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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

07/22/2024
Clerk of the Court
BY: AUSTIN LAM
Deputy Clerk

CGC-24-616667

HAFIZ ASALATI, an individual, and in his
representative capacity on behalf of himself, the
State of California, other Aggrieved Employees,

Plaintiff,

vs.

CHOTTO MATTE (SAN FRANCISCO) LLC, a
California limited liability company, and DOES
1-25

Defendants.

Case No.

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

Plaintiff HAFIZ ASALATI ("PLAINTIFF"), an individual, brings this action on behalf of himself and in a representative capacity on behalf of the State of California, himself, and other AGGRIEVED EMPLOYEES, defined below, against Defendant CHOTTO MATTE (SAN FRANCISCO) LLC, a California limited liability company, and Defendant DOES 1-25 ("Defendant DOES") ("DEFENDANTS"), and alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

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I. INTRODUCTION

1. PLAINTIFF brings this action individually and as a representative action on behalf of himself, the State of California and pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former AGGRIEVED EMPLOYEES of DEFENDANTS for engaging in a pattern and practice of wage and hour violations under the California Labor Code.

2. Plaintiff seeks recovery of all individual damages in addition to all civil penalties permitted pursuant to California Labor Code § 2699, *et seq.*

3. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS decreased their employment-related costs by systematically violating California wage and hour laws.

4. DEFENDANTS’ systematic pattern of wage and hour and IWC Wage Order violations toward PLAINTIFF and other AGGRIEVED EMPLOYEES in California include, *inter alia*:

- a. Failure to provide meal periods;
- b. Failure to provide rest periods;
- c. Failure to pay all minimum wages;
- d. Failure to pay all overtime wages;
- e. Improper tip pooling;
- f. Failure to provide accurate payroll records;
- g. Failure to provide accurate itemized wage statements;
- h. Failure to reimburse business expenses; and
- i. Failure to pay split shift premiums.

5. PLAINTIFF reserves the right to name additional representatives throughout the State of California.

II. PARTIES

6. Plaintiff HAFIZ ASALATI (“Plaintiff”), an individual, has resided, and at all times mentioned in this Complaint, continues to reside in Alameda County.

1 7. DEFENDANT CHOTTO MATTE (SAN FRANCISCO) LLC, a California limited
2 liability company, registered with the California Secretary of State as file No. 202124610862, that
3 at all relevant times mentioned herein conducted and continues to conduct substantial and regular
4 business throughout California.

5 8. Defendant DOES 1-25 (“Defendant DOES”) are persons and/or entities that at all
6 relevant times mentioned herein conducted and continue to conduct substantial and regular business
7 throughout California.

8 9. Each of the fictitiously named DEFENDANTS participated in the acts alleged in this
9 Complaint. The true names and capacities, whether individual, corporate, subsidiary, partnership,
10 associate or otherwise of DEFENDANT DOES 1 through 25, inclusive, are presently unknown to
11 PLAINTIFF who therefore sues these DEFENDANTS by such fictitious names pursuant to Cal.
12 Civ. Proc. Code. § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true
13 names and capacities of DOES 1 through 50, inclusive, when they are ascertained. PLAINTIFF is
14 informed and believes, and based upon that information and belief alleges, that the DEFENDANTS
15 named in this Complaint, including DOES 1 through 25, inclusive (hereinafter collectively
16 “DEFENDANTS”), are responsible in some manner for one or more of the events and happenings
17 that proximately caused the injuries and damages hereinafter alleged.

18 10. DEFENDANTS own, operate, and/or manage a restaurant in San Francisco serving
19 Peruvian-Japanese cuisine.

20 11. DEFENDANTS have employed PLAINTIFF between approximately October 2023
21 through the present, at DEFENDANT’s San Francisco location as an hourly non-exempt server paid
22 on an hourly basis plus tips.

23 **III. PRIVATE ATTORNEYS GENERAL ACT**

24 12. PLAINTIFF brings the representative action on behalf of the State of California and
25 on behalf of all hourly non-exempt individuals who are or previously were employed by
26 DEFENDANTS in California who suffered one or more Labor Code violations enumerated in Labor
27 Code §§ 2698 *et seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for
28 DEFENDANTS between May 15, 2023, and the present (“PAGA PERIOD”).

1 13. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code
2 § 2699(c) because he is employed by DEFENDANTS and suffered each of alleged Labor Code
3 violations committed by DEFENDANTS.

4 14. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant times
5 were, employees of DEFENDANTS, within the meanings set forth in the California Labor Code
6 and the applicable Industrial Welfare Commission Wage Order.

7 15. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to
8 enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* §
9 2699(a).)

10 16. Section 558 of the California Labor Code provides that “any employer *or other*
11 *person* acting on behalf of an employer who violates, or causes to be violated, a section of this
12 chapter or any provision regulating hours and days of work in any order of the Industrial Welfare
13 Commissions shall be subject to a civil penalty...” (*Lab. Code* § 558(a).)

14 17. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person*
15 acting either individually or as an officer, agent, or employee of another person, who pays or causes
16 to be paid to any employee a wage less than the minimum fixed by an applicable state or local law,
17 or by an order of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

18 18. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held
19 that a corporate employer’s owners, officers and directors, are subject to civil penalties for the
20 employer’s failure to pay appropriate wages to its employees, and, since liability under either 558
21 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings are
22 necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v.*
23 *Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203
24 Cal.App.4th 1112, 1145-1146.

25 19. Section 558.1 of the California Labor Code provides that “any employer *or other*
26 *person acting* on behalf of an employer, who violates, *or causes to be violated*, any provision
27 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
28 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802,

1 may be held liable as the employer for such violation.” (*Lab. Code* § 558.1(a).) Section 558.1(b)
2 identifies the “other person acting on behalf of an employer” includes “owner, director, officer, or
3 managing agent” of the employer. (*Lab. Code* § 558.1(b).)

4 20. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and
5 each of them, are subject to civil penalties and liability for their failure to pay PLAINTIFF and other
6 AGGRIEVED EMPLOYEES the appropriate wages as complained of herein and proximately
7 caused the complaints, injuries, and damages alleged herein.

8 21. DEFENDANTS have been personally involved in the purported violations and/or
9 had sufficient participation in the employer, such that each DEFENDANT may be deemed to have
10 contributed to, and “caused” the labor code violations alleged.

11 22. At all relevant times, each DEFENDANT, whether named or fictitious, was the
12 agent, employee or other person acting on behalf of each other DEFENDANT, and, in participating
13 in the acts alleged in this Complaint, acted within the scope of such agency or employment and
14 ratified the acts of the other.

15 23. Each DEFENDANT, whether named or fictitious, exercised control over
16 PLAINTIFF’S and other AGGRIEVED EMPLOYEES’ wages, working hours, and/or working
17 conditions.

18 24. Each DEFENDANT, whether named or fictitious, acted in all respects pertinent to
19 this action as the agent of the other DEFENDANT, carried out a joint scheme, business plan or
20 policy, and the acts of each DEFENDANT are legally attributable to the other DEFENDANTS.

21 **IV. JURISDICTION AND VENUE**

22 25. This Court has jurisdiction over this Action pursuant to California Code of Civil
23 Procedure, Section 410.10.

24 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,
25 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
26 DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities in
27 this County, and (ii) committed the wrongful conduct herein alleged in this County against
28 PLAINTIFF.

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V. FACTUAL ALLEGATIONS

A. Rest Period Violations

27. PLAINTIFF and other AGGRIEVED EMPLOYEES were required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of the nature and constraints of their job duties, DEFENDANTS' scheduling practices, DEFENDANTS' policies and practices.

28. Further, for the same reasons PLAINTIFF and other AGGRIEVED EMPLOYEES were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, these same employees were denied a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours.

29. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES are required to either postpone or skip their rest periods as result of the nature and constraints of their job duties, DEFENDANTS' scheduling practices, DEFENDANTS' policies and practices. Often, there is no employee available to break PLAINTIFF and other AGGRIEVED EMPLOYEES and therefore these employees must postpone and/or forfeit these breaks.

30. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages *in lieu* thereof. As a result of the nature and constraints of their job duties, DEFENDANTS' scheduling practices, DEFENDANTS' policies and practices, PLAINTIFF and other AGGRIEVED EMPLOYEES were denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

31. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS are required to provide rest periods to PLAINTIFF and other AGGRIEVED EMPLOYEES per every four (4) hours worked or major fraction thereof or provide the employee one (1) hour of pay at the employee's regular rate of compensation for each workday the rest period is not provided. During the entirety of PLAINTIFF'S employment and the PAGA Period, DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to work through rest periods without paying them in accordance with Industrial Wage Orders. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited their regular wages by working without compensation at the applicable

1 wage and rates. DEFENDANTS had, and may continue to practice, a uniform policy to not pay
2 PLAINTIFF and other AGGRIEVED EMPLOYEES all rest premiums owed.

3 B. Meal Period Violations

4 32. DEFENDANTS require PLAINTIFF and other AGGRIEVED EMPLOYEES to
5 work during the meal break during what is scheduled to be PLAINTIFF'S and other AGGRIEVED
6 EMPLOYEES' off-duty meal break due to the nature and constraints of their job duties,
7 DEFENDANTS' scheduling practices, DEFENDANTS' policies and practices.

8 33. Again, PLAINTIFF and other AGGRIEVED EMPLOYEES are required to either
9 postpone or skip their meal periods as result of the nature and constraints of their job duties,
10 DEFENDANTS' scheduling practices, DEFENDANTS' policies and practices. Often, there is no
11 employee available to break PLAINTIFF and other AGGRIEVED EMPLOYEES and therefore these
12 employees must postpone and/or forfeit these meal periods. PLAINTIFF and other AGGRIEVED
13 EMPLOYEES regularly clock out for meal periods but continue performing work and/or are
14 required to return from their break prior to the end of this 30-minute meal period.

15 34. When PLAINTIFF and other AGGRIEVED EMPLOYEES fail to clock out for their
16 meal periods during shifts that are six (6) hours or less, PLAINTIFF and other AGGRIEVED
17 EMPLOYEES must affirm their "voluntary" waiver of the meal period when they clock out for their
18 shift.

19 35. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
20 required to provide meal periods of not less than thirty (30) minutes to PLAINTIFF and other
21 AGGRIEVED EMPLOYEES for each work period of more than five (5) hours, except when that
22 work period is not more than six (6) and validly waived or provide one (1) hour of pay at the
23 employee's regular rate of compensation.

24 36. As a result of work requirements and DEFENDANTS' inadequate staffing practices,
25 PLAINTIFF and other AGGRIEVED EMPLOYEES were unable to take thirty (30) minute off-duty
26 meal breaks and in other instances were not fully relieved of duty for their meal period. PLAINTIFF
27 and other AGGRIEVED EMPLOYEES were required to perform work as ordered by
28 DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break.

1 The nature of the work performed by PLAINTIFF and other AGGRIEVED EMPLOYEES does not
2 qualify for limited and narrowly construed “on-duty” meal period exception. PLAINTIFF and other
3 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation and
4 in accordance with DEFENDANTS’ policies and practices.

5 C. Off-the-Clock Work and Failure to Pay all Minimum and Overtime Wages

6 37. During PLAINTIFF’S employment and the PAGA Period, DEFENDANTS failed to
7 accurately pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all hours worked as result
8 of DEFENDANTS policies and practices.

9 38. When DEFENDANTS implement new menus and/or new menu items,
10 DEFENDANTS direct PLAINTIFF and other AGGRIEVED EMPLOYEES to take home the new
11 menu to memorize the item, flavor profiles, and pairings. DEFENDANTS directed PLAINTIFF and
12 other AGGRIEVED EMPLOYEES to take home the new menus for memorization. DEFENDANTS
13 then test PLAINTIFF and other AGGRIEVED EMPLOYEES on the new items and if an employee
14 does not pass, DEFENDANTS will stop scheduling this employee for shifts until they pass the test.

15 39. DEFENDANTS did not track or compensate PLAINTIFF and other AGGRIEVED
16 EMPLOYEES for the time they spent at home memorizing DEFENDANTS new menu(s) and/or
17 new items.

18 40. This resulted in PLAINTIFF and other AGGRIEVED EMPLOYEES performing
19 off-the-clock work. DEFENDANTS failed to pay PLAINTIFF and other AGGRIEVED
20 EMPLOYEES all necessary wages for attending and performing work at DEFENDANTS’
21 direction, request, and benefit.

22 41. Further, from time-to-time PLAINTIFF and other AGGRIEVED EMPLOYEES
23 work shifts in excess of eight (8) hours per day and/or forty (40) hours per week. As a result of
24 DEFENDANTS’ practices and policies to direct employees to perform off-the-clock work,
25 DEFENDANTS failed to pay all minimum and overtime wages to PLAINTIFF and other
26 AGGRIEVED EMPLOYEES.

27 42. DEFENDANTS controlled the work schedules, duties, protocols, applications,
28 assignments, and employment conditions of PLAINTIFF and other AGGRIEVED EMPLOYEES.

1 43. DEFENDANTS were able to track the amount of time PLAINTIFF and other
2 AGGRIEVED EMPLOYEES spent working however, DEFENDANTS failed to document, track,
3 and pay PLAINTIFF and other AGGRIEVED EMPLOYEES all wages earned and owed for all the
4 work they performed, including during off-the-clock work which from time-to-time includes
5 overtime wages.

6 44. PLAINTIFF and other AGGRIEVED EMPLOYEES were non-exempt employees,
7 subject to the requirements of the California Labor Code. DEFENDANTS' policies and practices
8 deprived PLAINTIFF and other AGGRIEVED EMPLOYEES of all regular wages and from time
9 to time, overtime wages owed for the off-the-clock work activities.

10 45. DEFENDANTS knew or should have known that PLAINTIFF and other
11 AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

12 46. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited wages due
13 them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent while
14 off-the-clock. DEFENDANTS have a uniform policy and practice to not pay PLAINTIFF and other
15 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law.

16 47. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS are
17 required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all their time worked,
18 meaning the time during which an employee is subject to the control of an employer, including all
19 the time the employee is suffered or permitted to work. As alleged above, DEFENDANTS required
20 PLAINTIFF and other AGGRIEVED EMPLOYEES to work without paying them for all the time
21 they were under DEFENDANT'S control. As a result, PLAINTIFF and other AGGRIEVED
22 EMPLOYEES forfeited their regular and overtime wages by performing work without their time
23 being recorded and without compensation at the applicable wage and rates.

24 48. DEFENDANTS continue to practice a uniform policy to not pay PLAINTIFF and
25 other AGGRIEVED EMPLOYEES for all time worked.

26 49. Moreover, as a result, DEFENDANTS provided PLAINTIFF and other
27 AGGRIEVED EMPLOYEES with a paystub that failed to comply with Cal. Lab. Code § 226 and
28 did not maintain accurate payroll and timekeeping records.

1 D. Failure to Pay Split Shift Premium Resulting in Failure to Pay Minimum and/or Overtime
2 Wages

3 50. DEFENDANTS, from time to time, required PLAINTIFF and other AGGRIEVED
4 EMPLOYEES to work split shifts by requiring employees to work a lunch shift, clock out, and
5 then return to work for the dinner shift that same night.

6 51. On these occasions, DEFENDANTS required PLAINTIFF and other
7 AGGRIEVED EMPLOYEES to punch in for two separate periods of work on the same day,
8 separated by an unpaid break longer than a bona fide meal period, all to DEFENDANTS' benefit.

9 52. PLAINTIFF and other AGGRIEVED EMPLOYEES are entitled to earn minimum
10 wage premium when their schedule includes a split shift.

11 53. DEFENDANTS directed and scheduled PLAINTIFF and other AGGRIEVED
12 EMPLOYEES to work split shifts. DEFENDANTS failed to pay PLAINTIFF and other
13 AGGRIEVED EMPLOYEES the one-hour split shift minimum wage premium required by
14 California law.

15 E. Improper Tip Pooling

16 54. During the PAGA period and PLAINTIFF'S employment, pursuant to
17 DEFENDANTS' company policies and practices, PLAINTIFF and other AGGRIEVED
18 EMPLOYEES were forced to forfeit gratuities left for them by customers to DEFENDANTS' agents
19 who provided no service to the customers that resulted in the gratuity.

20 55. DEFENDANTS had a policy and practice of using a portion of these gratuities to
21 pay managers or other non-service employees. As a result, PLAINTIFFS and other AGGRIEVED
22 EMPLOYEES have not received the total proceeds of the gratuities, to which they are entitled to
23 under California law.

24 56. During PLAINTIFF'S employment, PLAINTIFFS and other AGGRIEVED
25 EMPLOYEES were in the "chain of service" and earned gratuities based on their service for their
26 customers. However, PLAINTIFF and other AGGRIEVED EMPLOYEES were forced to forfeit
27 portions of their gratuities, which said gratuities were kept by DEFENDANTS' employees who
28 were not in the chain of service and/or managers and supervisors from which the gratuity resulted.

1 57. PLAINTIFF and other AGGRIEVED EMPLOYEES contend that any gratuities kept
2 by DEFENDANTS' non-service employees were illegal and in violation of California law because
3 PLAINTIFF and other AGGRIEVED EMPLOYEES provided the service for to whom the gratuity
4 should have been paid.

5 58. California Labor Code § 351 establishes the requirements for an employer regarding
6 the payment of gratuities. Specifically, gratuities are the sole property of the employees. California
7 Labor Code § 351 expressly prohibits employers and their agents from collecting, taking, or
8 receiving any portion of a gratuity. California Labor Code § 350(e) defines the term "gratuity" as
9 including any money that has been paid or given or left for an employee by a patron of a business
10 over and above the actual amount due the business for services rendered or for goods, food, drink
11 or articles sold or served to such patron. Labor Code § 353 requires employers to keep accurate
12 records of all gratuities they receive, directly or indirectly.

13 59. Although tip pooling is not expressly prohibited by the Labor Code, employees who
14 mandate tip pooling must only distribute pooled tips to employees in the "chain of service." By
15 distributing tips to employees who were not in the "chain of service," DEFENDANTS have violated
16 and continue to violate the legal requirements for handling pooled tips.

17 F. Unreimbursed Business Expenses

18 60. DEFENDANTS failed to indemnify PLAINTIFF and other AGGRIEVED
19 EMPLOYEES for use of their personal cell phone as a direct consequence of discharging work
20 duties.

21 61. DEFENDANTS required PLAINTIFFS and other AGGRIEVED EMPLOYEES to
22 use their personal cell phone for work-related communications. DEFENDANTS use employees'
23 personal cell phones to communicate, swap shifts, and post the work schedule.

24 62. DEFENDANTS did not provide PLAINTIFFS and other AGGRIEVED
25 EMPLOYEES with a designated work phone. PLAINTIFFS and other AGGRIEVED
26 EMPLOYEES were neither compensated for the cost of the cellular phone nor the cost of the cellular
27 phone plan.

28 63. DEFENDANTS failed to reimbursed PLAINTIFFS and other AGGRIEVED

1 EMPLOYEES for use of their personal cell phone in discharge of their work duties.

2 64. DEFENDANTS shifted the costs associated with running a business onto
3 PLAINTIFF and other AGGRIEVED EMPLOYEES.

4 G. Inaccurate Itemized Wage Statements

5 65. California Labor Code Section 226 requires an employer to furnish its employees an
6 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3)
7 the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
8 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
9 employee and only the last four digits of the employee's social security number or an employee
10 identification number other than a social security number, (8) the name and address of the legal
11 entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
12 corresponding number of hours worked at each hourly rate by the employee

13 66. During PLAINTIFF'S employment and during the PAGA period, when PLAINTIFF
14 and other AGGRIEVED EMPLOYEES were not paid missed meal and rest period premiums and
15 were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and other
16 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
17 among other things, the total hours worked and all applicable hourly rates in effect during the pay
18 period and the corresponding amount of time worked at each hourly rate, correct rates of pay for
19 penalty payments or missed meal and rest periods.

20 67. DEFENDANTS routinely failed to keep, maintain, and store accurate payroll records
21 and provide wage statements that comply with Cal. Lab. Code § 226.

22 68. PLAINTIFF and other AGGRIEVED EMPLOYEES suffered damages as a result of
23 DEFENDANTS' aforementioned violation because they could not promptly and easily determine
24 from the wage statement alone the applicable hourly rate and the corresponding number of hours
25 worked at the applicable hourly rate for this remuneration.

26 69. As a result, DEFENDANTS issued PLAINTIFF and other AGGRIEVED
27 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
28 violations are knowing and intentional, and were not isolated or due to an unintentional payroll error

1 due to clerical or inadvertent mistake.

2 H. DEFENDANTS' Retaliation After Plaintiff's PAGA Filing

3 70. On May 15, 2024, PLAINTIFF provided written notice the Labor Workforce and
4 Development Agency of the specific provisions DEFENDANTS violated and the facts and theories
5 to support each alleged violation. PLAINTIFF certified mailed the PAGA Notice to DEFENDANTS
6 on May 15, 2024.

7 71. Prior to PLAINTIFF's filing of the PAGA notice, DEFENDANTS regularly
8 scheduled PLAINTIFF for five (5) shifts per week. The week after PLAINTIFF filed and mailed
9 his PAGA Notice, DEFENDANTS only scheduled PLAINITFF for four (4) shifts. The subsequent
10 week, DEFENDANTS schedule PLAINTIFF for only three (3) shifts.

11 72. Within ninety days of PLAINTIFF engaging in a protected activity, DEFENDANTS
12 retaliated against PLAINTIFF by removing shifts from PLAINTIFF'S schedule. There was a causal
13 nexus between PLAINTIFF'S engagement in a protected activity and DEFENDANTS' retaliation.

14 I. Continued Violations After PAGA Filing

15 73. On May 15, 2024, PLAINTIFF provided written notice the Labor Workforce and
16 Development Agency of the specific provisions DEFENDANTS violated and the facts and theories
17 to support each alleged violation. PLAINTIFF certified mailed the PAGA Notice to DEFENDANTS
18 on May 15, 2024.

19 74. After the filing of PLAINTIFF'S PAGA Notice, DEFENDANTS continued
20 violating California Labor Code provisions.

21 75. For example, after the filing of PLAINTIFF'S PAGA Notice, DEFENDANTS
22 implemented a new menu and required PLAINTIFF and other AGGRIEVED EMPLOYEES to take
23 the new menu home for memorization. DEFENDANTS informed PLAINTIFF and other
24 AGGRIEVED EMPLOYEES that they needed to pass a test on the menu before receiving future
25 shifts. As a result, DEFENDANTS directed PLAINTIFF and other AGGGRIEVED EMPLOYEES
26 to perform off-the-clock work to study and memorize the new menu. This work was performed for
27 the benefit of, and at the direction of DEFENDANTS without the applicable minimum and/or
28 overtime compensation.

1 76. As a result, DEFENDANTS have continued to issue inaccurate itemized wage
2 statements and failed to maintain accurate payroll records.

3 **VI. CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**

5 For Failure to Provide Rest Periods
6 (Cal. Lab. Code §§ 226.7 & 512)
7 (Plaintiff Against All Defendants)

8 77. PLAINTIFF incorporate by reference and reallege as if fully stated herein each and
9 every allegation set forth above.

10 78. Labor Code Sections 226.7 and 512 and the Industrial Wage Orders requires
11 DEFENDANTS to provide employees all rest periods specified in the applicable Wage Order. These
12 laws and regulations further entitle employees to be paid one additional hour of pay at their regular
13 rate of compensation for each day of denied rest period.

14 79. PLAINTIFF was required to work in excess of four (4) hours without being provided
15 ten (10) minute rest periods. Further and for the same reasons PLAINTIFF was denied his first rest
16 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours,
17 PLAINTIFF was denied a first and second rest period of at least ten (10) minutes for shifts worked
18 of between six (6) and eight (8) hours. PLAINTIFF was also not provided with one-hour wages in
19 lieu thereof.

20 80. As a result of DEFENDANTS' practices, PLAINTIFF was denied his proper rest
21 periods by DEFENDANTS and DEFENDANTS' managers.

22 81. DEFENDANTS violated California Labor Code §§ 226.7 and the applicable IWC
23 Wage Order by failing to compensate PLAINTIFF who was not provided a rest period, in
24 accordance with the applicable Wage Order, one additional hour of compensation at each
25 employee's regular rate of pay for each workday that rest period was not provided.

26 82. As a proximate result of the aforementioned violations, PLAINTIFF has been
27 damaged in an amount according to proof at trial, and seek all wages earned and due, interest,
28 penalties, expenses and costs of suit.

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83. PLAINTIFF incorporate by reference and reallege as if fully stated herein each and every allegation set forth above.

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1 89. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
2 including minimum wage compensation and interest thereon, together with the costs of suit. Cal.
3 Lab. § 1194.2 further establishes an employee's right to liquidated damages in an amount equal to
4 the unpaid minimum wages according to proof at trial.

5 90. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF without
6 regard to the correct amount of time worked. As set forth herein, DEFENDANTS' uniform policy
7 and practice was to unlawfully and intentionally deny payment of wages due to PLAINTIFF for all
8 hours worked and therefore did not receive minimum wage for all hours worked as required by Cal.
9 Lab. Code § 1197.

10 91. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
11 without limitation, as a result of implementing a uniform policy and practice that denied accurate
12 compensation to PLAINTIFF in regard to work off-the-clock and split shift premiums resulting in
13 a failure to pay all minimum wages.

14 92. In committing these violations of the California Labor Code, DEFENDANTS
15 inaccurately tracked and calculated the amount of time worked and consequently underpaid the
16 actual time worked by PLAINTIFF. DEFENDANTS acted in an illegal attempt to avoid the payment
17 of all earned wages, and other benefits in violation of the California Labor Code, the Industrial
18 Welfare Commission requirements and other applicable laws and regulations.

19 93. PLAINTIFF was paid less for time worked than he was entitled to, constituting a
20 failure to pay all earned wages.

21 94. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
22 PLAINTIFF has suffered and will continue to suffer an economic injury including the use and
23 enjoyment of wages and lost interest on such wages all to their damage in amounts in amounts which
24 are presently unknown to them, and which will be ascertained according to proof at trial.

25 95. DEFENDANTS knew or should have known that PLAINTIFF was under-
26 compensated for his time worked. DEFENDANTS systematically elected, either through intentional
27 malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform
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1 corporate policy, practice and procedure, and DEFENDANTS perpetrated this systematic scheme
2 by refusing to pay PLAINTIFF the correct wages for their time worked.

3 96. PLAINTIFF therefore, request recovery of all unpaid wages, according to proof,
4 interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS,
5 in a sum as provided by the California Labor Code and/or other applicable statutes.

6 97. DEFENDANTS' conduct as alleged herein was willful, intentional, and not in good
7 faith. Further, PLAINTIFF is entitled to seek and recover statutory costs.

8 **FOURTH CAUSE OF ACTION**

9 For Failure to Pay Overtime Wages
10 (Cal. Lab. Code § 510, 1194, 1198)
(Plaintiff Against All Defendants)

11 98. PLAINTIFF incorporate by reference and reallege as if fully stated herein each and
12 every allegation set forth above.

13 99. PLAINTIFF brings a claim for DEFENDANTS' willful and intentional violations of
14 the California Labor Code and the Industrial Welfare Commission requirements for
15 DEFENDANTS' failure to pay PLAINTIFF for all overtime worked, including, work performed in
16 excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

17 100. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
18 policy, an employer must timely pay its employees for all hours worked.

19 101. Cal. Lab. Code § 510 further provides that employees in California shall not be
20 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
21 unless they receive additional compensation beyond their regular wages in amounts specified by
22 law.

23 102. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
24 including minimum wage and overtime compensation and interest thereon, together with the costs
25 of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
26 than those fixed by the Industrial Welfare Commission is unlawful.

1 103. DEFENDANTS did not accurate record the time worked by PLAINTIFF which from
2 time-to-time, included overtime wages DEFENDANTS failed to pay PLAINTIFF overtime wages
3 on these occasions.

4 104. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
5 without limitation, as a result of implementing a uniform policy and practice that failed to accurately
6 record the time worked by PLAINTIFF.

7 105. DEFENDANTS denied accurate compensation to PLAINTIFF for overtime worked,
8 including, the overtime work performed in excess of eight (8) hours in a workday and/or forty (40)
9 hours in any workweek.

10 106. DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages,
11 and other benefits in violation of the California Labor Code, the Industrial Welfare Commission
12 requirements and other applicable laws and regulations.

13 107. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
14 PLAINTIFF did not receive full compensation for overtime worked.

15 108. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
16 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF.
17 Further, PLAINTIFF is not subject to a valid collective bargaining agreement that would preclude
18 the causes of action contained herein this Complaint. Rather, PLAINTIFF brings this Action based
19 on DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of
20 California.

21 109. DEFENDANTS paid PLAINTIFF less overtime than he was entitled to, constituting
22 a failure to pay all earned wages.

23 110. DEFENDANTS failed to accurately pay PLAINTIFF all overtime wages for the time
24 he worked which was in excess of the maximum hours permissible by law as required by Cal. Lab.
25 Code §§ 510, 1194 & 1198, even though PLAINTIFF was required to work, and did in fact work
26 from time-to-time, overtime as to which DEFENDANTS failed to accurately record and pay as
27 witnessed by employees and DEFENDANTS' business records.

111. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation to PLAINTIFF for all overtime worked by this employee, PLAINTIFF has suffered and will continue to suffer an economic injury in amounts which are presently unknown to them, and which will be ascertained according to proof at trial.

112. DEFENDANTS knew or should have known that PLAINTIFF was under-compensated for all overtime worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay these employees for overtime worked.

113. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate PLAINTIFF for all overtime worked and provide them with the requisite overtime compensation, DEFENDANTS acted and continue to act intentionally, oppressively, and maliciously toward PLAINTIFF with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

114. PLAINTIFF therefore request recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable statutes.

FIFTH CAUSE OF ACTION

For Failure to Provide Accurate, Itemized Wage Statements
(Cal. Lab. Code §§ 226; 226.3; 1174.5)
(Plaintiff Against All Defendants)

115. PLAINTIFF incorporate by reference and reallege as if fully stated herein each and every allegation set forth above.

116. Labor Code section 226 requires defendants to provide employees an accurate itemized statement showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece units and rates if applicable, (4) all deductions, (5) net wages earned, (6) the

1 inclusive date of the period for which the employee is paid, (7) the name of the employee and his or
2 her social security number, (8) the name and address of the legal entity that is the employer, and (9)
3 all applicable hourly rates in effect and the corresponding number of hours worked

4 117. DEFENDANTS did not accurately record PLAINTIFF'S wages, time worked, split
5 shift premiums, and missed meal and rest breaks. DEFENDANTS failed to provide an accurate
6 wage statement in writing that properly and accurately itemizes all wages owed to PLAINTIFF and
7 thereby also failed to set forth the correct wages earned by the employees.

8 118. DEFENDANTS knowingly and intentionally failed to comply with Labor Code
9 section 226(a) on each and every wage statement that they provided to PLAINTIFF.

10 119. By failing to keep adequate records, as required by Labor Code section 226 and 1174,
11 DEFENDANTS injured PLAINTIFF making it difficult for these employees to calculate the
12 minimum wages owed. Those injuries include unpaid wages, interest, and penalties thereon.

13 120. PLAINTIFF seeks to recover the statutory penalties provided by Labor Code section
14 226(e), 226.3, and 1174.5 for the wage statement violations committed and inaccurate payroll
15 records maintained by DEFENDANTS.

16 **SIXTH CAUSE OF ACTION**

17 For Failure to Reimburse Business Expenses

18 (Cal. Lab. Code § 2802)

19 (Plaintiff Against All Defendants)

20 121. PLAINTIFF incorporate by reference and reallege as if fully stated herein each and
21 every allegation set forth above.

22 122. Pursuant to California Labor Code section 2802, DEFENDANTS are required to
23 indemnify PLAINTIFF for the expenses and losses incurred during the performance of his job
24 duties. The purpose of this statute is to prevent employers from passing their operating expenses on
25 to their employees.

26 123. DEFENDANTS required PLAINTIFF to use his personal cell phones to
27 communicate with DEFENDANTS, swamp shifts, and view his schedule.

28 124. In violation of Labor Code section 2802, DEFENDANTS failed to reimburse
PLAINTIFF for necessary business expenditures incurred in discharging work duties.

1 125. DEFENDANTS sought to pad their own pockets at the expense of their employees,
2 and instead of compensating their employees for the necessary business costs, the employer passed
3 on its costs to its employees.

4 126. DEFENDANTS intentionally failed to reimburse its employees for the actual
5 expenses incurred and thereby increased its own profits to the detriment of its employees.

6 127. PLAINTIFF seeks to recover these business expenditures, plus interest thereon,
7 reasonable attorneys' fees, and costs, in an amount to be proven at trial.

8 128. Interest accrues from the date the employee incurred the necessary expenditure or
9 loss.

10 **SEVENTH CAUSE OF ACTION**

11 For Tip Pool Conversion

12 (Cal. Lab. Code §§ 350, 351, 353,)

13 (Plaintiff Against All DEFENDANTS)

14 129. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
15 every allegation set forth above.

16 130. During PLAINTIFF'S employment, DEFENDANTS maintained a tip pool in which
17 money left by patrons in an amount over and above the actual amount due for services was pooled
18 and distributed among employees including PLAINTIFF.

19 131. DEFENDANTS took money from the tip pool that PLAINTIFFS was entitled to
20 receive and allowed individuals outside the "chain of service" and managerial staff to take money
21 from the tip pool.

22 132. As a proximate result of the aforementioned violations, PLAINTIFF has been
23 damaged in an amount according to proof at trial, including the loss of gratuities to which they
24 were entitled.

25 **SEVENTH CAUSE OF ACTION**

26 For Retaliation

27 (Cal. Lab. Code §§ 98.6 et seq.)

28 (Plaintiff Against All Defendants)

133. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
every allegation set forth above.

134. PLAINTIFF engaged in a protected activity by reporting DEFENDANTS' violations of California Labor Code to the Labor Workforce and Development Agency on May 15, 2024.

135. DEFENDANTS reduced PLAINTIFF schedule within ninety (90) days of PLAINTIFF engaging in a protected activity.

136. DEFENDANTS non-retaliatory reason for reducing PLAINTIFF'S schedule was pretext for retaliating against PLAINTIFF. There is a casual nexus between PLAINTIFF'S engagement of a protected activity and DEFENDANTS' reduction of PLAINTIFF'S hours.

137. As a proximate result of the aforementioned violations, PLAINTIFF has been damaged in an amount according to proof at trial, including the loss of wages and gratuities to which he was entitled.

NINTH CAUSE OF ACTION

For Recovery of Civil Penalties Under the Labor Code Private Attorney General Act
(Cal. Lab. Code §§ 2698 et seq.)
(Plaintiff and Aggrieved Employees Against All DEFENDANTS)

138. PLAINTIFF and other AGGRIEVED EMPLOYEES incorporate by reference and reallege as if fully stated herein each and every allegation set forth above.

139. As a result of the acts alleged herein, PLAINTIFF, as an AGGRIEVED EMPLOYEE within the meaning of Labor Code section 2699, subdivision (c), on behalf of himself and all other AGGRIEVED EMPLOYEES of DEFENDANTS, seeks the recovery of civil penalties against DEFENDANTS pursuant to California Labor Code sections 2698 et seq., for the following knowing and intentional violations of the California Labor Code:

- a. For failing to compensate employees who were not provided a rest period in violation of Labor Code Section 226.7 and 512;
- b. For failing to compensate employees who were not provided a meal period in violation of Labor Code Section 226.7 and 512;
- c. For failing to pay all minimum wages in violation of Labor Code Section 1194, 1197, & 1197.1
- d. For failing to pay all overtime wages in violation of Labor Code Sections 510, 1194, and 1198;

- e. Improper tip pooling and conversion of tips in violation of Labor Code Section 350, 351 and 352;
- f. For failing to maintain for and provide accurate, itemized wage statements required by Labor Code Section 226 and 226.3;
- g. For failing to maintain accurate payroll records in violation of Labor Code Section 1174.5;
- h. For failing to reimburse employees for work-related expenses in violation of Labor Code Section 2802;

140. The above-referenced civil penalties shall include the recovery of amounts specified in the applicable sections of the Labor Code, and if not specifically provided, those under section 2699(f), and shall include those amounts sufficient to recover underpaid wages pursuant to Labor Code sections §§ 218.5, 218.6, 226, 226.3, 226.7, 350, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199 and 2699, subdivisions (a) and (f).

141. PLAINTIFF filed this complaint after the LWDA was afforded the opportunity to consider PLAINTIFF'S notice of DEFENDANTS' Labor Code violations and of PLAINTIFF'S intent to prosecute a private enforcement action for civil penalties under PAGA. After the LWDA declined to investigate, PLAINTIFF brought this PAGA cause of action against DEFENDANTS, pursuant to California Labor Code section 2699.3, subdivision (a)(2)(A).

DEMAND FOR RELIEF

WHEREFORE, PLAINTIFF prays for a judgment against each DEFENDANT, jointly and severally, as follows:

1. On behalf of the PLAINTIFF:

- A. Compensatory damages, according to proof at trial, including unpaid wages, plus interest thereon at the statutory rate;
- B. The amount of the expenses PLAINTIFFS incurred in the course of his job duties, plus interest, and costs of suit.
- C. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

1 D. One hundred dollars (\$100) for the initial pay period in which Defendants
2 intentionally failed to pay minimum wages per employee per pay period and two hundred fifty
3 dollars (\$250) per employee per pay period for each violation in a subsequent pay period for
4 violation of Cal. Lab. Code § 1197 and 1197.1

5 E. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
6 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
7 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
8 an award of costs for violation of Cal. Lab. Code § 226.

9 F. Punitive damages in an amount to punish DEFENDANTS to be proven at trial.

10 G. Liquidates damages pursuant to Cal. Lab. Code § 1194.2 in an amount equal to the
11 unpaid minimum wages according to proof at trial;

12 H. Civil penalties according to proof as provided by State Bill 497 for Defendants'
13 violation of Cal. Lab. Code § 98.6;

14 2. On Behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES

15 A. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
16 General Act of 2004;

17 2. On all claims:

18 A. An award of interest, including prejudgment interest at the legal rate;

19 B. Such other and further relief as the Court deems just and equitable; and

20 C. An award of penalties, attorneys' fees and cost of suit, as allowable under the law.

21
22 DATED: July 22, 2024

EMRAN LAW

23
24
25 By: Harris Emran

Harris Emran

26 Attorney For Plaintiff and Other Aggrieved
27 Employees
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DEMAND FOR A JURY TRIAL

PLAINTIFF demand a jury trial on issues triable to a jury.

DATED: July 22, 2024

EMRAN LAW

By: Harris Emran
Harris Emran
Attorney for PLAINTIFF and OTHER
AGGRIEVED EMPLOYEES