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on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

RAINY DAY FISHER, an individual, on
behalf of herself and others similarly situated,

Plaintiff,

vs.

RLW PROPERTIES, LLC, d/b/a Zephyr
Grill & Bar, d/b/a Smith's Landing Seafood
Restaurant, a California limited liability
company; RLW PROPERTIES LLC
ZEPHYR'S GRILL/SMITH'S LANDING, a
business organization of form unknown;
ZEPHYR GRILL & BAR, a business
organization of form unknown; SMITH'S
LANDING, a business organization of a form
unknown; and DOES 1 through 50, inclusive,

Defendants.

Case No.: C24-02017

CLASS ACTION

Assigned for All Purposes To:

Hon. Charles S. Treat

Dept.: 12

**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. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a)
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Violation of Labor Code § 245 and § 246;
10. Failure to Reimburse Necessary Uniform and Business Expenses under Labor Code § 2802;
11. Violation of Business & Professions Code § 17200 *et seq.*; and
12. Penalties under PAGA Labor Code § 2698

DEMAND FOR JURY TRIAL

Original Complaint Filed: March 19, 2024

Trial Date: None Set

1 Plaintiff RAINY DAY FISHER (hereinafter “Plaintiff”), on behalf of herself and all other
2 similarly situated non-exempt, hourly restaurant workers employed by Defendants in California
3 (collectively, “Employees”; individually, “Employee”) complains of Defendants, and each of
4 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 RLW
9 PROPERTIES, LLC, d/b/a Zephyr Grill & Bar, d/b/a Smith’s Landing Seafood Restaurant, a
10 California limited liability company; RLW PROPERTIES, LLC ZEPHYR’S GRILL/SMITH’S
11 LANDING, a business organization of form unknown; ZEPHYRS GRILL & BAR, a business
12 organization of form unknown; SMITH’S LANDING, a business organization of a form
13 unknown; and DOES 1 through 50 (all defendants being collectively referred to herein as
14 “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various provisions of
15 the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and
16 California Business & Professions Code, and seeks redress for these violations.

17 2. Plaintiff and the Class members worked as hourly, non-exempt bartenders,
18 restaurant employees, and in other similar and related positions for Defendants. Plaintiff, and upon
19 information and belief other similarly situated Employees, were required to perform various
20 restaurant services at Defendants’ restaurant locations throughout California. Plaintiff has resided
21 in Los Angeles County, California and was generally employed by Defendants throughout her
22 employment based out of Defendants’ restaurant there and in other locations in the State of
23 California. She and the other similarly situated Class members were generally asked to perform
24 bartending and serving and similar and related restaurant services tasks for Defendants’ customers
25 and at the behest of Defendants and their managers. She consistently worked without being paid
26 all wages due and without being provided all required breaks. More specifically, Plaintiff and the
27 other similarly situated Class members were employed by Defendants and shared similar job
28 duties and responsibilities, were subjected to the same policies and practices, and endured similar

1 violations at the hands of Defendants as the other Employee Class members who served in similar
2 and related positions.

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

12 4. Defendant RLW PROPERTIES, LLC, d/b/a Zephyr Grill & Bar, d/b/a Smith's
13 Landing Seafood Restaurant, is a California limited liability company with its principal executive
14 offices located on Castellina Drive in Brentwood, Contra Costa County, California. It is listed as a
15 limited liability company on the State of California Secretary of State website, and was listed as
16 the employer on the wage statements issued to Plaintiff, and upon information and belief other
17 similarly situated Class members employed by the Defendants at their California locations during
18 the relevant time period.

19 5. Upon information and belief, Defendant RLW PROPERTIES, LLC, d/b/a Zephyr
20 Grill & Bar, d/b/a Smith's Landing Seafood Restaurant, also operates using the names Zephyr
21 Grill & Bar, located in Brentwood, Contra Costa County and Smith's Landing Seafood Restaurant
22 located in Antioch, Contra Costa County, California.

23 6. Defendant ZEPHYRS GRILL & BAR, a restaurant operating in Brentwood,
24 Contra Costa, California, is believed to be an operational entity, either as a separate limited
25 liability company or as fictitious business name or successor or related entity to one or more of the
26 others named Defendants. It is registered on the Contra Costa County Clerk's website.

27 7. Defendant SMITH'S LANDING, a restaurant operating in Antioch, California, is
28 believed to be an operational entity, either as a separate limited liability company or as fictitious

1 business name or successor or related entity to one or more of the others named Defendants. It is
2 registered on the Contra Costa County Clerk's website.

3 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
4 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
5 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
6 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
7 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
8 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Contra Costa
9 County where Defendants operate and maintain restaurants and where Plaintiff and many of the
10 other Class members were employed. Defendants are also headquartered in Contra Costa County.
11 The Agent for service for Defendant, RLW PROPERTIES, LLC, d/b/a Zephyr Grill & Bar, d/b/a
12 Smith's Landing Seafood Restaurant is located in Brentwood, Contra Costa County, California.

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

21 10. Plaintiff is informed and believes and thereon alleges that each Defendant acted
22 in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
23 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
24 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
25 all respects as the employers or joint employers of Employees. Defendants, and each of them,
26 exercised control over the wages, hours or working conditions of Employees, created and
27 implemented the policies and practices that governed the employment of Plaintiff and the Class
28 members and dictated their job duties and responsibilities, or otherwise suffered or permitted

1 Plaintiff and the other Employee Class members to work, or engaged, thereby creating a common
2 law employment relationship, with the Employee Class members. Therefore, Defendants, and each
3 of them, employed or jointly employed the Employee Class members.

4 **FACTUAL BACKGROUND**

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

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

22 13. Plaintiff was employed as a bartender by Defendants at both the Brentwood and
23 Antioch restaurants and worked side by side with other co-workers employed as bartenders,
24 servers, bar backs and bussers, and those in other similar and related positions. Plaintiff was
25 generally scheduled to work shifts of eight hours per shift from 4:15 p.m. through 11:00 p.m., on
26 Wednesdays and Thursdays; from 4:00 p.m. to 2:00 a.m. on Fridays; from 5:00 p.m. to 1:00 a.m.
27 on Saturdays; and 1:30 p.m. to 11:00 p.m. on Sundays. Plaintiff generally worked more than
28 those scheduled hours due to off the clock work she was required to perform. She was scheduled

1 to work five shifts per week, which could include Saturdays and some Sundays. Given
2 Defendants' practice of understaffing their locations, Plaintiff worked more hours than she was
3 scheduled and paid for, including hours worked before and after her work shifts and during her
4 meal and rest breaks, which were consistently interrupted or not provided due to work demands
5 and understaffing.

6 14. In addition to being employed as a bartender, Plaintiff also worked as a server in
7 the bar area and assisted when needed in covering for or assisting servers. Class members
8 employed as servers, along with the others in similar and related restaurant services positions
9 such as bussers and kitchen staff, were subject to the same policies and practices uniformly
10 applied and implemented by Defendants. In addition to their hourly pay, bartenders would share
11 or pool tips with other bartenders, and servers would do so as well with other servers. Plaintiff
12 was expected to tip out other bartenders and bar backs and bussers and servers as appropriate and
13 servers tipped out kitchen staff based on a required percentage of the sales for the shift.

14 15. Bartenders and other employees such as servers, bussers, and dishwashers who
15 supported serving the customers were also paid some of their tips under the tip pooling system
16 that Defendants implemented and required all Employees to comply with. Tips were generally
17 calculated and closed out at the end of each shift and the Employees were paid a calculated
18 percentage specific to them and their total sales and their hours worked as compared to that of the
19 other eligible employees on the shift. However, Defendants never provided any explanation of
20 how tips were pooled and how individual percentage shares were calculated. Additionally, there
21 was no transparency to the pooling arrangement, at least for a portion of the relevant period. After
22 closing out tips for each shift, Plaintiff and the Class members were provided a listing sheet
23 showing the tips being paid to each employee for the shift so they could see how the pooled tips
24 were being allocated, but these sheets were only provided intermittently for a portion of the time.

25 16. Additionally, on many occasions, the general manager on duty, who was an
26 exempt employee, would take tips and not report them so as to not have to tip out or be taxed. On
27 one occasion during the relevant time period, the general manager took \$130 in cash from the tips
28 and did not report or otherwise pool it with the others. When Plaintiff confronted the general

1 manager about his unlawful actions, she was summarily terminated without explanation.

2 17. Defendants required tip pooling arrangement thus violated Labor Code §351,
3 including to the extent Defendants deducted taxes and withholding from the gratuities.
4 Supervisors and leads drew from the tip pool and employees were not timely paid all the
5 gratuities they were entitled to receive in the appropriate pay period when the tips were earned.

6 18. The Class members therefore experienced similar violations at Defendants' hands
7 arising under uniformly applied policies. These included requiring off the clock work in the form
8 of hours worked before and after scheduled shifts and during breaks. Plaintiff was required to
9 arrive at work before her scheduled shift start at least 20 minutes early and was compelled to
10 begin working immediately, before clocking in, to prepare the bar area. At least twice per week,
11 Plaintiff also spent at least one hour purchasing bar supplies and glass ware for the Defendants at
12 Dollar General and other discount stores. Towards the end and for completion of her scheduled
13 shifts, Plaintiff generally clocked out at the time designated by the Defendants. However, she was
14 required to clean up the bar area and tables and count and verify money and count it for closing
15 out the restaurant and bar sales and tips for up to 2 hours off the clock per week. Some of these
16 tasks required by Defendants and customer demand also occurred before she clocked into
17 Defendants' timekeeping system and after she clocked out for the shift, resulting in further off the
18 clock work. In addition to this pervasive off the clock work before and after scheduled shift start
19 times, Defendants' managers contacted Plaintiff by phone during off duty hours before and after
20 her shift hours to address work issues or scheduling or other work related items. She would also
21 receive text messages and instructions regarding work and was required to call other employees
22 to ask, answer and respond to questions, again while off the clock and without compensation.

23 19. Defendants' timekeeping system was a typical restaurant POS system, called
24 *Dinerware*. Plaintiff would input her employee code and then check whether she was clocking in
25 or out for her shifts, and in theory also for her meal periods if and when she was permitted to take
26 them. As Defendants did not attempt to schedule or provide meal periods and rest breaks to
27 Plaintiff, upon information and belief her timekeeping records should not reflect any meal period
28 time punches, and any automatic deductions for meal periods would constitute further off the

1 clock work.

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

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

25 22. Therefore, from at least four years prior to the filing of this lawsuit and
26 continuing to the present, Defendants had a consistent policy or practice of failing to pay
27 Employees for all hours worked and failing to pay minimum wages for all time worked, as
28 required by California law. Also, from at least four years prior to the filing of this lawsuit and

1 continuing to the present, Defendants had a consistent policy or practice of failing to pay
2 Employees overtime compensation at premium overtime rates for all hours worked in excess of
3 eight hours a day and/or forty hours a week, and double-time rates for all hours worked in excess
4 of twelve hours a day, in violation of Labor Code § 510 and the corresponding sections of IWC
5 Wage Orders.

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

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

1 worked over ten hours on a shift, Defendants failed to provide them with a second uninterrupted
2 and duty-free and timely meal period.

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

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

23 27. Therefore, for at least four years prior to the filing of this action and through to
24 the present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise
25 not provided with the opportunity to take required meal breaks due to Defendants' policies and
26 practices. On the occasions when Plaintiff and the Class members were provided with a meal
27 period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were
28 not provided with one hour's wages in lieu thereof. Meal period violations thus occurred in one or

more of the following manners:

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

28. Defendants also failed to authorize and permit Plaintiff and the Class members to take duty-free, net ten minute rest breaks for every four hours of shift work, or major fraction thereof. There were similar issues with the required net-ten-minute rest breaks that Plaintiff and the Class members were unable to take as with meal periods. This was exacerbated by the fact that Defendants made no efforts to schedule and otherwise authorize and permit Plaintiff and the Class members to take their required ten-minute rest breaks. Defendants also failed to authorize and permit Plaintiff and the Class members to take their required duty-free, net ten-minute rest periods. As rest breaks were not scheduled, Defendants' policy was not to provide them, and management did not emphasize the requirement to provide at least one ten-minute duty-free rest period for each four-hour duty period, or major fraction thereof. If and when Plaintiff was permitted to take a ten-minute rest break on a shift, she was not permitted to take a second one or a third one or any breaks were untimely or impermissibly shortened.

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

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

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

- 26 (a) Class members were required to work without being provided a minimum
27 ten minute rest period for every four hours or major fraction thereof worked
28 and were not compensated one hour of pay at their regular rate of

1 compensation for each workday that a rest period was not provided, and to
2 the extent Defendants paid any premiums, they failed to include all forms of
3 remuneration in the regular rate used to calculate and pay them.

4 (b) Class members were not authorized and permitted to take timely rest periods
5 for every four hours worked, or major fraction thereof; and

6 (c) Class members were required to remain on duty and under Defendants'
7 control during rest periods or otherwise had their rest periods interrupted by
8 work demands.

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

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

24 34. As a result of the above described illegal policies and practices, Defendants
25 engaged in and enforced the following additional unlawful practices and policies against Plaintiff
26 and the Class members she seeks to represent:

27 a. failing to pay all wages owed to Class members who either were discharged, laid
28 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,

203;

- b. failing to pay all wages owed to the Class members twice monthly in accordance with the requirements of Labor Code § 204;
- c. failing to pay Class members all wages owed, including all meal and rest period premium wages;
- d. failing to maintain accurate records of Class members' earned wages and meal periods in violation of Labor Code §§ 226 and 1174(d) and section 7 of the applicable IWC Wage Orders; and
- e. failing to produce timekeeping records in response to Plaintiff's timely and lawful request to receive them under these authorities.

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

36. Defendants also provided Plaintiff and the Class members with wage statements that failed to accurately report all hours worked and applicable hourly rates for all hours worked, including by reflecting rounded hours to the Employees' detriment and otherwise requiring off the clock work. Plaintiff and the Employees in the Class were unable to discern from their wage statements alone the actual hours they worked in total during a pay period and the rates they were paid for those hours worked. The wage statements failed to include the total hours worked, and

1 made it difficult for Class members to calculate this number. As Plaintiff and the Class members
2 were not provided with the opportunity to review their timekeeping punch records for the shifts in
3 the pay period before Defendants ran payroll for it, Class members had no way of knowing if they
4 were actually paid for all their hours worked. Defendants also listed the Castellina Drive address
5 in Brentwood on wage statements issued to Plaintiff, but Plaintiff was not working at that
6 restaurant location for at least the last 2 years.

7 37. Defendants have thus also failed to comply with Labor Code § 226(a) by issuing
8 wage statements that inaccurately reported total hours worked and total wages earned by Plaintiff
9 and the Class members, along with the appropriate applicable rates, and failed to list the correct
10 employer's name and address, among other requirements. Plaintiff and Class members are
11 therefore entitled to penalties not to exceed \$4,000.00 for each employee pursuant to Labor Code
12 § 226(b). Defendants have also failed to comply with paragraph 7 of the applicable California
13 IWC Wage Orders by failing to maintain time records showing when the employee begins and
14 ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total
15 daily hours worked by itemizing in wage statements all deductions from payment of wages and
16 accurately reporting total hours worked by the Class members.

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

26 39. Additionally, from at least four years prior to the filing of this lawsuit and
27 continuing to the present, Defendants have regularly required Plaintiff and the Class members to
28 incur necessary business expenses in the course of performing their required job duties without

reimbursement. Defendants required Plaintiff and the Class members to use their cellular phones to conduct work related business and to look up drink recipes to prepare for Defendants' customers. Defendants required Plaintiff and the Class members to incur mileage to drive to locations to purchase barware and supplies. Defendants also required Plaintiff and Class members to supply their own tools including spoons, jiggers, shakers, martini glasses, garnishes, and other bar utensils. Moreover, Defendants required Plaintiff and Class Members to clean and maintain their uniform shirts. Plaintiff and the Class members must be reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do so.

40. 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, 2698 *et. seq.*, and 2802, and California Code of Regulations, Title 8, section 11000 *et seq.*

41. 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

42. 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

1 hours worked in excess of eight in a day and/or forty in a week.

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

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

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

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

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

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

19 i. Subclass 9. Termination Pay Subclass. All Class members who, within the
20 applicable limitations period, either voluntarily or involuntarily separated from their employment
21 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
22 termination.

23 j. Subclass 10. Uniform and Expense Reimbursement Subclass. All Class members
24 who incurred necessary and reasonable expenses in connection with maintaining their uniforms
25 and performing their job duties for Defendants and who were subject to a policy and/or practice
26 under which such expenses were not reimbursed.

27 k. Subclass 11. UCL Subclass. All Class members who are owed restitution as a
28 result of Defendants' business acts and practices, to the extent such acts and practices are found to

1 be unlawful, deceptive, and/or unfair.

2 43. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
3 modify the class description with greater particularity or to provide further division into subclasses
4 or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
5 against Defendants, the Class Period should be adjusted accordingly.

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

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

20 **A. Numerosity**

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

27 **B. Commonality**

28 47. There are questions of law and fact common to the Class that predominate over

1 any questions affecting only individual Class members. The common questions are numerous and
2 substantial and flow from Defendants' uniform policies and/or practices of violating the California
3 Labor Code addressed above. As such, these common questions predominate over individual
4 questions concerning each individual Class Member's showing as to her or her eligibility for
5 recovery or as to the amount of damages. These common questions of law and fact include:

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

- 1 l. Whether Defendants violated Labor Code § 1194 by failing to compensate all
2 Employees during the relevant time period for all hours worked, whether regular or
3 overtime;
- 4 m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all
5 wages earned at least twice monthly;
- 6 n. Whether Defendants violated Labor Code § 2802 by failing reimburse necessary
7 business expenses incurred by Employees;
- 8 o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 9 p. Whether Employees are entitled to equitable relief pursuant to Business and
10 Professions Code § 17200 *et seq.*

11 **C. Typicality**

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

18 **D. Adequacy of Representation**

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

22 **E. Superiority of Class Action**

23 50. A class action is superior to other available means for the fair and efficient
24 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
25 questions of law and fact common to all Employees predominate over any questions affecting only
26 individual Employees. Each Employee in the Class has been damaged and is entitled to recovery
27 by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.
28

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

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

19 53. Defendants, as prospective and actual employers of the Employees in the Class,
20 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
21 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
22 Employees as well as the effect of any alleged arbitration agreements that may have been forced
23 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
24 and policies, most notably intentionally refusing to pay for all hours actually worked which should
25 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
26 agreements and policies and practices on the Employees and Class as a whole.

27 54. Plaintiff and the Employees in the Class did not discover the fact that they were
28 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there

1 any discussion about Plaintiff's and the Class' wavier of their Constitutional rights of trial by jury,
2 to collectively organize and oppose unlawful pay practices under California law as well as obtain
3 injunctive relief preventing such practices from continuing. As a result, the applicable statutes of
4 limitation tolled until such time as Plaintiff and the Class members discovered their claims.

5 **FIRST CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**

7 **(Against All Defendants)**

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

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

24 57. In California, employees must be paid at least the then applicable state minimum
25 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014,
26 and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H)
27 of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an
28 employee is subject to the control of an employer and includes all the time the employee is

1 suffered or permitted to work, whether or not required to do so.” Additionally, pursuant to Labor
2 Code § 204, other applicable laws and regulations, and public policy, an employer must timely
3 pay its employees for all hours worked. Defendants failed to do so.

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

7 59. The applicable minimum wage rate fixed by the commission for work during the
8 relevant period is found in the Wage Orders.

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

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

24 62. In committing the above-described violations of the California Labor Code,
25 Defendants inaccurately recorded, or required Plaintiff and the Class members to input times that
26 did not reflect their actual hours worked, or calculated the correct time worked and consequently
27 underpaid the actual time worked by Plaintiff and other members of the Class, including by
28 requiring off the clock work and rounding and refusing to pay all incurred overtime, as addressed

1 in detail above. Defendants acted in an illegal attempt to avoid the payment of all earned wages,
2 and other benefits in violation of the California Labor Code, the Industrial Welfare Commission
3 requirements and other applicable laws and regulations. As a result of these violations, Defendants
4 also failed to timely pay all wages earned in accordance with California Labor Code § 1194.

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

9 64. In addition to restitution for all unpaid wages, pursuant to California Labor Code
10 § 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
11 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
12 pay each employee minimum wages.

13 65. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
14 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
15 interest thereon.

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

19 67. Wherefore, Plaintiff and the Employee Class members are entitled to recover the
20 unpaid minimum wages (including double minimum wages), liquidated damages in an amount
21 equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees
22 and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of
23 the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs,
24 as well as the assessment of any statutory and/or civil penalties against Defendants, in a sum as
25 provided by the California Labor Code, including § 558, and/or other applicable statutes. To the
26 extent minimum wage compensation is determined to be owed to the Class members who have
27 terminated their employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202,
28 and therefore these individuals are also be entitled to waiting time penalties under California

1 Labor Code § 203, which penalties are sought herein on behalf of these Class members.
2 Defendants' failure to timely pay all wages owed also violated Labor Code § 204 for failure to pay
3 all wages owed twice monthly and resulted in violations of Labor Code § 226 because they
4 resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was
5 willful, intentional, and not in good faith. Further, Plaintiff and other Class members are entitled to
6 seek and recover statutory costs.

7 **SECOND CAUSE OF ACTION**

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

9 **(Against All Defendants)**

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

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

18 70. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
19 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
20 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular
21 hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in
22 any workweek or for the first eight hours worked on the seventh day of work in any one
23 workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any
24 one day or for hours worked in excess of eight hours on any seventh day of work in a workweek.
25 Defendants had a consistent policy of not paying Employees wages for all hours worked,
26 including by requiring off the clock work and rounding as addressed above and by under-reporting
27 actual hours worked. With work shifts generally being scheduled for eight hours or more, this
28 unpaid off the clock work resulted in Plaintiff and the Class members working past eight hours on

1 a shift, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

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

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

24 73. Additionally, Labor Code § 558(a) provides "any employer or other person
25 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or
26 any provisions regulating hours and days of work in any order of the IWC shall be subject to a
27 civil penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for
28 each pay period for which the employee was underpaid in addition to an amount sufficient to

1 recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
2 underpaid employee for each pay period for which the employee was underpaid in addition to an
3 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
4 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
5 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
6 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
7 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
8 Code § 558.

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

15 75. Employees have been damaged by these violations of California Labor Code §§
16 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
17 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
18 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
19 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
20 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
21 any order or ruling of the commission.”

22 76. Consequently, pursuant to the California Labor Code, including Labor Code §§
23 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders,
24 including paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full
25 amount of all their unpaid wages and overtime compensation for all their hours worked, with
26 interest, plus their reasonable attorneys’ fees and costs, as well as the assessment of any statutory
27 penalties against Defendants, and each of them, and any additional sums as provided by the
28 Labor Code and/or other statutes.

1 **THIRD CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

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

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

24 81. Moreover, Defendants failed to compensate Employees for each meal period not
25 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
26 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
27 employee a meal period in accordance with this section, the employer shall pay the employee one
28 hour of pay at the employee's regular rate of compensation for each workday that the meal period

1 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
2 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
3 and 20 of the applicable IWC Wage Order.

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

10 **FOURTH CAUSE OF ACTION**

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

12 **(Against All Defendants)**

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

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

18 85. Employees consistently worked consecutive four hour shifts and were generally
19 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
20 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
21 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
22 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
23 breaks of not less than ten minutes for each consecutive four hour shift. Defendants made no
24 efforts to authorize and permit rest breaks or otherwise schedule them, and Employees were often
25 required to work or to otherwise remain under Defendants' control during rest periods, and had
26 breaks provided untimely as a result of the above described off the clock work. Plaintiff and the
27 Class members were also not permitted to leave their work premises during any rest breaks they
28 were able to take.

86. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders provide that if an employer fails to provide an employee rest 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 rest period is not provided.

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

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

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

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

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

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

1 employer must give the employee these statements twice a month or each time wages are paid.

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

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

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

26 95. Plaintiff and the Class members suffered injury as a result of Defendants'
27 knowing and intentional failure to provide them with the wage and hour statements as required by
28 law and are presumed to have suffered injury and entitled to penalties under Labor Code §

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

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

22 97. Therefore, as a direct and proximate cause of Defendants’ violation of Labor
23 Code § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees
24 in the Class suffered injuries, including among other things confusion over whether they received
25 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
26 forcing them to make mathematical computations to analyze whether the wages paid in fact
27 compensated them correctly for all hours worked.

28

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

7 **SIXTH CAUSE OF ACTION**
8 **VIOLATION OF LABOR CODE § 221**
9 **(Against All Defendants)**

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

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

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

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

22 **SEVENTH CAUSE OF ACTION**
23 **VIOLATION OF LABOR CODE § 204**
24 **(Against All Defendants)**

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

27 104. Labor Code § 204 instructs that: "All wages, ...earned by any person in any
28 employment are due and payable twice during each calendar month, on days designated in

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

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

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

1 penalties under paragraph 20 of the applicable IWC Wage Orders. Defendants also violated
2 section 204 by failing to provide actual wage statements to Employees and instead requiring them
3 to ask to receive them each time.

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

9 **EIGHTH CAUSE OF ACTION**
10 **VIOLATION OF LABOR CODE § 203**
11 **(Against All Defendants)**

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

14 109. Numerous Class members are no longer employed by Defendants; they either
15 quit Defendants' employ or were fired therefrom.

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

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

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

27 113. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders,
28 employers are required "to pay each employee, on the established payday for the period involved,

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

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

16 **NINTH CAUSE OF ACTION**

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

18 **(Against All Defendants)**

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

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

25 117. Defendants paid non-discretionary bonuses and/or shift differentials to Employees
26 but Defendants failed to include these forms of remuneration in the regular rate of pay upon which
27 sick pay was calculated and paid. Rather than calculating the amount of paid sick time due when
28 sick time is used according to the requirements set forth in California Labor Code § 246(1),

1 Defendants paid sick leave to Employees at a lower rate, in violation of the law.

2 118. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor Code
3 § 245 *et seq.* and §§ 245 *et seq.* and 246.

4 **TENTH CAUSE OF ACTION**
5 **FOR FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**
6 **UNDER LABOR CODE § 2802**
7 **(Against All Defendants)**

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

10 120. Plaintiff and the Class are informed and believe and based thereon allege that
11 throughout the period applicable, Defendants required Plaintiff and the Class members to pay for
12 necessary work related expenses they incurred. Defendants required Plaintiff and the Class
13 members to use their cellular phones to conduct work related business and to look up drink recipes
14 to prepare for Defendants' customers. Defendants required Plaintiff and the Class members to
15 incur mileage to drive to locations to purchase martini glasses. Defendants also required Plaintiff
16 and Class members to supply their own tools including spoons, jiggers, shakers, martini glasses,
17 garnishes, and other bar utensils. Moreover, Defendants required Plaintiff and Class Members to
18 clean and maintain their uniform shirts. Plaintiff and the Class members must be reimbursed for
19 these necessary business expenses under Labor Code § 2802 and Defendants systematically failed
20 to do so.

21 121. 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.

25 122. 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.

5 123. 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 **ELEVENTH CAUSE OF ACTION**
12 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***
13 **(Against All Defendants)**

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

16 125. 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.

21 126. 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.

24 127. 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.

5 128. 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.

12 129. 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.

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

20 131. 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.*

24 132. 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.

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

134. 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.

TWELFTH CAUSE OF ACTION

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

(Against All Defendants)

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

136. 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.

137. 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.

138. 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.

139. 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, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking

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

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

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

23 (f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For
24 Defendants' failure to provide Employees with all their required and earned sick days and all their
25 COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil
26 and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5,
27 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to
28 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).

7 140. 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
18 (b) If upon inspection or investigation the Labor Commissioner determines that a
19 person had paid or caused to be paid a wage for overtime work in violation of any provision of this
20 chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare
21 Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting,
22 and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a
23 violation of this chapter shall be the same as those set out in Section 1197.1.

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

27
28 141. Plaintiff has exhausted his administrative remedies by submitting a certified letter to
the LWDA and Defendants on March 13, 2024 (LWDA-CM-1016436-24) addressing in detail the

specific provisions of the Labor Code Defendants have violated and addressing the facts and legal 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.

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;

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

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

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

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

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

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

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

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

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

22. For an award of attorneys' fees; and

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

DATED: December 4, 2024

D.LAW, INC.

By



Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Plaintiff RAINY DAY
FISHER, on behalf of herself and all others
similarly situated

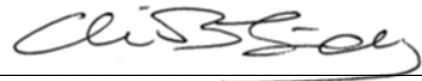
DEMAND FOR JURY TRIAL

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

DATED: December 4, 2024

D.LAW, INC.

By



Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Plaintiff RAINY DAY
FISHER, 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 450 N Brand Blvd., Ste 840, Glendale, CA 91203.

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 Camarillo, CA 93010

[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.

[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.

Sasha Zambrano