time of discharge.

11 93. Labor Code § 202 provides that all earned and unpaid wages of an employee
12 who quits after providing at least 72-hours notice before quitting are due and payable at the
13 time of quitting and that all earned and unpaid wages of an employee who quits without
14 providing at least 72-hours notice before quitting are due and payable within 72 hours.

15 94. Labor Code § 203 provides that the wages of an employee continue on a daily
16 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
17 unpaid wages to the employee in accordance with Labor Code § 201 or § 202.

18 95. The Defendants failed to pay Plaintiff and all of the other Class Members
19 whose employment ended all of the earned but unpaid wages described above by the
20 conclusion of their employment with Defendants, including minimum wages, regular wages,
21 overtime wages, unprovided meal period premium wages, and unprovided rest break premium
22 wages. Additionally, the Defendants failed to issue to Plaintiff and all of the other Class
23 members whose employment ended their final paychecks within the required time periods.

24 96. By failing to pay such earned wages to Plaintiff and the Class Members,
25 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
26 § 201 or § 202.

27 97. Plaintiff is informed and believes that Defendants' failures to timely pay
28 Plaintiff and the Class Members all of their earned and unpaid wages (described above) have

1 been willful in that, at all relevant times, Defendants have deliberately maintained policies and
2 practices that violate the requirements of the Labor Code and the Wage Order, even though at
3 all relevant times, they have had the ability to comply with those legal requirements.

4 98. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf
5 of himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time
6 penalties for each Class Member.

7 **EIGHTH CAUSE OF ACTION**

8 **CIVIL PENALTIES**

9 **(Lab. Code §§ 2698, *et seq.*)**

10 **(By Plaintiff and the Aggrieved Employees against all Defendants)**

11 99. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

12 100. The “Aggrieved Employees” are all members of the Class defined above who
13 Defendants employed during the period beginning March 14, 2023 and ending on the date that
14 final judgment is entered in this action.

15 101. Labor Code § 204 states

16 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
17 or 204.2, earned by any person in any employment are due and payable twice
18 during each calendar month, on days designated in advance by the employer as
19 the regular paydays. Labor performed between the 1st and 15th days, inclusive,
20 of any calendar month shall be paid for between the 16th and the 26th day of the
month during which the labor was performed, and labor performed between the
16th and the last day, inclusive, of any calendar month, shall be paid for
between the 1st and 10th day of the following month. ...

21 (b) (1) Notwithstanding any other provision of this section, all wages
22 earned for labor in excess of the normal work period shall be paid no later than
23 the payday for the next regular payroll period.

24 (2) An employer is in compliance with the requirements of subdivision (a)
25 of Section 226 relating to total hours worked by the employee, if hours worked
26 in excess of the normal work period during the current pay period are itemized
27 as corrections on the paystub for the next regular pay period. Any corrections set
out in a subsequently issued paystub shall state the inclusive dates of the pay
period for which the employer is correcting its initial report of hours worked.

28 (c) However, when employees are covered by a collective bargaining
agreement that provides different pay arrangements, those arrangements shall

1 apply to the covered employees.

2 (d) The requirements of this section shall be deemed satisfied by the
3 payment of wages for weekly, biweekly, or semimonthly payroll if the wages
4 are paid not more than seven calendar days following the close of the payroll
5 period.

6 102. Defendants paid wages to employees on regular intervals. Defendants,
7 however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked.
8 On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved
9 Employees on such intervals for all wages earned and all hours worked.

10 103. Labor Code section 1174, which also pertains to recordkeeping, states:

11 Every person employing labor in this state shall

12 ...

13 (c) Keep a record showing the names and addresses of all employees employed
14 and the ages of all minors.

15 (d) Keep, at a central location in the state or at the plants or establishments at
16 which employees are employed, payroll records showing the hours worked
17 daily by and the wages paid to, and the number of piece-rate units earned by
18 and any applicable piece rate paid to, employees employed at the respective
19 plants or establishments. These records shall be kept in accordance with rules
20 established for this purpose by the commission, but in any case shall be kept on
21 file for not less than three years. An employer shall not prohibit an employee
22 from maintaining a personal record of hours worked, or, if paid on a piece-rate
23 basis, piece-rate units earned.

24 104. Defendants failed to compensate Plaintiff and all of the other Aggrieved
25 Employees for all hours worked at the correct rates of pay, including all minimum wages
26 earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all
27 meal period premium wages earned, all rest break premium wages earned, gross wages earned,
28 net wages earned, and related compensation. As a result, Defendants have failed to accurately
 maintain all records required by section 1174 and the Wage Order, including but not limited to
 Plaintiff and all of the other Aggrieved Employees' total hours worked, total wages paid, and
 applicable hourly rates during each payroll period.

 105. During the applicable time period, Defendants violated California Labor Code
 §§ 201, 202, 203, 204, 226, 226.7, 351, 353, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and

1 2802.

2 106. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
3 behalf of themselves and other current or former employees, to bring a civil action to recover
4 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

5 107. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class
6 Members are entitled to recover civil penalties for each of the Defendants' violations of
7 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 351, 353, 510, 512, 558, 558.1, 1174,
8 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

9 A. For violations of California Labor Code § 204, one hundred dollars
10 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
11 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
12 established by California Labor Code § 210).

13 B. For violations of California Labor Code § 226(a), two hundred fifty
14 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
15 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
16 established by California Labor Code § 226.3).

17 C. For violations of California Labor Code §§ 510, 512, and 558.1, fifty
18 dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars
19 (\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
20 established by California Labor Code § 558).

21 D. For violations of California Labor Code § 1174, five hundred dollars
22 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
23 California Labor Code § 1174.5).

24 E. For violations of California Labor Code § 1197, one hundred dollars
25 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
26 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation,
27 per pay period (regardless of whether the initial violations were intentionally committed)
28 (penalty amounts established by California Labor Code § 1197.1).

1 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 351,
2 353, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per
3 pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved
4 Employee per pay period for each subsequent violation (penalty amounts established by
5 California Labor Code § 2699(f)(2)).

6 108. Plaintiff has complied with the procedures for bringing suit specified in
7 California Labor Code § 2699.3. By letter dated March 14, 2024, Plaintiff filed written notice
8 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
9 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
10 to have been violated, including the facts and theories to support the alleged violations. Plaintiff
11 accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to
12 take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff
13 anticipates that the LWDA will provide written notice to Plaintiff informing him that it does
14 not intend to investigate these allegations.

15 109. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
16 Employees are entitled to an award of civil penalties and reasonable attorney’s fees and costs in
17 connection with their claims for civil penalties.

18 **NINTH CAUSE OF ACTION**

19 **UNFAIR COMPETITION**

20 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

21 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

22 110. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23 111. At all relevant times during the applicable limitations period, Plaintiff and the
24 Class Members have been employees of Defendants and entitled to the benefits and
25 protections of the Business and Professions Code §§ 17200, *et seq.*

26 112. The unlawful conduct of Defendants alleged herein amounts to and constitutes
27 unfair competition within the meaning of California Business & Professions Code §§ 17200,
28 *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have

1 unfairly gained a competitive advantage over other comparable companies doing business in
2 California that comply with their legal obligations to compensate employees for all earned
3 wages.

4 113. As a result of Defendants' unfair competition as alleged herein, Plaintiff and
5 the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the
6 Class Members were deprived of minimum wages, regular wages, overtime wages, missed
7 meal period premium wages, missed rest period premium wages, kitchen tools, mobile phone,
8 and other expenses, and comparable money and property.

9 114. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
10 Class Members are entitled to restitution of all monies rightfully belonging to them that
11 Defendants did not pay them or otherwise retained by means of their unlawful and unfair
12 business practices.

13 115. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
14 connection with their unfair competition claims pursuant to California Code of Civil
15 Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

16 **V. PRAYER FOR RELIEF**

17 116. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays
18 for relief and judgment against Defendants as follows:

19 A. An order that the action be certified as a class action with respect to
20 Plaintiff's claims for violations of California law;

21 B. An order that Plaintiff be appointed class representative;

22 C. An order that counsel for Plaintiff be appointed class counsel;

23 D. Unpaid wages, including minimum, regular, overtime, double-time, split
24 shift, vacation, missed meal period, missed rest period, nonproductive time, rest and recovery
25 time, and reporting time wages;

26 E. Liquidated damages;

27 F. Statutory penalties, including waiting time penalties;

28 G. Civil penalties;

- 1 H. Restitution;
2 I. Declaratory relief;
3 J. Actual damages;
4 K. Pre-judgment interest;
5 L. Costs of suit;
6 M. Reasonable attorneys' fees; and
7 N. Such other relief as the Court deems just and proper.

8 **VI. DEMAND FOR JURY TRIAL**

9 Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial
10 on all issues so triable.

11 Dated: May 28, 2024

MM LAW, APC

12 By Maralle Messrelia
13 Maralle Messrelia, Esq.
14 Attorneys for Plaintiff,
15 JOSE I. SORIANO RODRIGUEZ, and all
16 others similarly situated
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