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on behalf of herself and all others similarly situated

FILED
Superior Court of California
County of Los Angeles
05/23/2024

David W. Slayton, Executive Officer / Clerk of Court
By: R. Lozano Deputy

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

DARLENE M. STROUD, an individual, on
behalf of herself and others similarly situated,

Plaintiff,

vs.

JM WEST, INC., d/b/a Jersey Mike's Subs, a
California Corporation; JM WEST II, INC.,
d/b/a Jersey Mike's Subs, a California
Corporation; JM SANTA MARIA LP, d/b/a
Jersey Mike's Subs, a California limited
partnership; JM ARROYO GRANDE LP,
d/b/a Jersey Mike's Subs, a California limited
partnership; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 24STCV06910

CLASS ACTION

Assigned for All Purposes To:
Hon. Maren E. Nelson
Dept.: 17

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for All Hours Worked;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Failure to Pay Vacation Wages Under Labor Code § 227(e);
4. Failure to Provide Suitable Seating;
5. Meal Period Liability Under Labor Code § 226.7;
6. Rest-Break Liability Under Labor Code § 226.7;
7. Violation of Labor Code § 226(a)
8. Violation of Labor Code § 221;
9. Violation of Labor Code § 204;
10. Violation of Labor Code § 203;
11. Violation of Labor Code § 245 and § 246;
12. Failure to Reimburse Necessary Uniform and Business Expenses, Labor Code § 2802;
13. Violation of Business & Professions Code § 17200 *et seq.*; and
14. Penalties under PAGA Labor Code § 2698

DEMAND FOR JURY TRIAL

Original Complaint Filed: March 19, 2024
Trial Date; None Set

1 Plaintiff DARLENE M. STROUD (hereinafter “Plaintiff”), on behalf of herself and all
2 other similarly situated non-exempt, hourly restaurant workers employed by Defendants in
3 California (collectively, “Employees”; individually, “Employee”) complains of Defendants, and
4 each of them, as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of herself and all current and former
7 Employees within the State of California who, at any time four (4) years prior to the filing of this
8 lawsuit, are or were employed as non-exempt, hourly employees by Defendants JM WEST, INC.,
9 d/b/a Jersey Mike’s Subs, a California Corporation; JM WEST II, INC., d/b/a Jersey Mike’s Subs,
10 a California Corporation; JM SANTA MARIA LP, d/b/a Jersey Mike’s Subs, a California limited
11 partnership; JM ARROYO GRANDE LP, d/b/a Jersey Mike’s Subs, a California limited
12 partnership; and DOES 1 through 50 (all defendants being collectively referred to herein as
13 “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various provisions of
14 the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and
15 California Business & Professions Code, and seeks redress for these violations.

16 2. Plaintiff and the Class members worked as hourly, non-exempt general managers,
17 shift leads, associates (sandwich makers), and in other similar and related restaurant work
18 positions for Defendants. Plaintiff, and upon information and belief other similarly situated
19 Employees, were required to perform various restaurant services at Defendants’ restaurant
20 locations throughout California. Plaintiff has resided in Santa Barbara County, California and was
21 generally employed by Defendants throughout her employment based out of Defendants’
22 restaurant there. Defendants own and operate other locations in the State of California, including
23 in Los Angeles County. Specifically, Defendant JM Arroyo Grande LP lists its principal address
24 in Porter Ranch, Los Angeles County, California. Furthermore, Defendant JM WEST II, Inc. owns
25 and operates restaurant locations in Thousand Oaks and Westlake Village, Los Angeles County,
26 California. Plaintiff and the other similarly situated Class members were generally asked to
27 perform and engage in similar and related restaurant services tasks for Defendants’ customers and
28 at the behest of Defendants and their managers. She consistently worked without being paid all

1 wages due and without being provided all required breaks. More specifically, Plaintiff and the
2 other similarly situated Class members were employed by Defendants and shared similar job
3 duties and responsibilities, were subjected to the same policies and practices, and endured similar
4 violations at the hands of Defendants as the other Employee Class members who served in similar
5 and related positions.

6 3. Defendants required Plaintiff and the Employees in the Class to work off the
7 clock and failed to record accurate time worked by these Employees, failed to pay them at the
8 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
9 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that
10 prevented them from learning of these unlawful pay practices. Defendants also failed to provide
11 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain
12 under Defendants' control and were not provided with the opportunity to take full uninterrupted
13 and duty-free rest periods and meal breaks, as required by the Labor Code and the applicable
14 paragraphs of the IWC Wage Orders.

15 4. Defendant JM WEST, INC., d/b/a Jersey Mike's Subs, is a California
16 Corporation with its principal executive offices located on Meta Street in Ventura, Ventura
17 County, California. It was listed as the employer on the wage statements issued to Plaintiff. Upon
18 information and belief other similarly situated Class members employed by the Defendants at their
19 California locations during the relevant time period.

20 5. Defendant JM WEST II, INC., d/b/a Jersey Mike's Subs, is a California
21 Corporation, with its principal executive offices located on Meta Street in Ventura, Ventura
22 County, California. It was listed as the employer on the wage statements issued to Plaintiff, and
23 upon information and belief other similarly situated Class members employed by the Defendants
24 at their California locations during the relevant time period.

25 6. Defendant JM SANTA MARIA LP, d/b/a Jersey Mike's Subs, is a California
26 limited partnership, with its principal executive offices located on Winged Foot Circle in Porter
27 Ranch, Los Angeles County, California. It was listed as the employer on the wage statements
28 issued to Plaintiff. Upon information and belief other similarly situated Class members employed

1 by Defendants at their California locations during the relevant time period.

2 7. Defendant JM ARROYO GRANDE LP, d/b/a Jersey Mike's Subs is a California
3 limited partnership with its principal executive offices located on Winged Foot Circle in Porter
4 Ranch, Los Angeles County, California. It was listed as the employer on the wage statements
5 issued to Plaintiff, and upon information and belief to other similarly situated Class members.

6 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
7 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
8 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
9 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
10 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
11 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Los Angeles
12 County where Defendants list their address with the California Secretary of State in Los Angeles
13 County. Defendants also have restaurant locations and headquarters in Thousand Oaks and West
14 Lake Village, Los Angeles County, California. Additionally, the Agent for service for Defendant,
15 JM ARROYO GRANDE LP, d/b/a Jersey Mike's Subs is located in Porter Ranch, Los Angeles
16 County, California.

17 9. The true names and capacities, whether individual, corporate, associate, or
18 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
19 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
20 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
21 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
22 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
23 this Complaint to reflect the true names and capacities of the Defendants designated herein as
24 Does 1 through 50 when their identities become known.

25 10. Plaintiff is informed and believes and thereon alleges that each Defendant acted
26 in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
27 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
28 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in

1 all respects as the employers or joint employers of Employees. Defendants, and each of them,
2 exercised control over the wages, hours or working conditions of Employees, created and
3 implemented the policies and practices that governed the employment of Plaintiff and the Class
4 members and dictated their job duties and responsibilities, or otherwise suffered or permitted
5 Plaintiff and the other Employee Class members to work, or engaged, thereby creating a common
6 law employment relationship, with the Employee Class members. Therefore, Defendants, and each
7 of them, employed or jointly employed the Employee Class members.

8 **FACTUAL BACKGROUND**

9 11. The Employees who comprise the Class, including Plaintiff, are non-exempt
10 employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare
11 Commission ("IWC"). Upon information and belief, their employment has not been governed
12 under any collective bargaining agreements. During the period of four years prior to the filing of
13 this action through its resolution, Plaintiff and the Class members were either not paid by
14 Defendants for all hours worked or were not paid at the appropriate minimum, regular and
15 overtime rates. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class
16 members all wages due and owing, including by requiring off the clock work, failed to provide
17 meal and rest breaks, and failed to furnish accurate wage statements and timely pay all wages
18 owed, all in violation of various provisions of the California Labor Code and applicable
19 paragraphs of the IWC Wage Orders.

20 12. During the course of Plaintiff and the Class members' employment with
21 Defendants, they were not paid all wages they were owed, including for all work performed
22 (resulting in "off the clock" work) and for all their overtime hours worked. This has resulted in
23 systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders.
24 Upon information and belief, Defendants employ other non-exempt, hourly employees as
25 restaurant workers at their restaurant locations in California.

26 13. Plaintiff was employed as a general manager and shift lead by Defendants at two
27 of the several restaurants under the control of Defendants and worked side by side with other co-
28 workers employed as associates (sandwich makers), counter staff, and those in other similar and

1 related positions. Plaintiff was generally scheduled to work shifts of eight hours per shift from
2 8:00 a.m. through 5:00 p.m., five to six days per week. Plaintiff generally worked more than
3 those scheduled hours due to off the clock work she was required to perform. At least once per
4 week, Plaintiff was required to go to work two hours before she clocked in to conduct inventory.
5 Then she would return to her residence to prepare written reports for Defendants and then return
6 to work. All of this time worked went uncompensated by the Defendants. Moreover, Plaintiff was
7 required to provide her “hours” to the manager once per week via text message. The manager
8 would then enter meal periods that Plaintiff was unable to take. Given Defendants’ practice of
9 understaffing their locations, Plaintiff worked more hours than she was scheduled and paid for,
10 including hours worked before and after her work shifts and during her meal and rest breaks,
11 which were consistently interrupted or not provided due to work demands and understaffing.

12 14. In addition to being employed as a general manager and shift lead, Plaintiff also
13 worked as an associate (sandwich maker), cleaner and assisted when needed in covering for or
14 assisting other associates. Class members employed as general managers, shift leads, sandwich
15 makers, cleaners, along with the others in similar and related restaurant services positions such as
16 bussers and kitchen staff, were subject to the same policies and practices uniformly applied and
17 implemented by Defendants.

18 15. In addition to their hourly pay, managers would share or pool tips with other
19 employees at a disproportionate and unlawful rate. Upon information and belief, Defendants
20 allowed customers to leave optional tips for employees. The Defendants’ tip pooling system gave
21 the bulk of the tips to management, including the owner’s wife, then the next largest portion went
22 to shift leads, and the fewest tips to the associates – who were the ones usually performing the
23 service that was actually tipped. Defendants allocated the smallest portion of tips to employees
24 who are under 18 years of age, regardless of whether they had been the associate who rendered
25 the service (e.g., sandwich making) for which the client tipped. General managers, shift leads,
26 and related individuals, would receive a share of tips for the shifts that they had not worked in
27 addition to those shifts they did work. General Managers and shift leads would perform some
28 direct line of service work, for example by making sandwiches, but most of their time working

1 did not involve directly serving customers. Despite this, owners and managers received the most
2 tips from the entire work staff. For example, during the relevant time period, one week of tips, at
3 a single restaurant location, were paid to management and shift leads, who received \$1533 out of
4 \$2201 or about \$200 per person. In stark contrast, the 14 associates who actually performed the
5 work, split the remaining \$667 at a rate of about \$50 per person.

6 16. On any given week, a single restaurant among Defendants' multiple locations
7 could yield \$3,000 worth of tips, which were upon information and belief improperly pooled and
8 paid. Any staff who received a tip were required to place the cash in a tip jar which was later
9 transferred to the cash register to be divided and pooled under Defendants' uniformly applied
10 unlawful policies and practices. Defendants required tip pooling arrangement thus violated Labor
11 Code §351, including to the extent Defendants deducted taxes and withholding from the
12 gratuities. Supervisors and leads drew from the tip pool and employees were not timely paid all
13 the gratuities they were entitled to receive in the appropriate pay period when the tips were
14 earned.

15 17. The Class members therefore experienced violations similar to Plaintiff at
16 Defendants' hands arising under uniformly applied policies. These included requiring off the
17 clock work in the form of hours worked before and after scheduled shifts and during breaks.
18 Some of these tasks required by Defendants and customer demand also occurred before she
19 clocked into Defendants' timekeeping system and after she clocked out for the shift, resulting in
20 further off the clock work. In addition to this pervasive off the clock work before and after
21 scheduled shift start times, Defendants' managers contacted Plaintiff by phone during off duty
22 hours before and after her shift hours to address work issues or scheduling or other work related
23 items. She would also receive text messages and instructions regarding work and was required to
24 call other employees to ask, answer and respond to questions, again while off the clock and
25 without compensation.

26 18. Defendants' timekeeping system was a typical restaurant POS system. Plaintiff
27 never had time to clock in or out because of the amount of work required by Defendants gave her
28 no time to do so. Other Class Members would use a POS system to clock in. As Defendants did

1 not attempt to schedule or provide meal periods and rest breaks to Plaintiff, upon information and
2 belief her timekeeping records should not reflect any meal period time punches, and any
3 automatic deductions for meal periods would constitute further off the clock work.

4 19. Plaintiff was therefore not paid for all her hours worked at the required
5 minimum, overtime, and double time wage rates due to Defendants' policy and practice of
6 requiring her to work off the clock and without pay or to work through breaks, and Defendants
7 thus also failed to keep required records of hours worked. Defendants also failed to pay Plaintiff
8 at the required overtime rates for all hours over eight in a shift, or over forty in a work week.
9 With work shifts generally scheduled for eight hours or more, this unpaid off the clock work
10 resulted in Plaintiff and the Class members working past eight hours on a shift, which required
11 that they be paid at the correct overtime rate of 1.5 times their regular rate. Upon information and
12 belief, the Class members were bound by similar scheduling and work policies and endured
13 similar violations at Defendants' hands as Plaintiff.

14 20. Defendants have either failed to maintain timekeeping records for Plaintiff that
15 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants
16 required and the actual hours Plaintiff worked or the breaks she received or have otherwise
17 declined to produce them to Plaintiff in response to a timely and lawful records request. By
18 requiring pervasive off the clock work and failing to pay for all hours worked, and by rounding
19 regular hours to the substantial detriment of the Class members to conform generally to scheduled
20 shift times, and by failing to record any meal period beginning and ending times, Defendants
21 have also committed knowing and intentional ongoing violations of the record keeping
22 requirements under the Labor Code, including section 1174. Additionally, to the extent
23 Defendants paid overtime, it was underpaid as addressed above or Defendants failed to include all
24 forms of remuneration in the regular rate used to calculate and pay overtime wages. This failure
25 to include non-discretionary bonuses and shift differentials and the like in the overtime rate thus
26 resulted in further underpayment of wages earned by Plaintiff and the Class members.

27 21. Therefore, from at least four years prior to the filing of this lawsuit and
28 continuing to the present, Defendants had a consistent policy or practice of failing to pay

1 Employees for all hours worked and failing to pay minimum wages for all time worked, as
2 required by California law. Also, from at least four years prior to the filing of this lawsuit and
3 continuing to the present, Defendants had a consistent policy or practice of failing to pay
4 Employees overtime compensation at premium overtime rates for all hours worked in excess of
5 eight hours a day and/or forty hours a week, and double-time rates for all hours worked in excess
6 of twelve hours a day, in violation of Labor Code § 510 and the corresponding sections of IWC
7 Wage Orders.

8 22. Defendants also failed to provide Plaintiff and the Class members with their
9 required meal periods and the at least two ten-minute rest breaks required for scheduled shifts of
10 eight hours. The above described off the clock work and job requirements and understaffing
11 contributed to Defendants' common policy of failing to provide lawful meal periods to Plaintiff
12 and the Class members, as required under the Labor Code and Paragraph 11 of the IWC Wage
13 Order(s). Defendants similarly systematically failed to authorize and permit Plaintiff and the
14 employee Class Members to take all required 10-minute rest breaks, as required under the Labor
15 Code and Paragraph 12 of the IWC Wage Order(s).

16 23. Plaintiff and the Class members generally worked shifts that entitled them to
17 receive at least one meal period and two rest breaks. However, Defendants failed to provide all
18 required meal periods and rest breaks to them. Plaintiff was usually the only general manager or
19 shift lead on her shift, and she was never permitted an uninterrupted meal or rest break. There
20 was no one to cover her shift during her meal or rest breaks. Defendants' uniformly applied
21 policies and practices systematically failed to provide required duty-free meal periods to Plaintiff
22 and the Class members, and Defendants did not even attempt to schedule meal periods. Instead,
23 due to job demand and understaffing, they were never provided or they were taken well after five
24 hours into a work shift or were otherwise shortened unlawfully, including by requiring Plaintiff
25 and the Class members to remain under Defendants' control and respond to work demands. If and
26 when Class members were able to attempt to take a meal break, they were not duty-free.
27 Defendants therefore failed to provide meal periods, provided them untimely, or else provided
28 impermissibly shortened meal periods where employees remained on-call to perform duties when

1 needed and had to hurry back to work. Upon information and belief, the Class members endured
2 similar meal period violations at Defendants' hands. On the occasions when Plaintiff and the
3 Class members worked over ten hours on a shift, Defendants failed to provide them with a second
4 uninterrupted and duty-free and timely meal period.

5 24. Defendants thus followed a uniformly applied policies of not providing all
6 required meal periods to their Employees. Meal periods were often not provided at all during a
7 work shift, as work and production demands and management pressure required Employees to
8 work through breaks or to take them well after five hours of work on a shift. However, even when
9 Plaintiff and the Class members were able to take a meal period, it was provided for less than the
10 required time or was otherwise interrupted by work duties and were required to respond to
11 customer demands and manager inquiries and instructions during breaks. Additionally, as
12 addressed above, Defendants followed a practice of requiring off the clock work in a manner that
13 would impact when Employees were to receive meal periods and rest breaks, thus leading to
14 further violations.

15 25. As a result, Defendants' failure to provide Plaintiff and the Class members with
16 all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
17 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants have
18 either failed to maintain required records of when meal periods were actually provided or failed to
19 produce them in response to Plaintiff's timely and lawful requests, or else maintained inaccurate
20 and incomplete records. Defendants also failed to pay Employees "premium pay," i.e. one hour of
21 wages at each Employee's effective hourly rate of pay, for each meal period or rest break that
22 Defendants failed to provide or deficiently provided. Upon information and belief, if and when
23 Defendants did pay any meal period premiums, they failed to include all forms of remuneration in
24 the regular rate used to calculate and pay it.

25 26. Therefore, for at least four years prior to the filing of this action and through to
26 the present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise
27 not provided with the opportunity to take required meal breaks due to Defendants' policies and
28 practices. On the occasions when Plaintiff and the Class members were provided with a meal

1 period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were
2 not provided with one hour's wages in lieu thereof. Meal period violations thus occurred in one or
3 more of the following manners:

- 4 (a) Class members were not provided full thirty-minute duty free meal periods
5 for work days in excess of five hours and were not compensated one hour's
6 wages in lieu thereof, all in violation of, among others, Labor Code §§
7 226.7, 512, and the applicable Industrial Welfare Commission Wage
8 Order(s);
- 9 (b) Class members were not provided second full thirty-minute duty free meal
10 periods for work days in excess of ten hours;
- 11 (c) Class members were required to work through at least part of their daily
12 meal period(s);
- 13 (d) Meal periods were provided after five hours of continuous work during a
14 shift; and
- 15 (e) Class members were restricted in their ability to take a full thirty-minute
16 meal period or were otherwise required to remain under Defendants'
17 control during meal periods.

18 27. Defendants also failed to authorize and permit Plaintiff and the Class members to
19 take duty-free, net ten minute rest breaks for every four hours of shift work, or major fraction
20 thereof. There were similar issues with the required net-ten-minute rest breaks that Plaintiff and
21 the Class members were unable to take as with meal periods. This was exacerbated by the fact
22 that Defendants made no efforts to schedule and otherwise authorize and permit Plaintiff and the
23 Class members to take their required ten-minute rest breaks. Defendants also failed to authorize
24 and permit Plaintiff and the Class members to take their required duty-free, net ten-minute rest
25 periods. Plaintiff and Class Members were not free to leave the premises and thus remained under
26 Defendants' control during their rest breaks. As rest breaks were not scheduled, Defendants'
27 policy was not to provide them, and management did not emphasize the requirement to provide at
28 least one ten-minute duty-free rest period for each four-hour duty period, or major fraction

1 thereof. If and when Plaintiff was permitted to take a ten-minute rest break on a shift, she was not
2 permitted to take a second one or a third one or any breaks were untimely or impermissibly
3 shortened.

4 28. Therefore, the job requirements and duties required of Plaintiff and the Class
5 members, and the demands from their managers, manifested a failure to authorize and permit
6 Class members to take all their required rest breaks. Plaintiff and the other similarly situated
7 Class members were either not authorized permitted the opportunity to take a rest break, or were
8 required to remain under Defendants' control and respond to instructions and job requirements
9 and demands. Defendants also failed to authorize and permit Employees to leave the property
10 premises during rest breaks, or else prevented them from doing so, thus further evidencing
11 Defendants' policy and practice of requiring Plaintiff and the Class members to remain under
12 their control during required off-duty rest breaks.

13 29. Defendants' policies and practices thus systematically deny and denied Plaintiff
14 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal
15 periods. The California Supreme Court has instructed that the rest period requirement obligates
16 employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest
17 periods employers must relieve employees of all duties and relinquish control over how
18 employees spend their time. Plaintiff and the Class members were and are under Defendants'
19 control when they are working through rest breaks, and Defendants failed to schedule or account
20 for required first, second, and third rest breaks during the shifts Plaintiff and the Class members
21 generally worked.

22 30. Plaintiff and the Employees in the Class were also not authorized and permitted to
23 take lawful rest periods, were systematically required by Defendants to work through or during
24 breaks, and were not provided with one hour's wages in lieu thereof. They were required to
25 remain on duty during breaks or portions of their breaks, thus making them either untimely or
26 shortened and on-duty, and they were also prevented from leaving the premises during rest breaks
27 under Defendants' policies and practices. Rest period violations therefore arose in one or more of
28 the following manners:

- 1 (a) Class members were required to work without being provided a minimum
2 ten minute rest period for every four hours or major fraction thereof worked
3 and were not compensated one hour of pay at their regular rate of
4 compensation for each workday that a rest period was not provided, and to
5 the extent Defendants paid any premiums, they failed to include all forms of
6 remuneration in the regular rate used to calculate and pay them.
- 7 (b) Class members were not authorized and permitted to take timely rest periods
8 for every four hours worked, or major fraction thereof; and
- 9 (c) Class members were required to remain on duty and under Defendants'
10 control during rest periods or otherwise had their rest periods interrupted by
11 work demands.

12 31. From at least four years prior to the filing of this lawsuit and continuing to the
13 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
14 deducting the Employees' earned wages, including by the above described off the clock work
15 before and after work shifts and to the extent they deducted hours for unpaid meal periods
16 Defendants failed to provide. By not compensating Employees for all hours worked, and not
17 recording any break times or permitting off-duty breaks, Defendants unlawfully deducted wages
18 earned by and owed to Plaintiff and the Class members, in violation of Labor Code § 221.

19 32. Defendants also violated California Labor Code § 246 by not providing all required
20 paid sick days at the appropriate rate of pay to Plaintiff and the Class Members. Upon information
21 and belief, Defendants paid Employees shift differentials and/or other non-discretionary bonuses.
22 However, upon information and belief, Defendants failed to incorporate all remunerations,
23 including shift differentials, into the calculation of the regular rate of pay for purposes of calculating
24 sick pay. Therefore, during times when Employees worked overtime and received shift differentials
25 and/or other non-discretionary bonuses, Defendants failed to pay all sick pay by paying a lower
26 overtime rate than required.

27 33. Defendants also failed to provide suitable seating to Plaintiff and the Class
28 members. Plaintiff had to use the dining room chairs that customers would also use to eat if they

1 dined in when Plaintiff worked on Defendants' paperwork during her shift. Plaintiff was not
2 allowed to use the dining room chairs when customers were in the store, and Defendants did not
3 provide any seating for her. Plaintiff was required to work on her feet to complete reports and
4 paperwork demanded by the Defendants, even though it is appropriate to be seated while engaging
5 in these tasks. Additionally, the associates and other employees in the restaurant were not
6 provided a seat to perform their duties. No seating was provided near the register, where it would
7 permit the associate to perform their duties. By failing to provide Plaintiff and certain Class
8 members with suitable seats in accordance with the applicable wage order, Defendants also
9 violated California Labor Code § 1198. Plaintiff and Class Members were harmed by Defendants'
10 failure to provide seats because they were required to stand for extended periods of time despite
11 the fact that the nature of his work did not require that they remain standing at all times.

12 34. Defendants also failed to pay Plaintiff and the other Class members all vested
13 vacation time at the time of their separation from Defendants' employment, in violation of Labor
14 Code § 227.3. Specifically, Plaintiff's paystubs do not show a vacation payout or balance.
15 Moreover, Defendants failed to pay Plaintiff for all earned and unused vacation time at her final
16 rate of pay at the time of Plaintiff's resignation from her employment. On information and belief
17 similarly situated Class members are also owed vested vacation time.

18 35. As a result of the above described illegal policies and practices, Defendants
19 engaged in and enforced the following additional unlawful practices and policies against Plaintiff
20 and the Class members she seeks to represent:

- 21 (a) failing to pay all wages owed to Class members who either were discharged,
22 laid off, or resigned in accordance with the requirements of Labor Code §§
23 201, 202, 203;
- 24 (b) failing to pay all wages owed to the Class members twice monthly in
25 accordance with the requirements of Labor Code § 204;
- 26 (c) failing to pay Class members all wages owed, including all meal and rest
27 period premium wages;

1 (d) failing to maintain accurate records of Class members' earned wages and
2 meal periods in violation of Labor Code §§ 226 and 1174(d) and section 7
3 of the applicable IWC Wage Orders; and

4 (e) failing to produce timekeeping records in response to Plaintiff's timely and
5 lawful request to receive them under these authorities.

6 36. During the relevant period, Defendants have also consistently failed to provide
7 Employees with timely, accurate, and itemized wage statements, in writing, as required by
8 California wage-and-hour laws, including by the above-described requirement of off the clock
9 work, failure to pay all overtime, and failure to pay premium wages for unprovided or otherwise
10 unlawful meal and rest breaks. Defendants have also made it difficult to account with precision for
11 the unlawfully withheld wages and meal and rest period compensation owed to Plaintiff and the
12 Class, during the liability period, because they did not implement and preserve a record-keeping
13 method as required for non-exempt employees by California Labor Code §§ 226, 1174(d), and
14 paragraph 7 of the applicable California Wage Orders. Upon information and belief, time clock
15 punches were not maintained or were not accurately maintained for work shifts and meal periods.
16 Defendants also failed to accurately record and pay for all regular and overtime hours worked by
17 Plaintiff and the Class members.

18 37. Defendants also provided Plaintiff and the Class members with wage statements
19 that failed to accurately report all hours worked and applicable hourly rates for all hours worked,
20 including by reflecting rounded hours to the Employees' detriment and otherwise requiring off the
21 clock work. Plaintiff and the Employees in the Class were unable to discern from their wage
22 statements alone the actual hours they worked in total during a pay period and the rates they were
23 paid for those hours worked. The wage statements failed to include the total hours worked, and
24 made it difficult for Class members to calculate this number. As Plaintiff and the Class members
25 were not provided with the opportunity to review their timekeeping punch records for the shifts in
26 the pay period before Defendants ran payroll for it, Class members had no way of knowing if they
27 were actually paid for all their hours worked. Defendants also listed the incorrect address of the
28 actual employer on wage statements issued to Plaintiff and Class Members.

1 38. Defendants have thus also failed to comply with Labor Code § 226(a) by issuing
2 wage statements that inaccurately reported total hours worked and total wages earned by Plaintiff
3 and the Class members, along with the appropriate applicable rates, and failed to list the correct
4 employer's name and address, among other requirements. Plaintiff and Class members are
5 therefore entitled to penalties not to exceed \$4,000.00 for each employee pursuant to Labor Code
6 § 226(b). Defendants have also failed to comply with paragraph 7 of the applicable California
7 IWC Wage Orders by failing to maintain time records showing when the employee begins and
8 ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total
9 daily hours worked by itemizing in wage statements all deductions from payment of wages and
10 accurately reporting total hours worked by the Class members.

11 39. Defendants required Plaintiff and the Class members to work hours off the clock
12 for which they were not compensated, and Defendants also failed to pay all overtime premium
13 wages owed for work conducted on a work shift and a workday, as addressed above. Therefore,
14 from at least three or four years prior to filing this lawsuit and continuing to the present,
15 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to
16 Plaintiff and other similarly situated Employees at the time of their termination or within seventy-
17 two hours of their resignation, as required by California wage-and-hour laws, including Labor
18 Code §§ 201-203. Defendants thus also failed to pay all wages owed to those Class members at
19 the time they were terminated or otherwise separated from employment.

20 40. Additionally, from at least four years prior to the filing of this lawsuit and
21 continuing to the present, Defendants have regularly required Plaintiff and the Class members to
22 incur necessary business expenses in the course of performing their required job duties without
23 reimbursement. Defendants required Plaintiff and the Class members to use their cellular phones
24 to conduct work related activities such as clock in and out, texting and calling the supervisors,
25 checking schedules downloading work apps, and Zoom calls for 8-10 hours per day. Moreover,
26 Defendants required Plaintiff and Class Members to clean and maintain their uniform shirts.
27 Plaintiff and the Class members must be reimbursed for these necessary business expenses under
28 Labor Code § 2802 and Defendants systematically failed to do so.

41. In light of the foregoing, Plaintiff and the Employees in the Class bring this action pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7, 246, 351, 510, 511, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*, and California Code of Regulations, Title 8, section 11000 *et seq.*

42. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff and the Class members seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or fraudulent practices alleged in this Complaint.

CLASS ALLEGATIONS

43. Plaintiff brings this class action on behalf of herself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as determined by the Court (“the Class Period”), and who have been employed as non-exempt, hourly restaurant employees at Defendants’ properties within the State of California.” Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

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

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

c. Subclass 3. Meal Period Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods or one hour of pay at the Employee’s regular rate of pay in lieu thereof.

d. Subclass 4. Rest Break Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Employee’s regular rate of pay in lieu thereof.

1 e. Subclass 5. Wage Statement Subclass. All Class members who, within the
2 applicable limitations period, were not provided with accurate itemized wage statements.

3 f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members
4 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,
5 including by requiring off the clock work.

6 g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class
7 members who were subject to Defendants' policy and practice of not timely paying all wages
8 earned when they were due and payable at least twice monthly.

9 h. Subclass 8. Sick Pay Subclass. All Class members who were not compensated at
10 the Employee's regular rate of pay for their sick pay wages.

11 i. Subclass 9. Unpaid Vacation Time Subclass. All Class members who are owed
12 vested vacation time.

13 j. Subclass 10. Termination Pay Subclass. All Class members who, within the
14 applicable limitations period, either voluntarily or involuntarily separated from their employment
15 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
16 termination.

17 k. Subclass 11. Uniform and Business Expense Reimbursement Subclass. All Class
18 members who incurred necessary and reasonable expenses in connection with the business, such
19 as cellular telephones, and maintaining their uniforms and performing their job duties for
20 Defendants and who were subject to a policy and/or practice under which such expenses were not
21 reimbursed.

22 l. Subclass 12. Suitable Seating. All Class members who were subjected to
23 Defendants' violations of suitable seating.

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

27 44. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
28 modify the class description with greater particularity or to provide further division into subclasses

1 or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
2 against Defendants, the Class Period should be adjusted accordingly.

3 45. Defendants, as a matter of company policy, practice and procedure, and in
4 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
5 requirements, and the applicable provisions of California law, intentionally, knowingly, and
6 willfully, engaged in a practice whereby Defendants failed to correctly calculate and pay
7 compensation for the time worked by Plaintiff and the other members of the Class, even though
8 Defendants enjoyed the benefit of this work, required Employees to perform this work and
9 permitted or suffered to permit this work. Defendants have uniformly denied these Class members
10 wages to which these employees are entitled, and failed to provide meal periods or authorize and
11 permit rest periods, in order to unfairly cheat the competition and unlawfully profit.

12 46. This action has been brought and may properly be maintained as a class action
13 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
14 of interest in this litigation and the proposed Class is easily ascertainable from the employment
15 records for Plaintiff and the Class members that Defendants are required to maintain under
16 California law.

17 **A. Numerosity**

18 47. The potential members of the Class as defined are so numerous that joinder of all
19 the Class members is impracticable. While the precise number of Class member has not been
20 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
21 time period relevant to this lawsuit employed, at least 100 Employees who satisfy the Class
22 definition within the State of California. Plaintiff alleges that Defendants’ employment records
23 will provide information as to the number and location of all Class members.

24 **B. Commonality**

25 48. There are questions of law and fact common to the Class that predominate over
26 any questions affecting only individual Class members. The common questions are numerous and
27 substantial and flow from Defendants’ uniform policies and/or practices of violating the California
28 Labor Code addressed above. As such, these common questions predominate over individual

1 questions concerning each individual Class Member's showing as to her or her eligibility for
2 recovery or as to the amount of damages. These common questions of law and fact include:

- 3 a. Whether Defendants failed to pay Employees minimum wages;
- 4 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 5 c. Whether Defendants failed to pay Employees overtime as required under Labor
6 Code § 510;
- 7 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
8 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
9 premium pay in lieu thereof;
- 10 e. Whether the nature of Plaintiff's and Class Members' job duties reasonably permit
11 the use of seating;
- 12 f. Whether Defendant unlawfully and/or willfully deprived Plaintiff and Class
13 Members of suitable seating when the nature of their job duties reasonably
14 permitted it;
- 15 g. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
16 Orders, by failing to authorize and permit Employees to take requisite rest breaks
17 or provide premium pay in lieu thereof;
- 18 h. Whether Defendants violated Labor Code § 226(a) by providing Employees with
19 inaccurate wage statements and wage statements that omitted many of the Section
20 226(a) requirements.
- 21 i. Whether Defendants violated Labor Code § 221;
- 22 j. Whether Defendants failed to pay Employees sick pay as require under Labor Code
23 § 245;
- 24 k. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
25 wages and compensation due and owing at the time of termination of employment;
- 26 l. Whether Defendants' conduct was willful;
- 27 m. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
28 Orders by failing to maintain accurate records of Class members' earned wages and

work periods;

- n. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- o. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- p. Whether Defendants violated Labor Code § 2802 by failing reimburse necessary business expenses incurred by Employees;
- q. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not providing employees with all required sick days and COVID-19 supplemental sick leave;
- r. Whether Defendants violated Labor Code § 227.3 by failing to pay Employees vested vacation time at the time of their separation from Defendants' employment.
- s. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- t. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

49. The claims of the named Plaintiff are typical of those of the other Employees. The Employee Class members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct and uniformly applied policies in violation of statutes, as well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for the off the clock work and meal and rest violations they were required to endure are typical of those of the other Class members.

D. Adequacy of Representation

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

1 **E. Superiority of Class Action**

2 51. A class action is superior to other available means for the fair and efficient
3 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
4 questions of law and fact common to all Employees predominate over any questions affecting only
5 individual Employees. Each Employee in the Class has been damaged and is entitled to recovery
6 by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

7 52. As to the issues raised in this case, a class action is superior to all other methods
8 for the fair and efficient adjudication of this controversy, as joinder of all Class members is
9 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
10 members. Further, as the economic or other loss suffered by vast numbers of Class members may
11 be relatively small, the expense and burden of individual actions makes it difficult for the Class
12 members to individually redress the wrongs they have suffered. Moreover, in the event
13 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
14 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
15 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
16 to vindicate their rights for violations they endured which they would otherwise be foreclosed
17 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

18 53. Class action treatment will allow those persons similarly situated to litigate their
19 claims in the manner that is most efficient and economical for the parties and the judicial system.
20 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
21 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would
22 set forth the subject and nature of the instant action. The Defendants' own business records can be
23 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
24 that any further notice is required additional media and/or mailings can be used.

25 54. Defendants, as prospective and actual employers of the Employees in the Class,
26 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
27 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
28 Employees as well as the effect of any alleged arbitration agreements that may have been forced

1 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
2 and policies, most notably intentionally refusing to pay for all hours actually worked which should
3 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
4 agreements and policies and practices on the Employees and Class as a whole.

5 55. Plaintiff and the Employees in the Class did not discover the fact that they were
6 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
7 any discussion about Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury,
8 to collectively organize and oppose unlawful pay practices under California law as well as obtain
9 injunctive relief preventing such practices from continuing. As a result, the applicable statutes of
10 limitation tolled until such time as Plaintiff and the Class members discovered their claims.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY MINIMUM WAGES**

13 **(Against All Defendants)**

14 56. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth
15 in full herein.

16 57. Defendants failed to pay Employees minimum wages they were owed, including
17 by their consistent policy of failing to pay Employees for all hours worked. Employees would
18 work hours and not receive wages, including as alleged above in connection with off the clock
19 work, including all the time required to remain on duty and under Defendants' control and during
20 breaks and due to the work demands placed upon them by Defendants' management and
21 customers. Defendants also imposed difficult to attain job and shift scheduling requirements on
22 Plaintiff and the Class members and understaffed shifts, which resulted in off the clock work and
23 underpayment of all wages owed to Employees over a period of time, while benefiting
24 Defendants. During the relevant Class Period, Defendants thus regularly failed to pay minimum
25 wages to Plaintiff and the Class members, including by requiring systematic off the clock work.
26 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,
27 applicable to the Class as a whole, as a result of implementing a uniform policy and practice that
28 denied accurate compensation to Plaintiff and the other members of the Class minimum wages.

1 58. In California, employees must be paid at least the then applicable state minimum
2 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014,
3 and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H)
4 of the applicable IWC Wage Orders defines “Hours Worked” as “the time during which an
5 employee is subject to the control of an employer and includes all the time the employee is
6 suffered or permitted to work, whether or not required to do so.” Additionally, pursuant to Labor
7 Code § 204, other applicable laws and regulations, and public policy, an employer must timely
8 pay its employees for all hours worked. Defendants failed to do so.

9 59. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
10 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
11 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

12 60. The applicable minimum wage rate fixed by the commission for work during the
13 relevant period is found in the Wage Orders.

14 61. The minimum wage provisions of California Labor Code are enforceable by
15 private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any
16 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or
17 the legal overtime compensation applicable to the employee is entitled to recover in a civil action
18 the unpaid balance of the full amount of this minimum wage or overtime compensation, including
19 interest thereon, reasonable attorney’s fees and costs of suit.”

20 62. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
21 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
22 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
23 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
24 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
25 the absence of a contractually agreed upon one. The underpayment of wages to Plaintiff and the
26 Class members is and has been a direct consequence of Defendants’ unlawful compensation
27 policies and practices, which applied uniformly to the Class members working at locations and
28 work sites throughout California.

1 63. In committing the above-described violations of the California Labor Code,
2 Defendants inaccurately recorded, or required Plaintiff and the Class members to input times that
3 did not reflect their actual hours worked, or calculated the correct time worked and consequently
4 underpaid the actual time worked by Plaintiff and other members of the Class, including by
5 requiring off the clock work and rounding and refusing to pay all incurred overtime, as addressed
6 in detail above. Defendants acted in an illegal attempt to avoid the payment of all earned wages,
7 and other benefits in violation of the California Labor Code, the Industrial Welfare Commission
8 requirements and other applicable laws and regulations. As a result of these violations, Defendants
9 also failed to timely pay all wages earned in accordance with California Labor Code § 1194.

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

14 65. In addition to restitution for all unpaid wages, pursuant to California Labor Code
15 § 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
16 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
17 pay each employee minimum wages.

18 66. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
19 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
20 interest thereon.

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

24 68. Wherefore, Plaintiff and the Employee Class members are entitled to recover the
25 unpaid minimum wages (including double minimum wages), liquidated damages in an amount
26 equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees
27 and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of
28 the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs,

1 as well as the assessment of any statutory and/or civil penalties against Defendants, in a sum as
2 provided by the California Labor Code, including § 558, and/or other applicable statutes. To the
3 extent minimum wage compensation is determined to be owed to the Class members who have
4 terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202,
5 and therefore these individuals are also be entitled to waiting time penalties under California
6 Labor Code § 203, which penalties are sought herein on behalf of these Class members.
7 Defendants' failure to timely pay all wages owed also violated Labor Code § 204 for failure to pay
8 all wages owed twice monthly and resulted in violations of Labor Code § 226 because they
9 resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was
10 willful, intentional, and not in good faith. Further, Plaintiff and other Class members are entitled to
11 seek and recover statutory costs.

12 **SECOND CAUSE OF ACTION**

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

14 **(Against All Defendants)**

15 69. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth
16 in full herein.

17 70. California Labor Code § 1194 provides that "any employee receiving less than
18 the legal minimum wage or the legal overtime compensation applicable to the employee is entitled
19 to recover in a civil action the unpaid balance of the full amount of this minimum wage or
20 overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."
21 The action may be maintained directly against the employer in an employee's name without first
22 filing a claim with the Division of Labor Standards and Enforcement.

23 71. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
24 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
25 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular
26 hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in
27 any workweek or for the first eight hours worked on the seventh day of work in any one
28 workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any

1 one day or for hours worked in excess of eight hours on any seventh day of work in a workweek.
2 Defendants had a consistent policy of not paying Employees wages for all hours worked,
3 including by requiring off the clock work and rounding as addressed above and by under-reporting
4 actual hours worked. With work shifts generally being scheduled for eight hours or more, this
5 unpaid off the clock work resulted in Plaintiff and the Class members working past eight hours on
6 a shift, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

7 72. Defendants thus had a consistent policy of not paying Employees wages for all
8 hours worked, including hours at their required regular, overtime, and double-time rates.
9 Defendants required Plaintiff and the Class members to work off the clock to avoid paying all
10 their earned and owed straight time and overtime wages and other benefits, in violation of the
11 California Labor Code, the California Code of Regulations and the IWC Wage Orders and
12 guidelines set forth by the Division of Labor Standards and Enforcement. Defendants have also
13 violated these provisions by requiring Plaintiff and other similarly situated non-exempt employees
14 to work through meal periods when they were required to be clocked out or to otherwise work off
15 the clock to complete their daily job duties or to attend and participate in company required
16 activities or remain under Defendants' control. Therefore, Employees were not properly
17 compensated, nor were they paid overtime rates for hours worked in excess of eight hours in a
18 given day, and/or forty hours in a given week. Based on information and belief, Defendants did
19 not make available to Employees a reasonable protocol for correcting time records when
20 Employees worked overtime hours or to fix incorrect time entries or those that Defendants
21 unlawfully under-recorded to the Employee's detriment, as Defendants required time records to
22 generally reflect scheduled shift times. Defendants also under-paid Plaintiff and the putative Class
23 members all wages by systematically miscalculating and underpaying overtime wages they earned,
24 as detailed above.

25 73. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
26 regular wages owed and overtime compensation for all hours worked, as required by California
27 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
28 IWC Wage Order, and is therefore unlawful.

1 74. Additionally, Labor Code § 558(a) provides “any employer or other person
2 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or
3 any provisions regulating hours and days of work in any order of the IWC shall be subject to a
4 civil penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for
5 each pay period for which the employee was underpaid in addition to an amount sufficient to
6 recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
7 underpaid employee for each pay period for which the employee was underpaid in addition to an
8 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
9 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
10 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
11 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
12 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
13 Code § 558.

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

20 76. Employees have been damaged by these violations of California Labor Code §§
21 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
22 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
23 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
24 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
25 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
26 any order or ruling of the commission.”

27 77. Consequently, pursuant to the California Labor Code, including Labor Code §§
28 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders,

1 including paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full
2 amount of all their unpaid wages and overtime compensation for all their hours worked, with
3 interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory
4 penalties against Defendants, and each of them, and any additional sums as provided by the
5 Labor Code and/or other statutes.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PAY VACATION WAGES UNDER LABOR CODE § 227.3**

8 **(Against All Defendants)**

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

11 79. California Labor Code § 227.3 provides: "Unless otherwise provided by a
12 collective-bargaining agreement, whenever a contract of employment or employer policy
13 provides for paid vacations, and an employee is terminated without having taken off his vested
14 vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance
15 with such contract of employment or employer policy respecting eligibility or time served;
16 provided, however, that an employment contract or employer policy shall not provide for
17 forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated
18 representative, in the resolution of any dispute with regard to vested vacation time, shall apply the
19 principles of equity and fairness." Thus, Labor Code § 227.3 requires that employers who provide
20 employees with vacation time must pay employees for all unused vacation at the time of
21 termination of employment.

22 80. At all relevant times during the applicable limitations period, Plaintiff and the Class
23 members accrued vacation time and paid time off during their employment with Defendants. As a
24 result of their reimbursement policies and practices, Plaintiff is informed and believes and thereon
25 alleges that Defendants failed to reimburse them for all accrued vacation and paid time off wages.
26 Thus, Defendants violated Labor Code § 227.3 by failing to pay Plaintiff and Class members the
27 vacation time due and owing to them at the time of termination of their employment.
28

81. By reason of the above, Plaintiff and the Class members are entitled to restitution for all unpaid amounts due and owing to within four years of the date of the filing of the Complaint until the date of entry of judgment.

82. Plaintiff, on behalf of herself and the members of the Class, seeks interest thereon pursuant to California Labor Code § 218.6, costs pursuant to California Labor Code § 218.6, and reasonable attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

83. Pursuant to the California Labor Code, including Labor Code §§ 227.3, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of all their vacation pay, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE SUITABLE SEATING

LAB. CODE § 1198; 8 C.C.R. § 11070(7)

(Against All Defendants)

84. Plaintiffs incorporate by reference every allegation in this complaint as if fully set forth herein.

85. Labor Code Section 1198 provides that it is illegal to employ an employee for “longer hours than those fixed by the [applicable wage order] or under conditions of labor prohibited by the [applicable wage] order.”

86. The applicable Wage Order provides that “[a]ll working employees *shall* be provided with suitable seats when the nature of the work reasonably permits the use of seats.” *Id.* § 11070(14)(A) (emphasis added). Further, “[w]hen the employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats *shall* be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.” *Id.* § 11070(14)(B) (emphasis added).

1 87. Defendants' policy prohibiting employees from sitting on the dining room chairs,
2 plus its policy of failing to provide sufficient suitable seating in reasonable proximity to the work
3 area, violated Labor Code §1198.

4 **FIFTH CAUSE OF ACTION**

5 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

6 **(Against All Defendants)**

7 88. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth
8 in full herein.

9 89. Employees regularly worked shifts greater than five hours and in some instances,
10 greater than ten hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC
11 Wage Order, an employer may not employ someone for a shift of more than five hours without
12 providing him or her with a meal period of not less than thirty minutes or for a shift of more than
13 ten hours without providing him or her with a second meal period of not less than thirty minutes.

14 90. Defendants failed to provide Employees with meal periods as required under the
15 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were not provided
16 with meal periods or were required to work or to otherwise remain under Defendants' control
17 during meal periods, or Defendants provided them after Employees worked beyond the fifth hour
18 of their shifts or Employees otherwise had them shortened and interrupted by work demands and
19 requirements to remain under Defendants' control during off the clock time. Furthermore, upon
20 information and belief, on the occasions when Employees worked more than ten hours in a given
21 shift, they did so without receiving a second uninterrupted thirty-minute meal period as required
22 by law.

23 91. Defendants thus failed to provide Plaintiff and the Class members with meal
24 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
25 including by not providing them with the opportunity to take meal breaks, by providing them late
26 or for less than thirty minutes, or by requiring them to perform work during breaks.

27 92. Moreover, Defendants failed to compensate Employees for each meal period not
28 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and

20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. Defendants failed to compensate the Employees in the Class for each meal period not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order.

93. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal to one hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and other statutes and applicable IWC Wage Order paragraphs.

SIXTH CAUSE OF ACTION

REST-BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

95. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that employers must authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four work hours.

96. Employees consistently worked consecutive four hour shifts and were generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for each consecutive four hour shift, and Defendants failed to provide Employees with timely rest breaks of not less than ten minutes for each consecutive four hour shift. Defendants made no efforts to authorize and permit rest breaks or otherwise schedule them, and Employees were often required to work or to otherwise remain under Defendants' control during rest periods, and had

1 breaks provided untimely as a result of the above described off the clock work. Plaintiff and the
2 Class members were also not permitted to leave their work premises during any rest breaks they
3 were able to take.

4 97. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage
5 Orders provide that if an employer fails to provide an employee rest period in accordance with this
6 section, the employer shall pay the employee one hour of pay at the employee's regular rate of
7 compensation for each workday that the rest period is not provided.

8 98. Defendants, and each of them, have therefore intentionally and improperly denied
9 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and
10 paragraph 12 of the applicable IWC Wage Orders.

11 99. Defendants failed to authorize and permit Plaintiff and the Class members to take
12 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
13 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
14 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
15 12 and 20 of the applicable IWC Wage Orders.

16 100. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
17 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour
18 of wages at their effective hourly rates of pay for each day worked without the required rest
19 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
20 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

21 **SEVENTH CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE § 226(a)**

23 **(Against All Defendants)**

24 101. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth
25 in full herein.

26 102. California Labor Code § 226(a) requires an employer to furnish each of her or her
27 employees with an accurate, itemized statement in writing showing the gross and net earnings,
28 total hours worked, and the corresponding number of hours worked at each hourly rate; these

1 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
2 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
3 statements may be given to the employee separately from the payment of wages; in either case the
4 employer must give the employee these statements twice a month or each time wages are paid.

5 103. Defendants failed to provide Plaintiff and the similarly situated Employee Class
6 members with accurate itemized wage statements in writing, as required by the Labor Code and
7 paragraph 7 of the applicable IWC Wage Orders. Specifically, Defendants required Class
8 members to ask to receive statements, rather than mailing or otherwise handing them out to all
9 Employees. Also, the wage statements given to Employees by Defendants failed to accurately
10 account for wages, overtime, and premium pay, including by failing to pay for all hours worked,
11 failure to pay for all overtime hours worked and for providing deficient meal periods and rest
12 breaks, all of which Defendants knew or reasonably should have known were owed to the
13 Employees, as alleged above.

14 104. Defendants also provided Plaintiff and the Class members with wage statements
15 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
16 Plaintiff and the Employees in the Class were unable to discern from their wage statements alone
17 the actual hours they worked in total during a pay period.

18 105. Throughout the liability period, Defendants intentionally failed to furnish to
19 Plaintiff and the Class members, upon each payment of wages, itemized statements accurately
20 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) all deductions, (4)
21 net wages earned, (5) the inclusive dates of the period for which the employee is paid, (6) the
22 name of the employee and only the last four digits of her or her social security number or an
23 employee identification number other than a social security number, (7) the name and address of
24 the legal entity that is the employer and (8) all applicable hourly rates in effect during the pay
25 period and the corresponding number of hours worked at each hourly rate by the employee
26 pursuant to Labor Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other
27 statutory requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the
28 Class members with such timely and accurate wage and hour statements.

1 106. Plaintiff and the Class members suffered injury as a result of Defendants’
2 knowing and intentional failure to provide them with the wage and hour statements as required by
3 law and are presumed to have suffered injury and entitled to penalties under Labor Code §
4 226(e), as the Defendants have failed to provide an accurate wage statement, failed to provide
5 accurate and complete information as required by any one or more of items Labor Code § 226
6 (a)(1) to (9), inclusive, and the Plaintiff and Class members cannot promptly and easily determine
7 from the wage statement alone one or more of the following: (i) The amount of the gross wages
8 or net wages paid to the employee during the pay period or any of the other information required
9 to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9)
10 of subdivision (a), (ii) Which deductions the employer made from gross wages to determine the
11 net wages paid to the employee during the pay period, (iii) The name and address of the employer
12 and, (iv) The name of the employee and only the last four digits of her or her social security
13 number or an employee identification number other than a social security number. For purposes
14 of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an
15 objective standard] would be able to readily ascertain the information without reference to other
16 documents or information.

17 107. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders,
18 employers are required “to pay each employee, on the established payday for the period involved,
19 not less than the applicable minimum wage for all hours worked in the payroll period, ...” Under
20 Labor Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the
21 order or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class
22 members may therefore pursue damages and penalties for violations of Labor Code § 204 and
23 paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the
24 applicable IWC Wage Orders.

25 108. Therefore, as a direct and proximate cause of Defendants’ violation of Labor
26 Code § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees
27 in the Class suffered injuries, including among other things confusion over whether they received
28 all wages owed them, the difficulty and expense involved in reconstructing pay records, and

1 forcing them to make mathematical computations to analyze whether the wages paid in fact
2 compensated them correctly for all hours worked.

3 109. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
4 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of
5 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
6 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
7 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
8 an award of costs and reasonable attorneys' fees.

9 **EIGHTH CAUSE OF ACTION**
10 **VIOLATION OF LABOR CODE § 221**
11 **(Against All Defendants)**

12 110. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth
13 in full herein.

14 111. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
15 receive from an employee any part of wages theretofore paid by said employer to said employee."
16 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
17 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
18 to do so.

19 112. Defendants unlawfully received and/or collected wages from the Employees in
20 the Class by implementing a policy understating the hours worked by Employees and requiring off
21 the clock work, as alleged above.

22 113. As a direct and proximate cause of the unauthorized deductions, Employees have
23 been damaged, in an amount to be determined at trial.

24 **NINTH CAUSE OF ACTION**
25 **VIOLATION OF LABOR CODE § 204**
26 **(Against All Defendants)**

27 114. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth
28 in full herein.

1 115. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
2 employment are due and payable twice during each calendar month, on days designated in
3 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
4 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
5 during which the labor was performed, and labor performed between the 16th and the last day,
6 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
7 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment
8 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
9 calendar days following the close of the payroll period.” As detailed above, Defendants
10 maintained a consistently applied policy and practice of not paying all wages earned between the
11 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
12 between the 16th and the last day of the month between the 1st and 10th day of the following month.
13 This included failing to pay all wages due and owing to Plaintiff and the Class members for all
14 hours they worked, and by failing to pay all tips and gratuities owed to Plaintiff and the Class
15 members timely during the pay period in which they were earned due to the general manager
16 illegally taking tips. Defendants similarly failed to pay all wages earned by not more than seven
17 calendar days following the close of the payroll period.

18 116. All wages due and owing to Plaintiff and the Class members, including as
19 required under Labor Code § 510, were therefore not timely paid by Defendants. Additionally,
20 wages required by Labor Code § 1194 and other sections became due and payable to each
21 employee in each pay period that she or she was not provided with a meal period or rest period or
22 paid straight or overtime wages or paid all tips to which she or she was entitled.

23 117. Defendants violated Labor Code § 204 by systematically refusing to timely pay
24 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
25 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
26 payday for the period involved, not less than the applicable minimum wage for all hours worked in
27 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
28 hours than those fixed by the order or under conditions of labor prohibited by the order is

1 unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for
2 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
3 penalties under paragraph 20 of the applicable IWC Wage Orders. Defendants also violated
4 section 204 by failing to provide actual wage statements to Employees and instead requiring them
5 to ask to receive them each time.

6 118. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
7 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
8 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
9 pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
10 applicable IWC Wage Orders.

11 **TENTH CAUSE OF ACTION**
12 **VIOLATION OF LABOR CODE § 203**
13 **(Against All Defendants)**

14 119. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth
15 in full herein.

16 120. Numerous Class members are no longer employed by Defendants; they either
17 quit Defendants’ employ or were fired therefrom.

18 121. Defendants failed to pay these Employees all wages due and certain at the time of
19 termination or within seventy-two (72) hours of resignation, as addressed in detail above.

20 122. The wages withheld from these Employees by Defendants remained due and
21 owing for more than thirty (30) days from the date of separation from employment.

22 123. Defendants failed to pay these Class members without abatement, all wages as
23 defined by applicable California law. Among other things, these Employees were not paid all
24 regular and overtime wages, including by Defendants failing to pay for all hours worked or
25 requiring off the clock work or by unlawfully under-recording time entries and rounding to the
26 detriment of Employees, and Defendants failed to pay premium wages owed for unprovided meal
27 periods and rest periods, as further detailed in this Complaint. Defendants’ failure to pay said
28 wages within the required time was willful within the meaning of Labor Code § 203.

1 124. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders,
2 employers are required “to pay each employee, on the established payday for the period involved,
3 not less than the applicable minimum wage for all hours worked in the payroll period, ...” Under
4 Labor Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the
5 order or under conditions of labor prohibited by the order is unlawful.” Plaintiff on behalf of these
6 Class members may therefore pursue damages and penalties for violations of Labor Code § 203
7 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20
8 of the applicable IWC Wage Orders. Also, under Labor Code § 1199(a)-(c), it is a misdemeanor
9 and Defendants are subject to a fine of not less than \$100 for causing Employees “to work for
10 longer hours than those fixed, or under conditions of labor prohibited by an order of the
11 commission” or if the employer pays “a wage less than the minimum fixed by an order of the
12 commission” or “violates...any provision of this chapter or any order or ruling of the
13 commission.”

14 125. Defendants’ failure to pay wages, as alleged, entitles these former Employee
15 Class members to penalties under Labor Code § 203 and the applicable paragraphs of the IWC
16 Wage Orders as addressed above, including the requirement that an employee’s wages shall
17 continue until paid for up to thirty (30) days from the date they were due.

18 **ELEVENTH CAUSE OF ACTION**

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

20 **(Against All Defendants)**

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

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

27 128. Defendants paid non-discretionary bonuses and/or shift differentials to Employees
28 but Defendants failed to include these forms of remuneration in the regular rate of pay upon which

1 sick pay was calculated and paid. Rather than calculating the amount of paid sick time due when
2 sick time is used according to the requirements set forth in California Labor Code § 246(1),
3 Defendants paid sick leave to Employees at a lower rate, in violation of the law.

4 129. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor Code
5 § 245 *et seq.* and §§ 245 *et seq.* and 246.

6 **TWELFTH CAUSE OF ACTION**
7 **FOR FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**
8 **UNDER LABOR CODE § 2802**
9 **(Against All Defendants)**

10 130. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth
11 in full herein.

12 131. Plaintiff and the Class are informed and believe and based thereon allege that
13 throughout the period applicable, Defendants required Plaintiff and the Class members to pay for
14 necessary work related expenses they incurred. Defendants required Plaintiff and the Class
15 members to use their cellular phones to conduct work related activities such as clock in and out,
16 texting and calling the supervisors, checking schedules downloading work apps, and Zoom calls
17 for 8-10 hours per day. Moreover, Defendants required Plaintiff and Class Members to clean and
18 maintain their uniform shirts. Plaintiff and the Class members must be reimbursed for these
19 necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do
20 so.

21 132. Defendants thus followed a uniform policy and practice of failing to reimburse
22 Employees for these necessary work related expenses or losses incurred in direct discharge of their
23 job duties during employment with Defendants and at the direction of the Defendants pursuant to
24 Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

25 133. Defendants' knowing and willful failure to reimburse lawful necessary work
26 related expenses and losses to Plaintiff and the Class members resulted in damages because,
27 among other things, Defendants did not inform employees of their right to be reimbursed for those
28 work related expenses. As Defendants failed to inform and misled Plaintiff and the Class members

1 with regard to their rights, Plaintiff and the Class members were led to believe that incurring those
2 lawful and necessary expenses was an expected and essential function of their employment with
3 Defendants and that failure to incur those expenses would have adverse consequences on their
4 employment.

5 134. Therefore, Plaintiff and the Class members are entitled to reimbursement for any
6 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9
7 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while
8 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed
9 from the date Plaintiff and the Class members incurred those expenses. Further, Plaintiff and the
10 Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

11 **THIRTEENTH CAUSE OF ACTION**

12 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

13 **(Against All Defendants)**

14 135. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth
15 in full herein.

16 136. Plaintiff, on behalf of herself, the Employees in the Class, and the general public,
17 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
18 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
19 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
20 the public interest within the meaning of Code of Civil Procedure § 1021.5.

21 137. Plaintiff is a "person" within the meaning of Business & Professions Code
22 § 17204, have suffered injury, and therefore has standing to bring this cause of action for
23 injunctive relief, restitution, and other appropriate equitable relief.

24 138. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
25 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
26 fraudulent in that Defendants' policy and practice failed to provide the required amount of
27 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
28 Class members for all hours worked, due to systematic business practices as alleged herein that

1 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
2 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
3 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
4 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

5 139. Wage-and-hour laws express fundamental public policies. Paying employees
6 their wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
7 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
8 vigorously to enforce minimum labor standards, to ensure that employees are not required or
9 permitted to work under substandard and unlawful conditions, and to protect law-abiding
10 employers and their employees from competitors who lower costs to themselves by failing to
11 comply with minimum labor standards.

12 140. Defendants have violated statutes and public policies. Through the conduct
13 alleged in this Complaint, Defendants have acted contrary to these public policies, have violated
14 specific provisions of the Labor Code, and have engaged in other unlawful and unfair business
15 practices in violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived
16 Plaintiff, and all persons similarly situated, and all interested persons, of the rights, benefits, and
17 privileges guaranteed to all employees under the law.

18 141. Defendants' conduct, as alleged above, constitutes unfair competition in violation
19 of the Business & Professions Code § 17200 *et seq.*

20 142. Defendants, by engaging in the conduct herein alleged, by failing to pay wages
21 and overtime and tips, failing to provide meal periods and rest breaks, etc., either knew or in the
22 exercise of reasonable care should have known that their conduct was unlawful; therefore their
23 conduct violates the Business & Professions Code § 17200 *et seq.*

24 143. By the conduct alleged herein, Defendants have engaged and continue to engage
25 in a business practice which violates California and federal law, including but not limited to, the
26 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
27 Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this Court
28 should issue declaratory and other equitable relief pursuant to California Business & Professions

Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

FOURTEENTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.*

(Against All Defendants)

146. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

147. Plaintiff and the Employees in the Class are also aggrieved employees as defined under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and either were or are employed by Defendants (“Aggrieved Employees”) during the relevant time period.

148. In failing to pay Aggrieved Employees minimum wages and overtime, not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders.

149. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, inter alia, on the following California Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 et seq.

150. More specifically, after complying with the notice procedures of Labor Code § 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above-addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions, including as follows:

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,

1 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
2 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
3 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
4 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
5 providing inaccurate wage statements and failing to maintain records as required under Labor
6 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
7 Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a
8 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
9 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
10 citation, ...";

11 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
12 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
13 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
14 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
15 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
16 § 2699(g)(1);

17 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
18 Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the
19 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
20 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
21 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
22 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs
23 pursuant to Labor Code § 2699(g)(1);

24 (f) Failure to Provide Suitable Seating: For the above addressed violations of
25 paragraph 14 of the applicable IWC Wage Orders constituting violations of Labor Code § 1198
26 and Labor Code § 2699.5, and the civil and statutory penalties available and applicable under
27 Labor Code § 2699(f)(2) and paragraphs 14 and 20 of the applicable IWC Wage Orders, and also
28 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

1 (g) All Alleged Violations of the IWC Wage Orders and Other Labor Code

2 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
3 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §
4 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and
5 paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to
6 Labor Code § 2699(g)(1).

7 151. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also
8 seeks the penalties and remedies set forth in Labor Code § 558, which states:

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

14 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
15 each pay period for which the employee was underpaid in addition to an amount sufficient to
16 recover underpaid wages...
17 (b) If upon inspection or investigation the Labor Commissioner determines that a
18 person had paid or caused to be paid a wage for overtime work in violation of any provision of this
19 chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare
20 Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting,
21 and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a
22 violation of this chapter shall be the same as those set out in Section 1197.1.

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

25 152. Plaintiff has exhausted his administrative remedies by submitting a certified letter to
26 the LWDA and Defendants on March 19, 2024 (LWDA-CM-1017498-24) addressing in detail the
27 specific provisions of the Labor Code Defendants have violated and addressing the facts and legal
28 theories to support the alleged violations and requested penalties. The LWDA has not provided
notice of its intent to investigate the alleged violations within 65 calendar days of the postmark
date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations
addressed herein and in the PAGA Notice letter and the original Complaint.

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RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
8. For restitution and/or damages and penalties for Defendants' failure to pay all wages due twice monthly under Labor Code § 204, as may be proven;
9. For restitution and/or damages for all amounts unlawfully withheld from the wages for all class members in violation of Labor Code § 221, as may be proven;
10. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;
11. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
12. For damages and restitution for failure to reimburse all reasonable and necessary business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

1 13. For liquidated damages pursuant to California Labor Code 1194.2(a) for failure to
2 pay minimum wage;

3 14. For restitution for unfair competition pursuant to Business & Professions Code
4 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

5 15. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

6 16. For penalties under Labor Code § 558, as may be proven;

7 17. For an order enjoining Defendants and their agents, servants, and employees, and
8 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
9 duties adumbrated in this Complaint;

10 18. For other wages and penalties under the Labor Code as may be proven;

11 19. For all general, special, and incidental damages as may be proven;

12 20. For an award of pre-judgment and post-judgment interest;

13 21. For an award providing for the payment of the costs of this suit;

14 22. For an award of attorneys' fees; and

15 23. For such other and further relief as this Court may deem proper and just.

16
17 DATED: May 23, 2024

D.LAW, INC.

18
19 By



David Yeremian
Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Plaintiff DARLENE M.
STROUD, on behalf of herself and all others
similarly situated

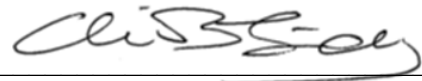
DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

DATED: May 23, 2024

D.LAW, INC.

By



David Yeremian
Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Plaintiff DARLENE M.
STROUD, on behalf of herself and all others
similarly situated

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

Jonathan Fraser Light
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LIGHT GABLER
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Counsel for JM Arroyo Grande LP dba
Jersey Mike's Subs and JM Santa Maria LP
dba Jersey Mike's Subs

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

[X] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

[] (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

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

Executed on May 23, 2024, at Glendale, California.

Sasha Zambrano

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES Branch Name: Spring Street Courthouse Mailing Address: 312 North Spring Street City, State and Zip Code: Los Angeles CA 90012	
SHORT TITLE: DARLENE M. STROUD vs JM WEST, INC., et al. NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 24STCV06910

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of LOS ANGELES. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Legal Connect
Reference Number: 9857900_2024_05_23_11_51_06_106_0
Submission Number: 24LA00883003
Court Received Date: 05/23/2024
Court Received Time: 11:55 am
Case Number: 24STCV06910
Case Title: DARLENE M. STROUD vs JM WEST, INC., et al.
Location: Spring Street Courthouse
Case Type: Civil Unlimited
Case Category: Other Employment Complaint Case
Jurisdictional Amount: Over \$35,000
Notice Generated Date: 05/23/2024
Notice Generated Time: 2:30 pm

<u>Documents Electronically Filed/Received</u>	<u>Status</u>
Amended Complaint	Accepted
Notice of Posting of Jury Fees	Accepted
Notice (name extension)	Accepted

Comments
Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: Legal Connect

Contact: Legal Connect

Phone: (800) 909-6859