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Superior Court of California,
County of San Diego

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Attorneys for Plaintiff,
ORQUIDEA ELIZABETH CUEVAS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ORQUIDEA ELIZABETH CUEVAS, an
individual, on her own behalf and on
behalf of all others similarly situated,

Plaintiffs,

vs.

MALIBU FARM SEAPORT VILLAGE,
a California corporation; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 37-2024-00019906-CU-OE-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY MINIMUM WAGES**
(Cal. *Labor Code* §§1194, 1194.2, 1997,
1197.1, 1198, 2698 *et seq.*; IWC Wage
Order No. 5)
- 2. FAILURE TO PROVIDE TIMELY OFF
DUTY MEAL PERIODS** (Cal. *Labor Code*
§§ 226.7, 512, 2698 *et seq.*; IWC Wage
Order No. 5)
- 3. FAILURE TO PROVIDE REST
PERIODS** (Cal. *Labor Code*
§ 226.7, 2698 *et seq.*; IWC Wage Order No.
5);
- 4. FAILURE TO MAINTAIN RECORDS
AND PROVIDE ACCURATE ITEMIZED
WAGE STATEMENTS** (Cal. *Labor Code*
§226, 2698 *et seq.*; IWC Wage Order No.
5);
- 5. FAILURE TO PROVIDE UNIFORM
AND MAINTENANCE ALLOWANCE**
(Cal. *Labor Code* § 2802, 2698 *et seq.*);
- 6. FAILURE TO ALLOW INSPECTION OF
EMPLOYMENT RECORDS** (Cal. *Labor*
Code §1198.5, 2698 *et seq.*); and
- 7. UNFAIR COMPETITION** (Cal. *Bus. & Prof.*
Code §§17200 *et seq.*, 2698 *et seq.*)

DEMAND FOR A JURY TRIAL

All allegations in this Complaint are based upon information and belief except for those allegations which pertain to the Plaintiff named herein and her counsel. Each allegation has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

Orquidea Elizabeth Cuevas ("Plaintiff") alleges the following:

1. This is a class action brought under California law by an individual who was employed by Malibu Farm Seaport Village ("Malibu Farm" or "Defendant") (along with DOES 1 through 100, collectively "Defendants"). Plaintiff brings this action on behalf of herself and others similarly situated to recover wages from Defendant due to Defendant's systematic failure to pay minimum wages, failure to provide meal and rest breaks (or pay the statutory compensation due), failure to issue accurate wage statements, failure to provide a uniform maintenance allowance and failure to allow inspection of employee records.

2. Plaintiffs have worked as hourly nonexempt employees at Defendant's restaurant. While working, Plaintiffs have been forced to endure stressful and illegal workplace conditions created by Defendant's efforts to maximize profits and tightly control labor costs.

3. Plaintiff, like her co-workers whom Defendant also employed during the applicable limitations period, spend their workdays at Malibu Farm, under illegal and highly regimented circumstances. That regimen results from Defendant's insistence to strictly monitor and curtail labor costs, which Defendant accomplishes by not paying for all labor costs, failing to pay minimum wages, refusing to provide meal periods, refusing to provide rest breaks, not paying the required extra hour for missed meal and rest breaks, failing to pay a uniform maintenance allowance, failing to allow inspection of employee records, by using other unlawful stratagems to ensure that labor costs remain artificially low.

4. Plaintiff brings this class action to recover, among other things, wages and penalties from unpaid wages earned and due, including but not limited to, minimum wages, late and missed rest break wages, wages due to discharged or quitting employees, penalties for failure to provide accurate itemized wage statements, penalties for failure to allow inspection of records, failure to provide uniforms and maintenance thereof and interest, attorneys' fees, costs, and expenses.

5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for herself and all members of the class, to compensate these workers for the unpaid wages and to protect current and future workers of Defendant from being subjected to similar wage theft and otherwise unlawful working conditions.

6. Plaintiff also brings an action seeking relief for Defendant's violations of California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and disgorgement of all compensation retained by Defendant as a result of its unlawful and unfair business practices, as well as injunctive relief.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this Complaint under Code of Civil Procedure §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business & Professions Code* §§ 17200 *et seq.* Plaintiff Orquidea Elizabeth Cuevas brings this Complaint on her own behalf and on behalf of all persons in the Class as defined in paragraph 16 below.

8. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of San Diego and because each of the Defendants owned and operated their restaurant in the County of San Diego.

THE PARTIES

PLAINTIFF

9. At all times relevant hereto, Plaintiff was:

(a) An individual over age 18 and a resident of San Diego County, California;

- 1 (b) Employed as an hourly employee for Defendant in San Diego County,
2 California;
- 3 (c) Did not receive minimum wages in violation of *Labor Code* §§1194,
4 1194.2, 1997, 1197.1, 1198, 2698, et seq., and the applicable Wage
5 Orders;
- 6 (d) Did not receive the meal periods required by *Labor Code* §266.7, 2698,
7 et seq. and the applicable Wage Orders;
- 8 (e) Did not receive the rest periods required by *Labor Code* §266.7, 2698, et
9 seq. and the applicable Wage Orders;
- 10 (f) Did not receive accurate wage statements as mandated by *Labor Code*
11 §226 and 2698 et seq.;
- 12 (g) Was not provided a uniform maintenance allowance as required by
13 *Labor Code* §2802, and 2698 et seq.; and
- 14 (h) Was not allowed to inspect her employment records as required by
15 *Labor Code* §1198.5, 2698 et seq. Each of these was a violation of the
16 *Labor Code*.

17 **DEFENDANT**

18 10. Plaintiff is informed and believes, and based on that information and belief,
19 alleges, Defendant Malibu Farm is, and at all times mentioned herein was:

- 20 (a) A California corporation, with a principal place of business at 29033
21 Grayfox Street, Suite 709, Los Angeles, California 90069. Defendant has
22 been authorized to do business and has been doing business in the
23 County of San Diego;
- 24 (b) The current employer of Plaintiff and the current and former employer of
25 the putative Class members;
- 26 (c) Paid Plaintiff and all Class members on an hourly basis;
- 27 (d) Failed to pay Plaintiff and all putative Class members minimum wages;
- 28

- 1 (e) Failed to provide Plaintiff and all putative Class members with meal and
2 rest periods, failed to provide Plaintiff and all putative Class members
3 with accurate itemized wage statements;
4 (f) Failed to provide a uniform maintenance allowance; and
5 (g) Failed to allow Plaintiff and all putative Class members to inspect
6 employment records. Each of these was a violation of the *Labor Code*.

7 11. The true names and capacities, whether individual, corporate, subsidiary,
8 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
9 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
10 *Civil Procedure* § 474. Plaintiff will seek leave to amend her Complaint to allege the true
11 names and capacities of DOES 1 through 100, inclusive, when they are ascertained.

12 12. Plaintiff is informed and believes, and based on that information and belief
13 alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which
14 reside in or are authorized to do, or are otherwise doing, business in the State of California.
15 Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and
16 conduct business in the County of San Diego. Each of the Defendants DOES 1 through 100
17 was the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator,
18 alter ego and/or representative of one or more of the other Defendants named herein, and acting
19 with permission, authorization, and/or ratification and consent of the other Defendants.

20 13. Plaintiff is informed and believes, and based on that information and belief
21 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
22 inclusive, are responsible in some manner for one or more of the events and happenings that
23 proximately caused the injuries and damages hereinafter alleged.

24 14. Plaintiff is informed and believes, and based on that information and belief
25 alleges, that Defendants named in this Complaint, including DOES 1 through 100, inclusive,
26 are, and at all times mentioned herein were, the agents, servants, and/or employees of each of
27 the other Defendants and that each Defendant was acting within the course and scope of his,
28 hers or its authority as the agent, servant and/or employee of each of the other Defendants.

1 Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the
2 Class, for the damages sustained as a proximate result of their conduct.

3 15. Plaintiff is informed and believes, and based on that information and belief
4 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
5 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
6 themselves and entered into a combination and systemized campaign of activity to *inter alia*
7 damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in
8 derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the
9 Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their
10 conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and
11 belief, and to all appearances, Defendants, and each of them, represented a unified body so that
12 the actions of one Defendant were accomplished in concert with, and with the knowledge,
13 ratification, authorization and approval of each of the other Defendants.

14 16. At all times mentioned herein, Defendants were subject to the Labor Code and
15 Industrial Welfare Commission Wage Orders of the State of California, including, but not
16 limited to, California Labor Code section 2698 et seq.

17 **CLASS ALLEGATIONS**

18 **A. The Definition of the Class**

19 17. The Class ("the Class") is defined as follows:

20 (a) "All current and former employees who were hourly paid employees of
21 Defendant and worked for Malibu Farm in California at any time during the
22 period commencing on the date that is four (4) years prior to the filing of this
23 Complaint and continuing through the present date (the "Class Period")."

24 (b) "All persons who were hourly paid employees of Defendant and worked for
25 Malibu Farm in California and left the employ of Defendant at any time during
26 the period commencing on the date that is within one (1) year prior to the filing
27 of this Complaint and continuing through the present date (the "Class Period")."

1 18. Plaintiff reserves her right under Rule 3.765 of the California Rules of Court to
2 amend or modify the Class description with greater specificity or further division into
3 subclasses or limitation to particular issues.

4 **B. Maintenance of the Action**

5 19. Plaintiff brings this action individually and on behalf of herself and as
6 representative of all similarly situated persons under *Labor Code* § 2699 and *Arias v. Superior*
7 *Court* (2009) 46 Cal. 4th 969, 980-981, *Business & Professions Code* §§ 17203 and 17204 and
8 *Code of Civil Procedure* § 382.

9 20. Plaintiff has exhausted his administrative remedies and pre-filing requirements
10 pursuant to California Labor Code section 2699.3, and has also fulfilled all notice requirements
11 under the statute.

12 21. On or around April 29, 2024, Plaintiff's counsel prepared and mailed a letter to
13 the California Labor & Workforce Development Agency ("LWDA"). The letter contained the
14 specific provisions of the California Labor Code violated by Defendants, as well as the facts
15 and theories in support of Plaintiff's claims. The statutory time period for the LWDA to
16 investigate and/or respond, and for the employers to respond, has concluded.

17 **C. The Class Requisites**

18 22. At all material times, Plaintiff was a member of the Class.

19 23. The Class action meets the statutory prerequisites for maintaining a class action
20 under Code of Civil Procedure § 382 in that:

- 21 (a) The persons who comprise the Class are so numerous that the joinder of all
22 those persons is impracticable and the disposition of their claims as a Class
23 will benefit the parties and the Court;
- 24 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
25 that are raised in this Complaint are common to the Class and will apply
26 uniformly to every Class member;
- 27 (c) The claims of the representative Plaintiff are typical of the claims of each
28 Class member. Plaintiff, like all Class members, has sustained damages

1 arising from Defendant's violations of the laws of the State of California.
2 Plaintiff, and the Class members, were and are similarly or identically
3 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
4 pattern of misconduct engaged in by the Defendant;

- 5 (d) The representative Plaintiff has, and will continue to, fairly and adequately
6 represent and protect the interests of the Class and has retained counsel
7 who are competent and experienced in class action litigation. There are no
8 material conflicts between the claims of the representative Plaintiff and the
9 Class members that would make class certification inappropriate. Counsel
10 for the Class will vigorously assert the claims of all Class members.

11 24. The persons who comprise the Class are so numerous that joining all of them is
12 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
13 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
14 will fairly and adequately protect the interests of the Class she seeks to represent. Plaintiff does
15 not have any interests that are antagonistic to the Class she seeks to represent. Counsel for
16 Plaintiff are experienced, qualified and generally able to conduct complex class action
17 litigation.

18 25. The Court should permit the action to be maintained as a class action under
19 *Code of Civil Procedure* § 382 because:

- 20 (a) The questions of law and fact common to the Class predominate over any
21 question affecting only individual members;
22 (b) A class action is superior to any other available method for fairly and
23 efficiently adjudicating the claims of the Class;
24 (c) The Class members are so numerous that it is impractical to bring all of
25 them before the Court;
26 (d) Plaintiff and other Class members will not be able to obtain effective and
27 economic legal redress unless the action is maintained as a class action;
28

- 1 (e) There is a community of interest in obtaining appropriate legal and
2 equitable relief for the statutory violations, and in obtaining adequate
3 compensation for the damages and injuries for which Defendant is
4 responsible in an amount sufficient to adequately compensate the Class
5 members;
- 6 (f) Without Class certification, the prosecution of separate actions by
7 individual Class members would create a risk of:
- 8 i. Inconsistent or varying adjudications for individual Class members
9 that would establish incompatible standards of conduct for
10 Defendant; and/or,
- 11 ii. Adjudication for individual Class members that would, as a
12 practical matter, dispose of other non-party members' interests, or
13 that would substantially impair or impede the non-parties' ability
14 to protect their interests, by, for example, potentially exhausting
15 the funds available from Defendant, and
- 16 (g) Defendant has acted or refused to act on grounds generally applicable to
17 the Classes, making final injunctive relief appropriate for the Class, as a
18 whole.

19 26. Plaintiff contemplates eventually issuing notice to the proposed Class members
20 that would set forth the subject and nature of the action. The Defendant's own business records
21 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that
22 any further notices may be required, Plaintiff would contemplate using additional media and/or
23 mailing.

24 **GENERAL ALLEGATIONS**

25 27. At all times material hereto, Defendant has been and is, a restaurant.

26 28. Plaintiff and members of the Class were employed as Expeditors and other
27 nonexempt hourly employees by Defendant in California at various times during the Class
28 Period.

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THE CONDUCT

29. Plaintiff seeks relief from Defendant's uniform policies and practices of denying Plaintiff and members of the Class wages and compensation owed under California law.

30. Starting on or about October 11, 2023 and continuing to April 17, 2024, Defendant employed Plaintiff on an hourly basis as an Expeditor at its restaurant.

31. While employed by Defendant as an Expeditor, Plaintiff was paid approximately \$17.50 per hour.

32. The employment by Defendant of the Class members, and each of them, is governed by Industrial Welfare Commission Wage Order 5, which covers those persons employed in the public housekeeping industry.

FAILURE TO PAY MINIMUM WAGES

33. Under California law, non-exempt employees as defined by the applicable Wage Order are entitled to minimum wages. Labor Code Section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code Section 1194 entitles "any employee receiving less than the legal minimum wage...is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage." The applicable IWC Wage Order(s), including IWC Wage Order No. 5-2001, obligates employers to pay each employee minimum wages for all hours worked.

34. These minimum wage standards apply to each hour employees worked or were subject to control by the employer for which they were not paid. Therefore, an employer's failure to pay for any particular hour of time worked by an employee or subject to the employer's control is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

35. At all times during the relevant time period, Plaintiff and the Class were not paid minimum wages due to the failure of Defendant to provide meal/rest breaks.

1 36. During this period, it was the practice and policy of Defendant to not pay
2 employees' minimum wages. Monies for minimum wages remain due and owing.

3 **FAILURE TO AFFORD MEAL/REST BREAKS**

4 37. Plaintiff and the Class members were routinely not afforded any rest breaks.
5 Further, Plaintiff and Class members were at times afforded meal breaks late.

6 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

7 38. As a result of Defendant's failure to pay employees required minimum wages
8 and failure to afford meal/rest breaks, the wage statements issued to the employees did not
9 comply with *Labor Code* §226 and California Industrial Welfare Commission ("IWC") Wage
10 Order 5 in that they did not accurately reflect all wages earned and due and owing.

11 **FAILURE TO PAY UNIFORM MAINTENANCE ALLOWANCE**

12 39. Defendant failed to pay Plaintiff and Class members for their uniforms and also
13 failed to pay for maintenance thereof.

14 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

15 40. Defendant failed to allow Plaintiff and Class members to timely inspect their
16 personnel records and payroll file.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY MINIMUM WAGES**

19 **(IWC Wage Order No. 5; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs**
20 **Against Defendant and Does 1 through 100)**

21 41. Plaintiff and the Class reallege and incorporate by reference all of the allegations
22 set forth in this Complaint.

23 42. Labor Code §§ 1194(a) states: "Notwithstanding any agreement to work for a
24 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
25 compensation applicable to the employee is entitled to recover in a civil action the unpaid
26 balance of the full amount of this minimum wage or overtime compensation, including interest
27 thereon, reasonable attorney's fees, and costs of suit."
28

1 43. *Labor Code* § 1197 states the California requirement that employees must be
2 paid at least the minimum wage fixed by the Commission, and any payment of less than the
3 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
4 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
5 the full amount of this minimum wage.” IWC Wage Order 5-2001 also obligates employers to
6 pay each employee minimum wages for all hours worked. These minimum wage standards
7 apply to each hour employees worked for which they were not paid. Therefore, an employer’s
8 failure to pay for any particular hour of time worked by an employee is unlawful, even if
9 averaging an employee’s total pay over all hours worked, paid or not, results in an average
10 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
11 (2005).

12 44. Pursuant to Wage Order 5, Defendant is required to pay the members of the
13 Class for all hours worked, meaning the time during which an employee is subject to the
14 control of an employer, including all the time the employee is suffered or permitted to work,
15 whether or not required to do so.

16 45. Furthermore, pursuant to *Labor Code* § 1198, “[t]he maximum hours of work
17 and the standard conditions of labor fixed by the commission shall be the maximum hours of
18 work and the standard conditions of labor for employees. The employment of any employee for
19 longer hours than those fixed by the order or under conditions of labor prohibited by the order
20 is unlawful.”

21 46. Defendant failed to satisfy minimum wage requirements because Defendant
22 failed to afford meal/rest breaks. Plaintiff and Class members did not receive minimum wages.

23 47. Defendant’s pattern, practice and uniform administration of corporate policy
24 regarding illegal employee compensation as described herein is unlawful and creates an
25 entitlement, pursuant to *Labor Code* § 218, to recovery by Plaintiff and the members of the
26 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at
27 the appropriate rate.
28

48. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for the time associated with the overtime for which they received no compensation. *See Sillah v. Command Int’l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage); *accord Andrade v. Arby’s Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

49. Plaintiff and the other Class members suffered and continue to suffer losses related to the use and enjoyment of compensation due and owing to them as a direct result of Defendant's unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

50. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699.

51. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, 2698, et seq. Plaintiff and the Class are entitled to recover the unpaid balances of the minimum wages Defendant owes them, plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to proof.

SECOND CAUSE OF ACTION

FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS

(IWC Wage Order No. 5; Labor Code §§ 226.7, 512 By Plaintiffs Against Defendant and Does 1 through 100)

52. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

1 53. California Labor Code §226.7(a) prohibits an employer from requiring an
2 employee to work during any meal period mandated by an applicable Industrial Wage Order.
3 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
4 employee to work during a meal or rest break or recovery period mandated pursuant to an
5 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
6 Commission..."

7 54. California Labor Code §1198 makes unlawful the employment of an employee
8 under conditions the IWC prohibits.

9 55. IWC Order No. 5-2001(11)(A) provides, in relevant part: "No employer shall
10 employ any person for a work period of more than five (5) hours without a meal period of not
11 less than 30-minutes, except that when a work period of not more than six (6) hours will
12 complete the day's work the meal period may be waived by mutual consent of the employer and
13 the employee."

14 56. IWC Order No. 5-2001 (11)(c) further provides, in relevant part: "Unless the
15 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
16 considered an 'on duty' meal period and counted as time worked."

17 57. Section 512(a) of the California Labor Code provides, in relevant part, that:

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

25 58. The Labor Code and Wage Order provisions cited above require California
26 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
27 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
28 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and

1 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
2 the fifth hour of their shifts.

3 59. As alleged herein, Defendant failed to relieve employees of duties for timely
4 meal breaks throughout the Class Period. Plaintiff and the members of the Class were at times
5 afforded their meal breaks late. Plaintiff and the members of the Class were at times required to
6 work through their meal periods at the fifth and sixth hour of their shifts at the direction of
7 Defendant and/or with their endorsement, encouragement, knowledge and acquiescence.

8 60. Defendant has a policy or practice of failing to ensure that Plaintiff and
9 members of the Class take the meal periods required by California Labor Code §226.7 and
10 IWC Wage Order No. 5-2001 §11.

11 61. By their actions in not affording Plaintiff and Class members meal periods,
12 Defendant violated Cal. Lab. Code §226.7(b) and section 11 of the Wage Order in the amount
13 of one additional hour of pay at the employee's regular rate of compensation for each work
14 period during each day in which Defendant failed to provide employees with statutory timely
15 off-duty meal periods.

16 62. Defendant also has a policy or practice of failing to pay each of their employees
17 who was not provided with a meal period as required an additional one hour of compensation at
18 each employee's regular rate of pay.

19 63. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to
20 bring a private right of action to recover wages due based on the deprivation of timely meal
21 periods under Cal. Labor Code § 226.7(b).

22 64. As California Labor Code Section 2699 provides for civil penalties recoverable
23 by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code
24 section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
25 recover these penalties pursuant to Labor Code section 2699.

26 65. As a direct and proximate result of Defendant's unlawful conduct as alleged
27 herein, Plaintiff and members of the Class have sustained economic damages, including but not
28 limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled

1 to recover economic and statutory damages, attorneys' fees and penalties and other appropriate
2 relief due to Defendant's violations of the California Labor Code and the applicable IWC Wage
3 Orders.

4 **THIRD CAUSE OF ACTION**
5 **FOR FAILURE TO PROVIDE REST PERIODS**

6 **(Labor Code § 226.7 and IWC Wage Order No. 5 By Plaintiffs Against Defendant and**
7 **Does 1 through 100)**

8 66. Plaintiff and the Class reallege and incorporate by reference all of the allegations
9 set forth in this Complaint.

10 67. Labor Code § 226.7 and the applicable Wage Order provide that employers shall
11 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
12 per four hours of work, or major fraction thereof.

13 68. Labor Code § 226.7 and the applicable Wage Order provide that if an employer
14 fails to provide an employee with rest periods in accordance with those provisions, the
15 employer shall pay the employee one hour of pay at the employee's regular rate of
16 compensation for each workday that the rest periods were not so provided.

17 69. Defendant has intentionally and improperly denied rest periods to Plaintiff and
18 the Class in violation of Labor Code § 226.7 and the applicable Wage Order.

19 70. At all times herein, Plaintiff and the Class members have worked 7 hours daily.

20 71. At all times relevant hereto, Defendant failed to provide rest periods as required
21 by Labor Code § 226.7 and the applicable Wage Order. Plaintiff and Class members never took
22 any rest breaks. There was no one to cover Plaintiff so Plaintiff was not able to take rest breaks.
23 Additionally, Defendant failed to instruct Plaintiff to take rest breaks.

24 72. As California Labor Code Section 2699 provides for civil penalties recoverable
25 by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code
26 section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
27 recover these penalties pursuant to Labor Code section 2699.

73. By virtue of Defendant's unlawful failure to provide rest periods to the Plaintiff and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class, but which exceed the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

74. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor Code section 2699(g)(1).

FOURTH CAUSE OF ACTION

FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE

ITEMIZED STATEMENTS

(Labor Code §226 By Plaintiffs Against Defendant and Does 1 through 100)

75. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

76. Pursuant to the applicable IWC Wage Orders, Defendant was the employer of Plaintiff and the Class.

77. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 5-2001 section 7, Defendant is required to maintain and provide accurate records relating to employee compensation including all formulas and production records used to calculate wages due.

78. Defendant is further required to provide, *inter alia*, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2) all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which the employee is being paid; (5) the name of the employee; and (6) the name and address of the legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

79. Section 226(e) provides that an employee is entitled to recover \$50 for the initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods in which the employer knowingly and intentionally failed to provide accurate itemized statements to the employee causing the employee to suffer injury.

1 80. Notwithstanding these provisions. Defendant has engaged in a uniform practice
2 of refusing to maintain and provide the accurate records and wage statements required by
3 California law.

4 81. Throughout the Class Period, Defendant intentionally and knowingly provided
5 Plaintiff and other members of the Class with weekly itemized wage statements containing
6 inaccurate information regarding the wages earned by Plaintiff and members of the Class in
7 that the payments owed to Plaintiff and the members of the Class for minimum wages,
8 untimely or missed meal and rest periods, were not included in gross wages earned by Plaintiff
9 and members of the Class.

10 82. As a result, Plaintiff and members of the Class have been injured by having been
11 deprived of the true facts pertaining to their compensation and employment.

12 83. Plaintiff and members of the Class were damaged by these failures because,
13 among other things, the failures led them to believe that they were not entitled to minimum
14 wages, pay for meal and rest periods not provided, even though they were so entitled and these
15 failures hindered them from determining the amounts of wages owed to them.

16 84. Plaintiff and members of the Class are entitled to the amounts provided in Labor
17 Code §226(e), plus attorneys' fees and costs.

18 85. As California Labor Code Section 2699 provides for civil penalties recoverable
19 by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code
20 section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
21 recover these penalties pursuant to Labor Code section 2699.

22 86. As result, Plaintiff and Class members seek recovery of the penalties authorized
23 by Labor Code sections 226(e) and 558, and such other penalties and legal and equitable
24 remedies as are provided by law for Defendant's improper conduct.

25 87. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to
26 Labor Code section 2699(g)(1).

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PAY UNIFORM AND MAINTENANCE ALLOWANCE**

3 **(Cal. Labor Code §2802 By Plaintiffs Against Defendant and Does 1 through 100)**

4 88. Plaintiff and the Class reallege and incorporate by reference all of the allegations
5 set forth in this Complaint.

6 89. Under California law, if an employer requires employees to wear a uniform, the
7 employer must pay for and maintain the uniform for the employee. Labor Code
8 §2802.

9 90. In addition to the cost of the uniform, the employer must provide employees
10 with reasonable maintenance of the uniforms. The employer can either maintain the uniform
11 itself, or pay the employee a weekly maintenance allowance.

12 91. An employer may never impose a financial burden on employees, with respect
13 to paying for and maintaining clothing, which would reduce the employees' wage rate below
14 the minimum wage.

15 92. Here, Defendant required Plaintiff and Class members to wear uniforms.
16 Plaintiff was required to purchase certain sweaters, jackets and hats. Further, Defendant does
17 not maintain the uniforms. Plaintiff and members of the Class pay for the maintenance and
18 cleaning themselves.

19 93. Defendant failed to reimburse Plaintiff and members of the Class for their
20 uniforms. Further, Defendant failed to maintain the uniforms, nor pay Plaintiff and members of
21 the Class a weekly maintenance allowance.

22 94. As California Labor Code Section 2699 provides for civil penalties recoverable
23 by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code
24 section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
25 recover these penalties pursuant to Labor Code section 2699.

26 95. As a proximate result of the aforementioned violations of Labor Code § 2802,
27 Plaintiff and members of the Class have been damaged in an amount according to proof at the
28 time of trial.

1 96. As a proximate result of the aforementioned violations of § 2802, Plaintiff and
2 members of the Class are entitled to recovery from Defendant for reimbursement of necessary
3 expenditures including interest and attorneys' fees as permitted by law.

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

6 ***(Labor Code §1198.5 By Plaintiff against Defendant and Does 1 through 100)***

7 97. Plaintiff and the Class reallege and incorporate by reference all of the allegations
8 set forth in this Complaint.

9 98. California Labor Code Section 1198.5 provides:

- 10 (a) Every current and former employee, or his or her representative, has the
11 right to inspect and receive a copy of the personnel records that the
12 employer maintains relating to the employee's performance or to any
grievance concerning the employee.
- 13 (b) The employer shall make the contents of those personnel records available
14 for inspection to the current or former employee, or his or her
15 representative, at reasonable intervals and at reasonable times, but not later
16 than 30 calendar days from the date the employer receives a written request,
17 unless the current or former employee, or his or her representative, and the
18 employer agree in writing to a date beyond 30 calendar days to inspect the
19 records, and the agreed-upon date does not exceed 35 calendar days from
the employer's receipt of the written request to inspect the records. Upon a
written request from a current or former employee, or his or her
representative, the employer shall also provide a copy of the personnel
records,..... later than 30 calendar days from the date the employer receives
the request...
- 20 (k) If an employer fails to permit a current or former employee, or his or her
21 representative, to inspect or copy personnel records within the times specified I
22 this section... the current or former employee may recover a penalty of seven
23 hundred fifty dollars (\$750) from the employer.
- 24 (1) A current or former employee may also bring an action for injunctive relief
25 to obtain compliance with this section, and may recover costs and reasonable
attorney's fees in such an action.

26 99. Additionally, pursuant to Wage Order 5, at section 7 re: Records, employers are
27 required to keep accurate payroll records on each employee, and such records must be made
28 readily available for inspection by the employee upon reasonable request.

1 100. Plaintiff's counsel issued a written request to Defendant for copies of her
2 personnel records and payroll file.

3 101. Under California Labor Code Sections 226, 432 and 1198.5, such records were
4 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
5 Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for
6 Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of her
7 payroll file. Further, Defendant provided Plaintiff's personnel records twenty days late.

8 102. As a direct result and consequence of Defendant's failure and refusal to permit
9 Plaintiff full access to her records, Plaintiff seeks injunctive relief in the form of an order or
10 decree mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a
11 result of Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory
12 penalty of \$750 based upon Defendant's violation of §1198.

13 **SEVENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

15 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiff Against Defendant and Does 1**
16 **through 100)**

17 103. Plaintiff and the Class reallege and incorporate by reference all of the allegations
18 set forth in this Complaint.

19 104. Pursuant to applicable IWC Wage Orders, Defendant was the employer of
20 Plaintiff and the Class. Defendant is also a "person" as that term is defined in Business &
21 Professions Code §17021.

22 105. The Business & Professions Code defines unfair competition as any unlawful,
23 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
24 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
25 minimum wages; (2) pay Plaintiff and the Class meal periods not provided, (3) pay Plaintiff
26 and the Class rest periods not provided, (4) furnish Plaintiff and the Class with accurate
27 itemized wage statements, as mandated by the applicable Labor Code and Industrial Welfare
28 Commission requirements, (5) provide uniforms and a maintenance allowance and (6) allow

1 inspection of employment records, all in violation of Business & Professions Code §§ 17200 *et*
2 *seq.*

3 106. By and through the unfair and unlawful business practices described herein,
4 Defendant has obtained valuable property, money and services from the Plaintiff and the Class
5 and has deprived them of valuable rights and benefits guaranteed by law all to the detriment of
6 Plaintiff and the Class.

7 107. All the acts described herein are violations of, among other things, the Labor
8 Code and applicable Industrial Commission Wage Orders, are unlawful and in violation of
9 public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and
10 thereby constitute unfair and unlawful business practices in violation of Business & Professions
11 Code §§ 17200 *et seq.*

12 108. Plaintiff and the Class are entitled to, and do, seek such relief as may be
13 necessary to restore to them the money and property which Defendant has acquired, or of
14 which Plaintiff and the Class have been deprived by means of the above-described unfair and
15 unlawful business practices.

16 109. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
17 above-described business practices are unfair and unlawful and that injunctive relief should be
18 issued restraining Defendant from engaging in any of the above described unfair and unlawful
19 business practices in the future.

20 110. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
21 redress the injuries which they have suffered as a consequence of the unfair and unlawful
22 business practices of Defendant. As a result of the unfair and unlawful business practices
23 described above, Plaintiff and the Class have suffered and will continue to suffer irreparable
24 harm unless Defendants are restrained from continuing to engage in these unfair and unlawful
25 business practices. In addition, Defendant should be required to disgorge the unpaid moneys to
26 Plaintiff and the Class.

27 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in her favor
28 and against Defendant as follows:

- 1 1. For compensatory damages in the amount minimum wages due to Plaintiff and
2 Class members, according to proof;
- 3 2. For one (1) hour of pay at the regular rate of compensation for Plaintiff and
4 Class members for each workday that a meal and/or rest period was not provided;
- 5 3. For compensatory damages in the amount of Plaintiff and Class members'
6 uniform and maintenance expenses, costs and attorneys' fees pursuant to Cal. Code Civ. Proc.
7 §2802(c);
- 8 4. For an award of consequential damages in Plaintiff and Class members' favor
9 and against Defendant, in an amount to be proven at trial;
- 10 5. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
- 11 6. For specific relief enforcing waiting time penalties of 30 days of per diem wages
12 pursuant to *Cal. Bus. & Prof. Code* §17200, according to proof;
- 13 7. For prejudgment interest accrued on all due minimum wages from the date that
14 wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a), according to
15 proof;
- 16 8. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 1198.5, 2699,
17 according to proof;
- 18 9. For reasonable costs, including attorneys' fees, in an amount according to proof
19 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 1198.5(1), 218.5, 2802, 2699, and/or Cal.
20 Code of Civ. Proc. §1021.5;
- 21 10. For an award of restitution of wages to Plaintiff and Class members in an
22 amount equal to the amount of wages owed and unpaid, according to proof;
- 23 11. For injunctive relief requiring Defendant to comply with Labor Code
24 1198.5(b)(1);
- 25 12. For injunctive relief ordering the continuing unfair business acts and practices to
26 cease, as the Court deems just and proper;
- 27 13. For other injunctive relief ordering Defendant to notify Plaintiff and Class
28 embers that they have not been paid the proper amounts in accordance with California law;

1 14. For punitive and exemplary damages in a sum to be determined at trial; and

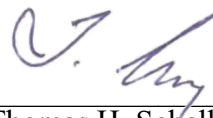
2 15. For such other and further relief as the Court deems just and proper.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiff Orquidea Elizabeth Cuevas hereby respectfully requests a trial by jury for all
5 claims and issues raised in her Complaint that may be entitled to a jury trial.

6
7 LIPELES LAW GROUP, APC

8 Date: June 26, 2024

9
10 By:  _____

11 Thomas H. Schelly
12 Attorneys for Plaintiff
13 Orquidea Elizabeth Cuevas

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is Lipeles Law Group APC, 880 Apollo Street, Suite 336, El Segundo, CA 90245. On the date below, I served the foregoing document(s) described as:

M M

By sending a true copy thereof to the address listed below:

M r r I served the documents by providing them to a professional messenger service for personal service.

r r I deposited a sealed envelope containing a true and correct copy of the documents listed above for overnight delivery and with the postage fully prepaid.

M r r r I caused the documents to be sent to the persons at the email address listed above in a PDF file, and the transmission appeared to be successful.

■ d M I deposited a sealed envelope containing a true and correct copy of the documents listed above with the United States Postal Service with the postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at El Segundo, California.

r I faxed the documents to the persons at the fax number listed above, and the transmission appeared to be successful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 26, 2024 at El Segundo, California.

Diana Casarrubias
Diana Casarrubias

Paul Bosworth
Malibu Farm San Diego
831 W Harbor Dr
San Diego, CA 92101-7707

Agent for Service for Defendant
Malibu Farm Seaport Village