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Attorney for Plaintiff,
KYLE WHITTAKER

IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO, GORDON D. SCHABER COURTHOUSE

KYLE WHITTAKER, an individual, on behalf of
all others similarly situated,

Plaintiffs,

v.

CLIFF HOUSE OF FOLSOM, a business entity
of unknown nature, TIM MCDONALD, an
individual, and DOES 1 through 20 inclusive,

Defendants.

Case No. **24CV015490**

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wage in Violation of Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198;
2. Failure to Pay Overtime in Violation of Labor Code §§ 510 and 1198;
3. Failure to Provide Meal Periods in Violation of §§ 226.7, 512 (a), and 1198;
4. Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7 and 1198;
5. Failure to Furnish Compliant Wage Statements and Maintain Accurate Pay Records in violation of § 226, 1174 (d), and 1198;
6. Failure to Timely Pay Wages in Violation of Labor Code § 204;
7. Willful Failure to Pay Wages in Violation of Labor Code §§ 201-203;

8. Civil Penalties in Violation of Labor Code
§§ 2698, et seq.;

Jury Trial Demanded

1. Plaintiff KYLE WHITTAKER, on behalf of themselves and all others similarly situated, and as an aggrieved employee on behalf of all other aggrieved employees, is informed and believes and thereon alleges as follows:

PARTIES, VENUE AND JURISDICTION

2. This Class Action is brought pursuant to Code of Civil Procedure § 382 to recover wages and all other available relief on behalf of Plaintiff and all similarly situated current and former non-exempt, hourly-paid employees of Defendants.

3. This enforcement action is brought pursuant to the Private Attorneys General Act of 2004, California Labor Code §§ 2698, et seq. (“PAGA”) to recover civil penalties and any other available relief on behalf of Plaintiff, the State of California, and other current and former aggrieved employees of Defendants and against whom one or more Labor Code violations or any provision regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth in this Complaint.

4. Plaintiff KYLE WHITTAKER worked as a Server for CLIFF HOUSE OF FOLSOM, and DOES 1-20, a business of unknown entity located at 9900 Greenback Lane, Folsom, CA 95630, from approximately January 1, 2015 to February 4, 2024. Plaintiff’s job duties included recording the patron’s food and beverage choices, transmitting those orders to the kitchen, delivering their food and drink choices, totaling charges and issuing bills to customers.

5. Plaintiff KYLE WHITTAKER was at all times relevant hereto a resident of Orangevale, California.

6. Defendant TIM MCDONALD was at all times relevant herein the principal of CLIFF HOUSE OF FOLSOM.

7. Venue is proper pursuant to California Civil Procedure Code §§ 395 (a) and 395.5 because this suit was filed in the county where the liability arises, and where the breach occurred.

8. Plaintiff is informed and believes, and based thereon alleges, that there exists such a

1 unity of interest and ownership between CLIFF HOUSE OF FOLSOM, TIM MCDONALD, and
2 DOES 1-20 that the individuality and separateness of defendants have ceased to exist.

3 9. Plaintiff is informed and believes, and based thereon alleges, that despite the formation
4 of purported corporate existence, CLIFF HOUSE OF FOLSOM, TIM MCDONALD, and DOES 1-
5 20 are, in reality, one and the same.

6 10. CLIFF HOUSE OF FOLSOM, TIM MCDONALD, and DOES 1-20 do not comply
7 with all requisite corporate formalities to maintain a legal and separate existence.

8 11. The business affairs of CLIFF HOUSE OF FOLSOM, TIM MCDONALD, and DOES
9 1-20 are, and at all times relevant were, so mixed and intermingled that the same cannot reasonably
10 be segregated, and the same are in inextricable confusion. CLIFF HOUSE OF FOLSOM is, and at all
11 times relevant hereto was, used by DOES 1-20 and TIM MCDONALD as a mere shell and conduit
12 for the conduct of certain of Defendants' affairs, and is, and was, the alter ego of DOES 1-20. The
13 recognition of the separate existence of CLIFF HOUSE OF FOLSOM would not promote justice, in
14 that it would permit Defendants to insulate themselves from liability to Plaintiff for violations of state
15 law. The corporate existence of CLIFF HOUSE OF FOLSOM and DOES 1-20 should be disregarded
16 in equity and for the ends of justice because such disregard is necessary to avoid fraud and injustice
17 to Plaintiff herein.

18 12. Accordingly, CLIFF HOUSE OF FOLSOM, TIM MCDONALD, and DOES 1-20 are
19 the alter egos of one another, and the fiction of their separate corporate existence must be disregarded.

20 13. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
21 thereon alleges that CLIFF HOUSE OF FOLSOM, TIM MCDONALD, and DOES 1-20 are joint
22 employers by virtue of a joint enterprise, and that the employees and agents of CLIFF HOUSE OF
23 FOLSOM were also employees of TIM MCDONALD and DOES 1-20. CLIFF HOUSE OF
24 FOLSOM employees performed services for each and every one of Defendants, and to the mutual
25 benefit of all Defendants, and all Defendants shared control of them as employees, either directly or
26 indirectly, and the manner in which Defendants' business was and is conducted.

27 14. The true names and capacities, whether individual, corporate, associate, or otherwise,
28 of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and

1 therefore these Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
2 Complaint to insert the true names and capacities of these Defendants when they become known to
3 Plaintiff. Plaintiff is informed and believes and based thereupon alleges, that each of the fictitiously
4 named Defendant is responsible for the wrongful acts alleged herein and are therefore liable to
5 Plaintiff as alleged hereinafter.

6 15. Plaintiff is informed and believes and based thereupon alleges, that at all times relevant
7 hereto, Defendants were the agents, employees, managing agents, supervisors, coconspirators, parent
8 corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendant, and
9 each of them, and in doing the things alleged herein, were acting at least in part within the course and
10 scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status
11 and/or joint venture and with the permission and consent of each of the other Defendant.

12 16. Plaintiff is informed and believes and based thereupon alleges, that Defendant,
13 including those defendants named as DOES 1-20 acted in concert with one another to commit the
14 wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
15 wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further informed and believes, and
16 based thereupon alleges, that Defendant, including those defendants named as DOES 1-20 formed
17 and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts
18 alleged herein, with all such acts alleged herein done as part of and pursuant to said conspiracy,
19 intended to cause and actually causing Plaintiff's harm.

20 17. Whenever and wherever reference is made in this Complaint to any act or failure to
21 act by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean
22 the acts and/or failures to act by each Defendant acting individually, jointly and severally.

23 **GENERAL ALLEGATIONS**

24 18. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
25 members were not paid for all hours worked because all hours worked were not recorded.

26 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to receive certain wages for
28

1 overtime compensation and that they were in fact not receiving certain wages for overtime
2 compensation.

3 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to receive at least minimum wages
5 for compensation and that they were not receiving at least minimum wages for work that was
6 required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and class
7 members were not paid at least minimum wages for work done off-the-clock.

8 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to meal periods in accordance with
10 the Labor Code or payment of one additional hour of pay at their regular rates of pay when they
11 were not provided with timely, uninterrupted, 30 minute meal periods and that Plaintiff and class
12 members were not provided with all meal periods or payment of one additional hour of pay at their
13 regular rates of pay when they did not receive a timely, uninterrupted, 30 minute meal period.

14 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to 10 minute rest periods in
16 accordance with the Labor Code and applicable IWC Wage Order or payment of one additional hour
17 of pay at their regular rates of pay when they were not provided with a compliant 10 minute rest
18 period and that Plaintiff and class members were not provided compliant 10 minute rest periods or
19 payment of one additional hour of pay at their regular rates of pay when they were not provided a
20 compliant 10 minute rest period.

21 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to timely payment of all wages
23 earned upon termination of employment. In violation of the California Labor Code, Plaintiff and
24 class members did not receive payment of all wages due, including overtime wages, minimum
25 wages, and meal and rest period premiums, within the time periods required by law.

26 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to timely payment of wages during
28 their employment. Plaintiff and class members did not receive payment of all wages, including

1 overtime wages, minimum wages, and meal and rest period premiums in violation of the California
2 Labor Code.

3 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to receive full reimbursement for
5 all business-related expenses and costs they incurred in direct consequence of the discharge of their
6 duties and that they did not receive full reimbursement of applicable business-related expenses and
7 costs incurred.

8 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
9 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and
10 class members for all hours worked, and that Defendants had the financial ability to pay such
11 compensation, but willfully, knowingly, and intentionally failed to do so.

12 **CLASS ACTION ALLEGATIONS**

13 27. Plaintiff's proposed Class consists of:

14 All persons who worked for Defendants as non-exempt, hourly-paid
15 employees in California, within four years prior to the filing of the
16 initial complaint until the date of trial ("Class").

17 28. Plaintiff's proposed subclass consists of:

18 All persons who worked for Defendants as non-exempt, hourly-paid
19 employees in California and who received at least one wage statement
20 within one year prior to the filing of the initial complaint until the date
21 of trial ("Subclass").

22 29. Members of the Class and Subclass are referred to herein as "Class."

23 30. Plaintiff reserves the right to redefine the Class and to add additional subclasses as
24 appropriate based on further investigation and discovery.

25 31. At all relevant times, Defendants have had a common and consistent policy and
26 practice of failing to pay the proper minimum wage and overtime, furnish compliant wage statements,
27 maintain accurate pay records, provide uninterrupted meal and rest periods and timely pay wages in
28

1 violation of the Labor Code and IWC Wage Orders.

2 32. There is a well-defined community of interest in the litigation and the class members
3 are readily ascertainable:

4 33. **Numerosity:** The members of the Class are sufficiently numerous that joinder of all
5 members is impracticable. The membership of the entire Class is unknown to Plaintiff at this time.
6 However, the Class is estimated to be greater than 50 individuals and the identity of such membership
7 is readily ascertainable by inspection of Defendants' employment records.

8 34. **Commonality:** There are questions of law and fact common to the Class that are
9 answerable on a common basis, and these questions predominate over individual questions. The
10 questions of law and fact common to the Class include, without limitation:

- 11 a. Whether Defendants required Plaintiff and class members to work over 8 hours
12 per day, over 12 hours per day, or over 40 hours per week and failed to pay them
13 all legally required overtime compensation;
- 14 b. Whether Defendants failed to pay Plaintiff and class members at least minimum
15 wages for all hours worked;
- 16 c. Whether Defendants failed to provide Plaintiff and class members with meal
17 periods;
- 18 d. Whether Defendants failed to provide Plaintiff and class members with rest
19 periods;
- 20 e. Whether Defendants provided Plaintiff and class members with complete and
21 accurate wage statements as required by California Labor Code section 226 (a);
- 22 f. Whether Defendants failed to pay earned overtime wages, minimum wages, and
23 meal and rest period premiums due to Plaintiff and class members upon their
24 discharge;
- 25 g. Whether Defendants failed to timely pay overtime wages, minimum wages, and
26 meal and rest period premiums to Plaintiff and class members during their
27 employment;
- 28 h. The appropriate amount of damages, restitution, or monetary penalties resulting

1 from Defendants' violations of California law.

2 35. **Typicality:** Plaintiff's claims are typical of the claims of the Class they seeks to
3 represent. As set forth herein, Defendants' common course of conduct causes Plaintiff and similarly
4 situated persons employed by Defendants the same or similar injuries and damages. Plaintiff's claims
5 are thereby representative of and co-extensive with the claims of the Class.

6 36. **Adequacy:** Plaintiff will fairly and adequately represent the interests of all members
7 of the Class they seeks to represent. Plaintiff is members of the Class they seeks to represent, does
8 not have any conflicts of interest with the Class, will prosecute the case vigorously on behalf of the
9 Class, and has already devoted time and resources to the initial investigation of these claims.
10 Plaintiff's attorney is competent and experienced in litigating employment actions, including wage
11 and hour class actions.

12 37. **Superiority of Class Action:** A class action is superior to other available methods for
13 the fair and efficient adjudication of this controversy. In particular, Plaintiff is informed and believes
14 that some Class Members may be unwilling to bring individual lawsuits for fear of retaliation by
15 Defendants. Because the damages suffered by certain individual members of the Class may be
16 relatively small, the expense and burden of individual litigation make it impracticable for Class
17 Members to pursue their claims separately. Each member of the Class has been damaged and is
18 entitled to recovery by reason of Defendants' illegal, fraudulent and unfair employment practices and
19 policies. Class action treatment will allow those similarly situated persons to litigate their claims in
20 the manner that is most efficient and economical for the parties and the judicial system. Class action
21 treatment will also avoid inconsistent outcomes because the same issues can be adjudicated in the
22 same manner for all members of the Class.

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PAY MINIMUM WAGE IN VIOLATION OF**

25 **LABOR CODE §§ 1182.12, 1194, 1197, 1197.1, and 1198**

26 **(AGAINST ALL DEFENDANTS)**

27 38. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
28 though fully set forth herein.

1 39. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1,
2 and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
3 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
4 Compensable work time is defined by the applicable wage order as “the time during which an
5 employee is subject to the control of an employer, and includes all the time the employee is suffered
6 or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11010 (2) (G).

7 40. Due to Defendants’ company-wide scheduling practices and policies, Plaintiff and
8 class members were forced to forego meal periods and/or have their meal periods interrupted by
9 work, and were not relieved of all duties for unpaid meal periods, in order to meet their deadlines
10 and handle their workloads. Defendants did not pay minimum wages for meal periods Plaintiff and
11 class members worked through that qualified for overtime premium payment. Defendants did not
12 pay Plaintiff and class members for the time they continued to perform their duties during their meal
13 periods.

14 41. Defendants had no policy and/or practice for scheduling second meal periods for
15 employees or for authorizing and permitting Plaintiff and class members to take second 30-minute
16 meal periods on days they worked in excess of 10 hours in one day. As a result, Defendants did not
17 provide Plaintiff and class members with all second 30-minute meal periods to which they were
18 entitled.

19 42. Defendants did not pay at least minimum wages for all hours worked by Plaintiff and
20 class members. To the extent that these off-the-clock hours did not qualify for overtime premium
21 payment, Defendants did not pay at least minimum wages for those hours Plaintiff and class members
22 worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
23 and 1198. Accordingly, Defendants regularly failed to pay at least minimum wages to Plaintiff and
24 class members for all of the hours they worked. Defendants’ failure to pay Plaintiff and class
25 members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
26 1198.

27 43. Pursuant to California Labor Code section 1194.2, Plaintiff and class members are
28 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and

1 interest thereon.

2 44. Defendant failure to pay the legal minimum wage to Plaintiff and the Class as alleged
3 herein is unlawful and creates entitlement, pursuant to Labor Code §1194, to recovery by Plaintiff
4 and the Class in a civil action for the unpaid balance of the full amount of the unpaid wages owed,
5 including interest thereon.

6 45. Pursuant to Labor Code §1194, Plaintiff and the Class are entitled to an award of
7 reasonable attorneys' fees and costs incurred in this action.

8 **SECOND CAUSE OF ACTION**
9 **FAILURE TO PAY OVERTIME WAGE**
10 **IN VIOLATION OF LABOR CODE §§ 510 and 1198**
11 **(AGAINST ALL DEFENDANTS)**

12 46. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
13 though fully set forth herein.

14 47. Labor Code § 1198 makes it unlawful to employ an employee under conditions of
15 labor that are prohibited by the applicable wage order. California Labor Code § 1198 requires that
16 "the standard conditions of labor fixed by the commission shall be the . . . standard conditions of
17 labor for employees. The employment of any employee . . . under conditions of labor prohibited by
18 the order is unlawful."

19 48. The applicable IWC Wage Order required Defendants to pay Plaintiff and class
20 members working more than 8 hours in a day or more than 40 hours in a workweek, at the rate of
21 time and one-half for all hours worked in excess of 8 hours in a day or 40 hours in a workweek. The
22 applicable IWC Wage Order further required Defendants to pay Plaintiff and class members working
23 more than 12 hours in a day, overtime compensation at a rate of 2 times their regular rate of pay, and
24 2 times their regular rate of pay for hours worked in excess of 8 hours on the seventh consecutive
25 day of a work in a workweek.

26 49. At all relevant times, Defendants willfully failed to pay all overtime wages owed to
27 Plaintiff and class members. At all relevant times, Plaintiff and class members were not paid overtime
28 premiums for all of the hours they worked in excess of 8 hours in a day, in excess of 12 hours in a

1 day, and/or in excess of 40 hours in a week.

2 50. At all relevant times herein, Defendants had, and continue to have, a company-wide
3 policy of failing to implement any policies to authorize and permit employees to take compliant meal
4 periods and, instead, engaged in a practice of discouraging and impeding employees from taking
5 meal periods by assigning them a heavy workload and understaffing their facilities.

6 51. Additionally, Defendants, on a company-wide basis, failed to schedule meal periods
7 even though they are aware that employees are entitled to such meal periods. As a result of this
8 company-wide understaffing of its facilities and failure to schedule meal periods, Plaintiff and class
9 members were not always permitted and authorized to take uninterrupted 30-minute meal periods
10 during shifts to which they were entitled to receive a meal period. For example, Plaintiff regularly
11 worked through meal periods and had meal periods interrupted by supervisors and by work to meet
12 expected targets.

13 52. At all relevant times, Defendants had no policy for scheduling second meal periods
14 and no practice of permitting Plaintiff and class members to take second 30-minute meal periods.
15 As a result, on days that Plaintiff and class members worked in excess of 10 hours, they were not
16 provided with second 30-minute meal periods.

17 53. Defendants knew or should have known that, as a result of their policies and practices,
18 Plaintiff and class members were performing some of their assigned duties off-the-clock and/or
19 during unpaid meal periods, and were suffered or permitted to perform work for which they were
20 not paid. Because Plaintiff and class members worked shifts in excess of 8 hours a day or more and
21 40 hours a week or more, much of this off-the-clock work qualified for overtime premium pay.
22 Therefore, Plaintiff and class members were not paid overtime wages for all of the overtime hours
23 they actually worked. To the extent Plaintiff and class members worked shifts in excess of 12 hours
24 a day, or in excess of 8 hours on the seventh consecutive day of a work in a workweek, Plaintiff and
25 class members were not paid double time wages for all overtime hours they actually worked.

26 54. Defendants' failure to pay Plaintiff and class members the balance of overtime
27 compensation, as required by California law, violates the provisions of California Labor Code §§
28 510 and 1198. Pursuant to California Labor Code § 1194, Plaintiff and class members are entitled

1 to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

2 55. Labor Code §558 (a) requires that any person acting on behalf of an employer who
3 violates, or causes to be violated, overtime rules pay a civil penalty in the amount of \$50 for each
4 underpaid employee for each pay period in which the employee was underpaid in addition to an
5 amount sufficient to recover underpaid wages. Also, Labor Code §558 (a) for each subsequent
6 violation, the person acting on behalf of an employer is liable in the amount of \$100 for each
7 underpaid employee for each pay period for which the employee was underpaid in addition to an
8 amount sufficient to recover the underpaid wages.

9 56. In addition to the above withheld overtime wages, Plaintiff and the Class are entitled
10 to civil penalties based upon Defendants' underpayment of overtime wages. Defendant violated Labor
11 Code §558 on each of the past pay periods within the one-year preceding the filing of this complaint,
12 the first of which Defendant are penalized \$50.00, and the remainder of which Defendant are
13 penalized \$100.00 each, for a total due in Labor Code §558 penalties in an amount to be proven at
14 trial.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PROVIDE MEAL PERIODS**

17 **LABOR CODE §§ 226.7, 512 (a) and 1198**

18 **(AGAINST ALL DEFENDANTS)**

19 57. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
20 though fully set forth herein.

21 58. "An employer shall not employ an employee for a work period of more than five hours
22 per day without providing the employee with a meal period of not less than 30 minutes, except that if
23 the total work period per day of the employee is no more than six hours, the meal period may be
24 waived by mutual consent of both the employer and employee. An employer shall not employ an
25 employee for a work period of more than 10 hours per day without providing the employee with a
26 second meal period of not less than 30 minutes, except that if the total hours worked is no more than
27 12 hours, the second meal period may be waived by mutual consent of the employer and the employee
28 only if the first meal period was not waived." Labor Code § 512; IWC Wage Order Nos. 1–2001 to

1 16-2001, § 11; IWC Wage Order No. 17-2001, § 9; 8 Cal Code Regs §§ 11010-11160, § 11; 8 Cal
2 Code Regs § 11170, § 9.

3 59. At all relevant times herein, Labor Code §§ 226.7 and 512 (a), 1198 and the applicable
4 IWC Wage Order also require employers to provide a second meal break of not less than 30 minutes
5 if an employee works over 10 hours per day or to pay an employee one additional hour of pay at the
6 employee's regular rate, except that if the total hours worked is no more than 12 hours, the second
7 meal period may be waived by mutual consent of the employer and the employee only if the first
8 meal period was not waived.

9 60. "An employer shall not require an employee to work during a meal ... period mandated
10 pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
11 Commission If an employer fails to provide an employee a meal ... period in accordance with a
12 state law, including, but not limited to, an applicable statute or applicable regulation, standard, or
13 order of the Industrial Welfare Commission ... the employer shall pay the employee one additional
14 hour of pay at the employee's regular rate of compensation for each workday that the meal ... period
15 is not provided." Lab. Code § 226.7 (b) & (c).

16 61. At all relevant times, Plaintiff and the Class regularly worked more than five hours per
17 day, and were thereby entitled to take uninterrupted 30-minute meal periods on each day of work.

18 62. At all relevant times herein, Defendants had, and continue to have, a company-wide
19 policy and/or practice of understaffing their locations while simultaneously assigning demanding
20 workloads, which had the combined effect of preventing Plaintiff and class members from taking all
21 timely, uninterrupted meal periods to which they were entitled. Additionally, Defendants had no
22 policy and/or practice of scheduling meal periods for Plaintiff and class members. As a result of
23 Defendants' policies and/or practices, Plaintiff and class members had to work through some or all
24 of their meal periods, have their meal periods interrupted to return to work, and/or wait extended
25 periods of time before taking meal periods.

26 63. Defendants did not provide Plaintiff and class members with second 30-minute meal
27 periods on days that they worked in excess of 10 hours in one day. Plaintiff worked 10 or more hour
28 shifts and, at times, up to 12 or more hours in a shift without being permitted or authorized to take a

1 second 30-minute meal period.

2 64. Plaintiff is also informed and believes that Defendants engaged in a systematic,
3 company-wide practice and/or policy of not paying meal period premiums for Plaintiff and class
4 members, regardless of whether they were able to take a compliant meal break, in violation of the
5 applicable IWC Wage Order and Labor Code sections 226.7 and 512 (a). As a result, Defendants
6 failed to provide Plaintiff and class members compliant meal periods in violation of California Labor
7 Code sections 226.7 and 512 and failed to pay the full meal period premiums due.

8 65. As alleged herein, Plaintiff and the Class are not exempt from the meal period
9 requirements of the applicable Code of Regulations and Industrial Welfare Commission Orders.
10 Consequently, Defendants' conduct violates the applicable IWC Wage Order, and California Labor
11 Code §§ 226.7, 512 (a), and 1198. Plaintiff and class members are therefore entitled to recover from
12 Defendants one additional hour of pay at the employee's regular rate of compensation for each work
13 day that the meal period was not provided, plus interest thereon and costs of suit in an amount subject
14 to proof at trial.

15 **FOURTH CAUSE OF ACTION**
16 **FAILURE TO PROVIDE REST PERIODS**
17 **LABOR CODE §§ 226.7 and 1198**
18 **(AGAINST ALL DEFENDANTS)**

19 66. Employees must be given 10-minute net rest periods for every 4 hours of work, to be
20 taken in the middle of each 4-hour period insofar as practicable. However, a rest period need not be
21 provided for employees whose total daily work is less than 3.5 hours. Thus, employees are entitled to
22 one 10-minute net rest period for shifts from 3.5 to 6 hours in length, two for shifts of more than 6
23 hours up to 10 hours, and three for shifts of more than 10 hours up to 14 hours, and so on. *Brinker*
24 *Restaurant Corp. v Superior Court*, 53 Cal.4th 1004, 1029 (2012); Wage Order Nos. 1–2001 to 16–
25 2001, §§11–12 (A); 8 Cal Code Regs §§11010-11160.

26 67. “An employer shall not require an employee to work during a rest ... period mandated
27 pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
28 Commission If an employer fails to provide an employee a rest ... period in accordance with a

1 state law, including, but not limited to, an applicable statute or applicable regulation, standard, or
2 order of the Industrial Welfare Commission ... the employer shall pay the employee one additional
3 hour of pay at the employee's regular rate of compensation for each workday that the rest ... period
4 is not provided." Lab. Code § 226.7 (b) & (c).

5 68. To comply with its obligation to provide rest periods under California Labor Code §
6 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how
7 employees spend their break time, and relieve their employees of all duties — including the
8 obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus*
9 *v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

10 69. Defendants' company-wide policy and practice of understaffing while simultaneously
11 assigning demanding workloads, prevented Plaintiff and class members from being relieved of all
12 duty in order to take compliant rest periods.

13 70. Defendants also had a uniform policy of failing to schedule rest breaks. As a result,
14 Plaintiff and class members missed their rest breaks, would be required to take them late, or would
15 have their rest breaks interrupted. Plaintiff and class members were prevented from being relieved
16 of all duty in order to take compliant rest periods and instead would be required to continue working.

17 71. Plaintiff and class members worked shifts in excess of 3 ½ hours, in excess of 6 hours,
18 and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
19 were entitled.

20 72. Defendants have also engaged in a systematic, company-wide practice and/or policy
21 of not paying rest period premiums owed when rest periods are not authorized or permitted. Thus,
22 Defendants denied Plaintiff and class members rest periods and failed to pay them rest period
23 premium wages due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

24 73. As alleged herein, Plaintiff and the Class are not exempt from the rest period
25 requirements of the applicable Code of Regulations and Industrial Welfare Commission Orders.

26 74. Defendants' conduct violates the applicable IWC Wage Order and California Labor
27 Code §§ 226.7 and 1198. Plaintiff and class members are therefore entitled to recover from
28 Defendants one additional hour of pay at the employee's regular rate of compensation for each work

1 day that the rest period was not authorized or permitted, plus interest thereon and costs of suit in an
2 amount subject to proof at trial.

3 **FIFTH CAUSE OF ACTION**

4 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**
5 **AND FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS**
6 **IN VIOLATION OF LABOR CODE §§ 226 1174 (d), and 1198**
7 **(AGAINST ALL DEFENDANTS)**

8 75. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
9 though fully set forth herein.

10 76. Pursuant to Labor Code §§ 226 and 1174, employers have a duty to provide their non-
11 exempt employees with accurate itemized statements showing total hours worked, hourly wages,
12 gross wages, total deductions net wages earned and name of the employer. An employer who violates
13 these Code sections is liable to its employees for the greater of actual damages suffered by the
14 employee, or \$50.00 in civil penalties for the initial pay period in which a violation occurred, and
15 \$100.00 per employee for each subsequent pay period, up to a statutory maximum of \$4,000.00.

16 77. “Every employer shall keep accurate information with respect to each employee
17 including the following: (1) Full name, home address, occupation and social security number ... (3)
18 Meal periods, split shift intervals and total daily hours worked shall also be recorded.” IWC Wage
19 Order 4-2001, section 7 (A) (1) & (3).

20 78. “Every person employing labor in this state shall: (c) Keep a record showing the names
21 and addresses of all employees employed and the ages of all minors. (d) Keep, at a central location in
22 the state or at the plants or establishments at which employees are employed, payroll records showing
23 the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and
24 any applicable piece rate paid to, employees employed at the respective plants or establishments.”
25 Lab. Code § 1174 (c) & (d).

26 79. “Any person employing labor who willfully fails to maintain the records required by
27 subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of
28 Section 1174 ... shall be subject to a civil penalty of five hundred dollars (\$500).” Cal. Lab. Code §

1 1174.5.

2 80. "A copy of the statement and the record of the deductions shall be kept on file by the
3 employer for at least three years at the place of employment or at a central location within the State of
4 California." Cal. Lab. Code § 226 (a).

5 81. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an
6 employer, who violates, or causes to be violated, Labor Code section 226, may be held liable as the
7 employer for such violation. The term 'other person acting on behalf of an employer' is limited to a
8 natural person who is an owner, director, officer, or managing agent of the employer.

9 82. At all relevant times, Defendants have knowingly and intentionally provided Plaintiff
10 and Subclass members with uniform, incomplete, and inaccurate wage statements.

11 83. Because Defendants failed to document and deducted time worked from Plaintiff's
12 and Subclass members' wage statements and employment records for meal periods they did not
13 actually receive, Defendants unlawfully deducted wages earned and meal period premiums that
14 should have been paid. Thus, Defendants did not furnish wage statements to Plaintiff and Subclass
15 members containing the correct amount of gross wages earned in violation of Labor Code § 226 (a)
16 (1), accurate total hours worked in violation of Labor Code § 226 (a) (2), correct amount of net wages
17 earned in violation of Labor Code § 226 (a) (5), or accurate number of hours worked at each
18 corresponding hourly rate in violation of Labor Code § 226 (a) (9).

19 84. To the extent that Defendants paid any meal break premium and/or rest break premium
20 payments, Defendants failed to identify such payments on Plaintiff's and Subclass members' wage
21 statements and employment records, and Defendants otherwise failed to provide information on the
22 wage statements sufficient to identify how many premium payments were paid during each pay
23 period, the specific dates worked giving rise to the premium payments owed, or to determine whether
24 such premium payments adequately and/or accurately compensated Plaintiff and Subclass members
25 for any and all premiums owed.

26 85. California Labor Code § 1198 provides that the maximum hours of work and the
27 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
28 applicable IWC Wage Orders. § 1198 further provides that "the employment of any employees for

1 longer hours than those fixed by the order or under conditions of labor prohibited by the order is
2 unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time
3 records showing when the employee begins and ends each work period and meal period. At all
4 relevant times, Defendants failed, on a company-wide basis, to keep records of meal period start and
5 stop times for Plaintiff and Subclass members in violation of section 1198.

6 86. California Labor Code section 1174 (d) provides that “every person employing labor
7 in this state shall ... keep a record showing the names and addresses of all employees employed and
8 the ages of all minors” and “keep, at a central location in the state or at the plants or establishments
9 at which employees are employed, payroll records showing the hours worked daily by and the wages
10 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
11 employed at the respective plants or establishments...” At all relevant times, and in violation of
12 Labor Code § 1174 (d), Defendants willfully failed to maintain accurate payroll records for Plaintiff
13 and Subclass members showing the daily hours they worked and the wages paid thereto as a result
14 of failing to record the off-the-clock hours that they worked.

15 87. Plaintiff and Subclass members are entitled to recover from Defendants the greater of
16 their actual damages caused by Defendants’ failure to comply with California Labor Code § 226 (a),
17 or an aggregate penalty not exceeding four thousand dollars \$4,000 per employee, in addition to
18 attorneys’ fees and costs.

19 **SIXTH CAUSE OF ACTION**

20 **FAILURE TO TIMELY PAY WAGES**

21 **IN VIOLATION OF LABOR CODE § 204**

22 88. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
23 though fully set forth herein.

24 89. “All wages ... earned by any person in any employment are due and payable twice
25 during each calendar month, on days designated in advance by the employer as the regular paydays
26 ... (d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly,
27 biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following
28 the close of the payroll period.” Labor Code § 204.

1 90. “In addition to, and entirely independent and apart from, any other penalty provided
2 in this article, every person who fails to pay the wages of each employee as provided in Sections ...
3 204 ... shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100)
4 for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional
5 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
6 amount unlawfully withheld.” Labor Code § 210.

7 91. At all times relevant herein, Defendants engaged in a practice of failing to pay Plaintiff
8 and the Class by the seventh calendar day following the close of the payroll period. Indeed, as
9 discussed above, Plaintiff and the Class are owed wages for unpaid minimum wage, unpaid overtime,
10 meal periods, rest periods and unreimbursed business expenses. At no time during their employment
11 were these outstanding sums ever paid to them. Instead, these outstanding sums continued to
12 accumulate every pay period. Therefore, Plaintiff and the Class were not paid all wages earned by the
13 seventh calendar day following the close of their pay periods.

14 92. As a direct and proximate result of Defendants’ failure to timely pay wages, Plaintiff
15 and the Class are entitled to penalties under Labor Code § 210 in an amount subject to proof at trial.

16 **SEVENTH CAUSE OF ACTION**

17 **WILLFUL FAILURE TO PAY WAGES**

18 **IN VIOLATION OF LABOR CODE §§ 201-203**

19 93. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
20 though fully set forth herein.

21 94. “If an employer discharges an employee, the wages earned and unpaid at the time of
22 discharge are due and payable immediately.” Labor Code § 201.

23 95. “If an employee not having a written contract for a definite period quits his or her
24 employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless
25 the employee has given 72 hours previous notice of his or her intention to quit, in which case the
26 employee is entitled to his or her wages at the time of quitting.” Labor Code § 202.

27 96. “If an employer willfully fails to pay any wages of an employee who is discharged or
28 who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same

1 rate until paid or until an action therefor is commenced.” Labor Code § 203.

2 97. Plaintiff and the Class were not exempt from the requirements of Labor Code §§ 201-
3 203.

4 98. At no time since Plaintiff’s or the Class’s separation of employment did Defendants
5 pay them wait-time penalties as required by Labor Code § 203.

6 99. As a direct and proximate result of Defendants’ willful failure to pay Plaintiff’s and
7 the Class’s wages upon their separation of employment, Plaintiff and the Class incurred wait-time
8 penalties in an amount equal to their daily rate of pay over the period that the wages were not paid in
9 an amount subject to proof at trial.

10 **EIGHTH CAUSE OF ACTION**
11 **CIVIL PENALTIES IN VIOLATION OF**
12 **LABOR CODE § 2699, ET SEQ.**
13 **(AGAINST ALL DEFENDANTS)**

14 100. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
15 though fully set forth herein.

16 101. Under Labor Code § 2698, et seq., Plaintiff, as a aggrieved employee, may bring an
17 action against defendants, on behalf of themselves and other current or former employees, seeking civil
18 penalties for defendants’ violations of the California Labor Code.

19 102. Plaintiff was an aggrieved employee within the meaning of Labor Code §2698, et seq.
20 by virtue of the numerous Labor Code violations he was subjected to as plead herein.

21 103. Defendants also subjected the aggrieved employees on whose behalf Plaintiff brings
22 this enforcement action to all of the Labor Code violations plead herein, including failing to pay
23 minimum wages in violation of Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198, failing to pay
24 overtime in violation Labor Code §§ 510 and 1198, failing to furnish compliant wage statements and
25 maintain accurate pay records in violation of § 226, 1174 (d), and 1198, failing to provide meal
26 periods in violation of §§ 226.7, 512 (a), and 1198, failing to provide rest periods in violation of Labor
27 Code §§ 226.7 and 1198, failure to timely pay wages in violation of Labor Code § 204 and willful
28 failure to pay wages in violation of Labor Code § 201-203.

104. On May 17, 2024, Plaintiff provided written notice by online filing with the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation, as required by Labor Code § 2699.3 (a) (1) (A).

105. As of the filing of this Complaint, Plaintiff has received no notice from the Labor and Workforce Development Agency of its intent to pursue an action against Defendants.

106. As a direct and proximate result of Defendants' California Labor Code violations as set forth herein, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code § 2699 (f), for those Labor Code sections not expressly providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly provide for a penalty.

107. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered civil penalties.

PRAYER FOR RELIEF

Plaintiff and the Class pray for relief and judgment against Defendant as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of \$25,000, exclusive of interest and costs.

Class Certification

2. That this case be certified as a class action;

3. That Plaintiff be appointed as the representatives of the Class and Subclass;

4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

(Unpaid Minimum Wages)

5. That the Court adjudge, declare and decree that Defendants violated Labor Code §§ 1182.12, 1194, 1197, 1197.1, 1198, applicable Wage Orders and Codes of Regulation by willfully failing to pay minimum wages to Plaintiff and class members;

6. For payment of unpaid wages in an amount subject to proof;

7. For liquidated damages pursuant to Labor Code §1194.2 in an amount subject to proof,
plus interest;

8. For prejudgment interest at the legal rate from the date the obligation became due through the date of judgment in this matter;

9. For all reasonable costs and attorney's fees incurred by Plaintiff's and the Class's enforcement of the rights granted by Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 pursuant to Labor Code § 1194 (a); and

10. For such other relief that the Court deems just and appropriate.

As to the Second Cause of Action

(Unpaid Overtime)

11. That the Court adjudge, declare and decree that Defendants violated Labor Code §§ 510 and 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to pay overtime wages to Plaintiff and class members;

12. For payment of unpaid overtime wages in an amount subject to proof;

13. For prejudgment interest at the legal rate from the date the obligation became due through the date of judgment in this matter;

14. For all reasonable costs and attorney's fees incurred by Plaintiff's and the Class's enforcement of the rights granted by Labor Code §§ 510 and 1198 pursuant to Labor Code § 1194 (a); and

15. For such other relief that the Court deems just and appropriate.

As to the Third Cause of Action

(Failure to Provide Meal Periods)

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 226.7, 512 (a), 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7 (b);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other relief that the Court deems just and appropriate.

As to the Fourth Cause of Action

(Failure to Provide Rest Periods)

23. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 226.7, 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to provide all rest periods to Plaintiff and class members;

24. That the Court make an award to the Plaintiff and class members of one hour of pay at each employee's regular rate of pay for each workday that a rest period was not provided;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7 (b);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other relief that the Court deems just and appropriate.

As to the Fifth Cause of Action

(Noncompliant Wage Statements and Payroll Records)

30. That the Court adjudge, declare and decree that Defendants violated Labor Code §§ 226 and 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to furnish compliant, accurate itemized wage statements to Plaintiff and class members and for failure to keep accurate payroll records;

31. For consequential and incidental losses and damages according to proof;

32. For injunctive relief pursuant to Labor Code § 226 (h);

1 33. For statutory penalties pursuant to Labor Code § 226 (e);

2 34. For all reasonable costs and attorney's fees incurred by Plaintiff's and the Class's
3 enforcement of the rights granted by Labor Code §§ 226 pursuant to Labor Code § 226 (e) (1); and

4 35. For such other relief that the Court deems just and appropriate.

5 **As to the Sixth Cause of Action**

6 **(Failure to Timely Pay Wages)**

7 36. That the Court declare, adjudge, and decree that Defendants violated California Labor
8 Code § 204, applicable IWC Wage Orders and Codes of Regulation by willfully failing to timely pay
9 wages to Plaintiff and class members;

10 37. For penalties pursuant to Labor Code § 210, plus 25 percent of amounts unlawfully
11 withheld from Plaintiff and class members;

12 38. For all actual, consequential, and incidental losses and damages, according to proof;

13 39. For pre-judgment interest on any unpaid wages from the date such amounts were due,
14 or as otherwise provided by law;

15 40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or
16 as otherwise provided by law; and

17 41. For such other relief that the Court deems just and appropriate.

18 **As to the Seventh Cause of Action**

19 **(Willful Failure to Pay Wages)**

20 42. That the Court declare, adjudge, and decree that Defendants violated California Labor
21 Code § 201-203, applicable IWC Wage Orders and Codes of Regulation by willfully failing to pay
22 minimum wages, overtime wages, and meal and rest premiums owed to Plaintiff and class members
23 either upon discharge or within 72 hours of their resignation;

24 43. For wait time penalties pursuant to Labor Code § 203;

25 44. For all actual, consequential, and incidental losses and damages, according to proof;

26 45. For pre-judgment interest on any unpaid wages from the date such amounts were due,
27 or as otherwise provided by law;

28 46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or

1 as otherwise provided by law; and

2 47. For such other relief that the Court deems just and appropriate.

3 **As to the Eighth Cause of Action**

4 **(Civil Penalties under the PAGA)**

5 48. That the Court declare, adjudge, and decree that Defendants violated all California
6 Labor Code sections plead herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174,
7 1182.12, 1194, 1197, 1197.1, and 1198.

8 49. For civil penalties pursuant to 210, 226.3, 256, 558, 1174.5, 1197.1, 2699 (a) and/or
9 2699 (a), (f) and (g), for violations of all California Labor Code sections plead herein, including Labor
10 Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1, and 1198.

11 50. For attorneys' fees and costs pursuant to California Labor Code § 2699 (g) (1), and
12 any and all other relevant statutes, for Defendants' violations of all California Labor Code sections
13 plead herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197,
14 1197.1, and 1198.

15 51. For pre-judgment and post-judgment interest as provided by law; and

16 52. For such other and further relief as the Court deems just and appropriate.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff and the Class hereby demand a trial by jury on all issues.

19
20 **PIMENTEL LAW, P.C.**

21
22 Dated: August 1, 2024

By: 

Gabriel J. Pimentel
Yesenia L. Rodriguez
Attorneys for the Plaintiff