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BRI PUENTES

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

SHAWN RIVERA, an individual, and BRI
PUENTES, an individual,

Plaintiffs,

v.

CAPTAIN SPIKE, LLC DBA GASLAMP
FISH HOUSE, a California limited liability
company; FRANCOIS PATANCHON, an
individual; and NINO RABBAA, an
individual, and DOES 1 through 50, inclusive,

Defendants.

Case No. 24CU013669C

CLASS ACTION COMPLAINT

1. Failure to Pay Wages and/or Overtime, Labor Code §§ 510, 1194, 1194.2, and 1199
2. Failure to Provide Meal Periods, Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Periods, Labor Code § 226.7
4. Unlawful Deductions of Gratuities, Labor Code § 351;
5. Wage Statement Violations, Labor Code § 226(a)
6. Waiting Time Penalties, Labor Code § 203
7. Business & Professions Code § 17200

COMES NOW Plaintiff SHAWN RIVERA (“RIVERA”) and BRI PUENTES, (“PUENTES”) (RIVERA and PUENTES are collectively referred to as “Plaintiff”), on behalf of themselves and all others similarly situated and aggrieved employees, complain and allege as follows:

I. INTRODUCTION:

1. Plaintiff brings this class action for violations of the California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), and the California Business and Professions Code against Defendants CAPTAIN SPIKE, LLC DBA

1 GASLAMP FISH HOUSE, a California limited liability company; FRANCOIS PATANCHON,
2 an individual; and NINO RABBAA, an individual, and DOES 1 through 50, inclusive
3 (collectively referred to as “Defendants,” and “Gas Lamp Fish House”).

4 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to him
5 and other similarly situated workers for unpaid wages, statutory penalties, interest, and related
6 relief. These claims are based on Defendants’:

- 7 a. Failure to pay all wages, including minimum, regular, overtime and doubletime
- 8 wages, earned for all hours worked at the correct rates of pay;
- 9 b. Failure to provide Paid Sick Leave pay;
- 10 c. Failure to authorize and permit all meal periods;
- 11 d. Failure to authorize and permit all rest breaks;
- 12 e. Failure to pay premium wages for unprovided meal periods;
- 13 f. Failure to pay premium wages for unprovided rest breaks;
- 14 g. Unlawful deductions from gratuities and tips;
- 15 h. Failure to issue accurate and complete itemized wage statements; and
- 16 i. Failure to timely pay wages upon termination of employment

17 3. Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated
18 damages, restitution, statutory penalties, attorneys’ fees, costs, and related relief through this class
19 action.

20 JURISDICTION AND VENUE

21 4. This Court has subject matter jurisdiction over all causes of action asserted herein
22 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
23 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
24 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
25 laws of the State of California or is subject to adjudication in the courts of the State of California.

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1 5. This Court has personal jurisdiction over Defendants because Defendants have
2 caused injuries in the County of San Diego and the State of California through their acts, and by
3 their violation of the California Labor Code, California state common law, and California
4 Business & Professions Code § 17200, et seq.

5 6. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
6 Civil Procedure § 395. Defendant operates within California and does business within San Diego
7 County. The unlawful acts alleged herein have a direct effect on Plaintiffs and all Proposed Class
8 Members within the State of California and the County of San Diego.

9 7. This case should be classified as complex according to Rule 3.400 of the California
10 Rules of Court, and assigned to a complex litigation judge and department, as it will involve
11 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive
12 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
13 require substantial post judgment judicial supervision.

14 **THE PARTIES**

15 8. Plaintiff SHAWN RIVERA is a resident of California, and performed all work
16 described in this complaint as an employee of Defendants at the location of Defendants'
17 restaurant, Gaslamp Fish House, located at within the City of San Diego.

18 9. Plaintiff BRI PUENTES is a resident of California, and performed all work
19 described in this complaint as an employee of Defendants at the location of Defendants'
20 restaurant, Gaslamp Fish House, located at within the City of San Diego.

21 10. Defendant CAPTAIN SPIKE, LLC DBA GASLAMP FISH HOUSE, a California
22 limited liability company is a limited liability company organized and existing under the laws of
23 California and also a citizen of California, with its principal place of business located in the City
24 of San Diego.

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1 11. Defendant FRANCOIS PATANCHON, the individual, is a resident of California,
2 and a resident of San Diego County, and he is an owner, officer, director and/or managing agent of
3 CAPTAIN SPIKE, LLC DBA GASLAMP FISH HOUSE, based on Plaintiffs' information and
4 belief.

5 12. Defendant NINO RABBAA, the individual, is a resident of California, and a
6 resident of San Diego County, and he is an owner, officer, director and/or managing agent of
7 CAPTAIN SPIKE, LLC DBA GASLAMP FISH HOUSE, based on Plaintiffs' information and
8 belief.

9 13. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
10 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but is
11 informed and believes and thereon alleges that said Defendants are legally responsible for the
12 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
13 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
14 when ascertained.

15 14. Plaintiff is further informed and believes, and based thereon alleges, that each
16 Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried
17 out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
18 Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects
19 acted as the employer and/or joint employer of Plaintiff and the Proposed Class Members.

20 15. At all relevant times, in perpetrating the acts and omissions alleged herein,
21 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
22 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
23 Members or otherwise complying with their rights in accordance with applicable California labor
24 laws as alleged herein.

25 16. At all relevant times, in perpetrating the acts and omissions alleged herein,
26 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
27 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
28 described class in accordance with applicable laws as alleged herein. Furthermore, Defendants

1 acted in all respects as the employers or joint employers of the Proposed Classes. Defendants, and
2 each of them, exercised control over the wages, hours or working conditions of the Proposed
3 Classes, or suffered or permitted the Proposed Classes to work, or engaged, thereby creating a
4 common law employment relationship, with the Proposed Classes. Therefore, Defendants, and
5 each of them, employed or jointly employed the Proposed Classes.

6 **CLASS ALLEGATIONS**

7 17. This action has been brought and may be maintained as a class action pursuant to
8 California Code of Civil Procedure section 382 because there is a well-defined community of
9 interest among the persons who comprise the readily ascertainable class defined below and
10 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a
11 class action.

12 18. Class Definition: The Class is defined as follows: All persons Defendants
13 employed in California hourly, non-exempt employees, individuals performing work comparable
14 to the aforementioned, compensated comparably to the aforementioned, individuals in similar
15 positions, at any time during the period beginning four years prior to the filing of this action and
16 ending on the date that final judgment is entered in this action ("Class" or "Class Members").

17 19. Reservation of Rights: Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
18 right to amend or modify the class definition with greater specificity, by further division into
19 subclasses and/or by limitation to particular issues.

20 20. Numerosity: The Class Members are so numerous that the individual joinder of
21 each individual Class Member is impractical. While Plaintiff does not currently know the exact
22 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
23 minimum required for numerosity under California laws.

24 21. Commonality and Predominance: Common questions of law and fact exist as to all
25 Class Members and predominate over any questions which affect only individual Class Members.
26 These questions include, but are not limited to:

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1 a. Whether Defendants failed to pay all wages earned to Class Members for all
2 hours worked at the correct rates of pay, including the minimum wage, and meal period premium,
3 rest period premium, and overtime premium wages;

4 b. Whether Defendants failed to provide the Class Members with all meal
5 periods and/or failed to pay meal break premium pay in compliance with California law;

6 c. Whether Defendants failed to authorize and permit the Class Members to
7 take all rest periods and/or failed to pay rest break premium pay in compliance with California
8 law;

9 d. Whether Defendants unlawfully deducted time worked by the Class
10 Members, to avoid paying them for it, as well as to avoid paying required meal break premium
11 pay;

12 e. Whether Defendants knowingly and intentionally failed to provide the class
13 with accurate and complete itemized wage statements;

14 f. Whether Defendants knowingly and intentionally deducted processing
15 charges from Class Members gratuities paid by credit card;

16 g. Whether Defendants knowingly and intentionally failed to provide the class
17 with Paid Sick Leave;

18 h. Whether Defendants willfully failed to provide the class with timely final
19 wages;

20 i. Whether Defendants engaged in unfair competition within the meaning of
21 Business and Professions Code sections 17200, et seq., with respect to the Class; and

22 j. Whether Class Members are entitled to restitution of money or property that
23 Defendants may have acquired from them through alleged Labor Code violations.

24 22. Typicality: Plaintiff's claims are typical of the other Class Members' claims.
25 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
26 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
27 Code, the Wage Order, and the Business and Professions Code.

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23. Adequacy of Class Representative: Plaintiff is an adequate class representative in that they have no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

24. Adequacy of Class Counsel: Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action wage and hour litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

25. Superiority: A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

FACTUAL BACKGROUND

26. IWC Wage Order 5-2001 ("the Wage Order") applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" as any industry, business, or establishment which provides meals, housing, or maintenance services," including but not limited to, "Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises." Wage Order, § 2(Q). At all relevant times during the applicable limitations period, the Defendants, Plaintiff, and all of the Class Members were covered by the Wage Order because the Defendants operated, and Plaintiff, and all of the

1 Class Members worked for, one or more establishments operated as a restaurant, providing meals
2 and food in either solid or liquid form, prepared and served to be consumed on the premises.
3 Accordingly, Plaintiff and all of the other Class Members are entitled to the protections the Wage
4 Order provides.

5 27. PUENTES and RIVERA worked as a non-exempt employees for Gaslamp Fish
6 House in waitstaff, bartending, and other positions. Among other services they performed,
7 PUENTES and RIVERA and their aggrieved co-workers were tasked with the following duties
8 and responsibilities: interacting with GAS LAMP FISH HOUSE customers; taking customer
9 orders for food and drink; preparing certain food and drink items; serving customer orders for food
10 and drink; performing cleaning duties; restocking and replenishing restaurant supplies; bussing
11 tables, washing dishes, and other related duties.

12 28. As described in detail below, PUENTES and RIVERA are both aggrieved
13 employees of Gaslamp Fish House, as a result of Gaslamp Fish House's multiple Labor Code and
14 IWC Wage Order violations with respect to their employment, including but not limited to the
15 following (all sections cited herein shall reference the California Labor Code unless otherwise
16 noted):

17 a. §245, et seq.: Failure to provide paid sick leave, and failure to provide
18 required written notice of paid sick leave;

19 b. §§ 1174, 1174.5, 1199, Failure to keep required time-keeping records,
20 accurately reflecting all time worked, and the failure to allow RIVERA to inspect those records
21 upon reasonable request, as required under section 7 of Industrial Wage Commission Wage Order
22 5;

23 c. §§ 226, 226.3: Failure to provide accurate itemized wage statements;

24 d. §§ 218, 510, 558, 1194, 1194.2, 1194.3, 1197, 1197.1, et seq.: Failure to
25 timely pay minimum wage/regular/overtime wages;

26 e. §§ 226.7, 512: Failure to provide complete, timely, and off-duty meal and
27 rest periods;

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1 f. §§ 201, 202, 203, 256, 1197.1, 1197.2: failure to pay wages due to
2 employee who has been discharged or quit;

3 g. §§ 351, 353: Unlawful deductions from employee's gratuities and failure to
4 keep and maintain accurate records of gratuities.

5 h. Additional sections were violated and are cited below.

6 **FAILURE TO PROVIDE PAID SICK LEAVE, AND FAILURE TO PROVIDE**
7 **REQUIRED WRITTEN NOTICE OF PAID SICK LEAVE IN VIOLATION OF LABOR**
8 **CODE § 245 ET SEQ.**

9 29. Since 2015, under California's Healthy Workplaces, Healthy Families Act of 2014,
10 California employers have been required to provide its employees (exempt and non-exempt alike)
11 who have worked in California for 30 or more days from the commencement of employment with
12 paid sick days, to be accrued at least one hour for every 30 hours worked. Employers must provide
13 and allow each employees to use no less than 40 hours or five (5) days of paid sick leave (or
14 equivalent paid leave or paid time off) in each year of the employee's employment, as codified at
15 California Labor Code § 246 et seq.

16 30. Additionally, under §246(i), "An employer shall provide an employee with written
17 notice that sets forth the amount of paid sick leave available, or paid time off leave an employer
18 provides in lieu of sick leave, for use on either the employee's itemized wage statement described
19 in Section 226 or in a separate writing provided on the designated pay date with the employee's
20 payment of wages." (Lab. Code, § 246(i).)

21 31. GAS LAMP FISH HOUSE violated California Labor Code section 246, by failing
22 to provide PUENTES, RIVERA, and all similarly situated and/or aggrieved employees with any
23 paid sick leave and the mandated accrual rate of paid sick leave, and by failing to carry-over paid
24 sick leave from year to year while not providing a lump sum accrual of the full required amount at
25 the beginning of the next benefit year. Additionally, GAS LAMP FISH HOUSE's violative paid
26 sick leave plan failed to accurately report the available balance of accrued paid sick leave on each
27 employee's wage statements, or in a separate writing. Consequently, GAS LAMP FISH HOUSE
28 violated the statutory rights of PUENTES, RIVERA, and all similarly situated and/or aggrieved

employees, and prevented them from being aware of and able to use their full amount of paid sick leave in the time required by the statute.

FAILURE TO ADEQUATELY DOCUMENT ALL HOURS WORKED, OFF-THE CLOCK WORK, UNLAWFUL ROUNDING PRACTICES, UNLAWFUL DEDUCTION OF TIME WORKED, UNLAWFUL DEDUCTION OF WAGES, FAILURE TO PAY MINIMUM WAGE, FAILURE TO PAY ALL EARNED WAGES, FAILURE TO PAY OVERTIME, MEAL AND REST BREAK VIOLATIONS, WAGE STATEMENT VIOLATIONS, WAITING TIME PENALTIES:

32. For its non-exempt employees, Gaslamp Fish House engaged in multiple overlapping and related practices with respect to the employees' time worked that resulted in the unlawful underpayment of earned wages to Gaslamp Fish House employees.

33. California law requires that when an employee works more than 5 hours in a day, the employer must provide a 30 minute duty-free meal break, starting no later than the end of the 5th hour of work. (Lab. C. §512) Under Lab.C. 512(a) and 8 Cal. Code Reg. § 11050(11)(A), absent a waiver by the employee, a first meal period must begin no later than the end of an employee's fifth hour of work. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041.) An employer may not require an employee to work during mandatory meal and rest or recovery periods. (Lab.C. 226.7(b).)

34. Lab. Code § 226.7 provides that if an employer fails to provide an employee a meal or rest period in accordance with a state law, including, but not limited to, an applicable statute or order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

35. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the Court held that it was a violation of Lab. Code §§ 226.7, and Industrial Welfare Commission (IWC) wage order No. 4-2001, subd. 12(A) to require that security guards keep their pagers and radio phones on during rest periods and that they remain vigilant and responsive to calls when needs arose, and that California law requires that employers relinquish any control over how employees

1 spend their break time and relieve employees of all duties, including the obligation to
2 remain on call; a rest period must be a period of rest.

3 36. Gaslamp Fish House regularly required employees to stay on-duty, and/or to work
4 through meal and rest breaks because the company failed to adequately staff the restaurant to
5 provide adequate coverage for a breaking employee's respective customers, which coerced
6 PUENTES, RIVERA, and all similarly situated and/or aggrieved employees to work through their
7 breaks, in order to provide adequate customer service.

8 37. Accordingly, Gaslamp Fish House violated Lab. Code §§ 226.7, 512, and Industrial
9 Welfare Commission (IWC) wage order No. 5-2001, subd. 12(A) by requiring PUENTES,
10 RIVERA and other similarly situated and/or aggrieved employees to work through their meal and
11 rest breaks, and by not providing meal and rest breaks without relieving them of all work duties.
12 Gaslamp Fish House is liable for premium pay, penalties, attorneys' fees and costs for doing so.

13 38. As a result of working through their breaks, PUENTES, RIVERA, and all similarly
14 situated and/or aggrieved employees frequently worked shifts of longer than six hours without
15 taking a break. In order to (unlawfully) avoid paying meal and rest break premium pay, GAS
16 LAMP FISH HOUSE regularly and unlawfully deducted, reduced, or deleted time worked by
17 employees that they had clocked into GAS LAMP FISH HOUSE's timekeeping system so that it
18 appeared that they worked less than six hours, when in fact they had worked more than six hours.
19 PUENTES, RIVERA, and all similarly situated and/or aggrieved employees were not paid for the
20 deducted time worked, and were deprived of meal and rest break premium pay. Due to this unpaid
21 time from GAS LAMP FISH HOUSE's unlawful deductions of their time worked, PUENTES,
22 RIVERA, and all similarly situated and/or aggrieved employees were not paid the minimum wage
23 for all hours worked. Additionally, because GAS LAMP FISH HOUSE's unlawful deductions of
24 their time worked, PUENTES, RIVERA, and all similarly situated and/or aggrieved employees
25 were not paid overtime wages for all hours worked in excess of 8 in a workday or 40 in a
26 workweek.

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39. Additionally, throughout the employment of PUENTES, RIVERA, and other similarly situated and/or aggrieved employees, GAS LAMP FISH HOUSE collected their tips/gratuities paid by customer credit cards, and distributed those gratuities to PUENTES, RIVERA, and other similarly situated and/or aggrieved employees, but unlawfully deducted a processing fee for doing so. California Labor Code § 351 provides in relevant part, “An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company.” By deducting a processing fee for their tips paid via credit card, GAS LAMP FISH HOUSE violated Lab. Code § 351. Each violation of §351 is deemed a misdemeanor, “punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment for not exceeding 60 days, or both.” (Lab. Code, § 354.) Additionally, under Labor Code §353, “Every employer shall keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise.” Upon information and belief, GAS LAMP FISH HOUSE did not and does not shall keep or maintain accurate records of all gratuities received by PUENTES, RIVERA, or other similarly situated and/or aggrieved employees. Accordingly, GAS LAMP FISH HOUSE is liable for civil penalties, attorney’s fees and costs, for violating §§ 351, and/or 353.

VIOLATION OF CALIFORNIA LABOR CODE §§ 226, 1174, and 1198

40. California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. Gaslamp Fish House has not provided PUENTES and RIVERA or the aggrieved employees with accurate or properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation

1 in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which
2 the employer fails to provide the employee a wage statement or fails to keep the required records
3 pursuant to Section 226(a).

4 41. The California Supreme Court decision in *Naranjo v. Spectrum Security Services,*
5 *Inc.* (2022) 13 Cal.5th 93 held that premium pay premium pay for missed meal and rest breaks
6 under Lab. Code, § 226.7, compensated employees for the work performed during a meal or rest
7 break period and therefore constituted wages within the meaning of Lab. Code, §§ 200, 203, and
8 226, employers are required to report missed-break premium pay earned in each pay period on the
9 employee's wage statement under § 226, and that employers must promptly pay all earned
10 premium pay upon termination or be liable for waiting time penalties under Labor Code §203.

11 42. During the relevant time period, because Gaslamp Fish House failed to provide rest
12 and meal breaks for PUENTES and RIVERA and all similarly situated and aggrieved employees,
13 failed to pay required rest and meal break premium pay for missed breaks, failed to pay for all
14 time worked, failed to pay any overtime for work exceeding eight hours in a day or 40 hours in a
15 week, failed to report and pay any meal and rest break premium pay, Gaslamp Fish House
16 knowingly and intentionally provided PUENTES and RIVERA and all similarly situated and/or
17 aggrieved employees with incomplete and inaccurate wage statements in violation of Labor Code
18 §226. Gaslamp Fish House issued wage statements to aggrieved employees that fail to correctly
19 list: the gross wages earned, as required by §226(a)(1); the total number of hours worked, as
20 required by §226(a)(2); net wages earned, §226(a)(5); all applicable hourly rates in effect during
21 the pay period, including but not limited to overtime rates of pay and the corresponding number of
22 hours worked at each hourly rate, as required by § 226(a)(9).

23 43. California Labor Code section 1174(d) provides that “[e]very person employing
24 labor in this state shall [k]eep a record showing the names and addresses of all employees
25 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants
26 or establishments at which employees are employed, payroll records showing the hours worked
27 daily by and the wages paid to, and the number of piece-rate units earned by and any applicable
28 piece rate paid to, employees employed at the respective plants or establishments...”

1 44. Labor Code section 1174.5 provides that employers are subject to a \$500 civil
2 penalty if they fail to maintain accurate and complete records as required by section 1174(d).
3 During the relevant time period, and in violation of Labor Code section 1174(d), Gaslamp Fish
4 House willfully failed to maintain accurate payroll records for non-exempt, aggrieved employees
5 showing the daily hours they worked and the wages paid thereto as a result of failing to record the
6 off-the-clock hours that they worked that GAS LAMP FISH HOUSE unlawfully deducted.

7 45. Additionally, section 7 of Industrial Wage Commission Wage Order 5 requires that
8 “[a]n employee’s records shall be available for inspection by the employee upon reasonable
9 request.” Gaslamp Fish House refused both requests to allow PUENTES and RIVERA and other
10 employees to inspect their time records upon request.

11 46. California Labor Code § 1199 provides that when an employer violates or refuses
12 or neglects to comply with any provision of or any order of the Industrial Welfare Commission, is
13 guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or
14 by imprisonment for not less than 30 days, or by both. By refusing to allow PUENTES and
15 RIVERA to inspect their time records, pursuant to § 1199, Gaslamp Fish House is guilty of a
16 misdemeanor and is subject to a fine of not less than one hundred dollars (\$100).

17 47. California Labor Code section 1198 provides that the maximum hours of work and
18 the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in
19 the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any
20 employees for longer hours than those fixed by the order or under conditions of labor prohibited
21 by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to
22 keep accurate time records showing when the employee begins and ends each work period and
23 meal period. During the relevant time period, Gaslamp Fish House failed, on a company-wide
24 basis, to keep records of meal period start and stop times for non-exempt, aggrieved employees in
25 violation of section 1198. Also, in light of Gaslamp Fish House’s failure to provide non-exempt,
26 aggrieved employees with 30-minute meal periods to which they were entitled, Gaslamp Fish
27 House kept no records of meal start and end times for first or second meal periods.

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1 48. Because Gaslamp Fish House failed to provide the correct net and gross wages
2 earned, applicable rates of pay, and number of total hours worked on wage statements, the meal
3 and rest break premium pay earned, non-exempt, aggrieved employees have been prevented from
4 verifying, solely from information on the wage statements themselves, that they were paid
5 correctly and in full. Instead, non-exempt, aggrieved employees have had to look to sources
6 outside of the wage statements themselves and reconstruct time records to determine whether in
7 fact they were paid correctly and the extent of underpayment, thereby causing them injury.

8 49. The non-exempt, aggrieved employees are entitled to recover penalties, attorney's
9 fees, costs, and interest thereon pursuant to Labor Code sections 226(e), 226.3, 1174, 1174.5,
10 1198, and/or 1199.

11 **VIOLATION OF CALIFORNIA LABOR CODE §§ 1182.12, 1194, 1197, 1197.1, and 1198**

12 50. California Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198
13 require employers to pay employees the minimum wage fixed by the Industrial Welfare
14 Commission ("IWC"). The payment of a lesser wage than the minimum so fixed is unlawful.
15 Compensable work time is defined in IWC Wage Orders as "the time during which an employee is
16 subject to the control of an employer, and includes all the time the employee is suffered or
17 permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 1 1070(2)(G)
18 (defining "Hours Worked").

19 51. As described above, due to Gaslamp Fish House's company-wide practices of
20 failure to compensate its non-exempt employees for all time worked resulted in minimum wage
21 violations.

22 **VIOLATION OF CALIFORNIA LABOR CODE 510 and 1198**

23 52. California Labor Code sections 510 and 1198 and the applicable IWC Wage Order
24 require employers to pay employees working more than eight (8) hours in a day or more than forty
25 (40) hours in a workweek at the rate of time-and-one-half (1 1/2) times the regular rate of pay for
26 all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.
27 The applicable IWC Wage Order further provides that employers are required to pay employees
28 working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times

1 their regular rate of pay. An employee's regular rate of pay includes all remuneration for
2 employment paid to, or on behalf of, the employee, including commissions, non-discretionary
3 bonuses and incentive pay.

4 53. As described above, Gaslamp Fish House willfully failed to pay all overtime wages
5 owed to its non-exempt, aggrieved employees, as required under § 510, 1198 and the IWC wage
6 orders. During the relevant time period, aggrieved employees were not paid overtime premiums
7 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
8 hours in a day, and/or in excess of forty (40) hours in a week.

9 **VIOLATION OF CALIFORNIA LABOR CODE 201, 202, 203, 256, 1197.1, 1197.2**

10 54. California Labor Code sections 201, 202, and 203 provide that if an employer
11 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
12 immediately, and that if an employee voluntarily leaves his or her employment, his or her wages
13 shall become due and payable not later than seventy-two (72) hours thereafter, unless the
14 employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which
15 case the employee is entitled to his or her wages at the time of quitting. Gaslamp Fish House
16 willfully failed to pay Plaintiff and other similarly situated and/or aggrieved employees who are
17 no longer employed by Gaslamp Fish House all their earned wages, including, but not limited to,
18 overtime wages, regular wages, minimum wages, and meal and rest period premium wages, either
19 at the time of discharge, or within seventy-two (72) hours of their leaving Gaslamp Fish House's
20 employ in violation of California Labor Code sections 201, 202, and 203.

21 55. Aggrieved employees are entitled to recover civil penalties, attorney's fees, costs,
22 and interest thereon, pursuant to Labor Code sections 203, 256, 1197.1, 1197.2, and/or 2699(f)-
23 (g).

24 **VIOLATIONS OF CALIFORNIA LABOR CODE § 558(a)**

25 56. California Labor Code section 558(a) provides "[a]ny employer or other person
26 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or
27 any provision regulating hours and days of work in any order of the Industrial Welfare
28 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars

1 (\$50) for each underpaid employee for each pay period for which the employee was underpaid in
2 addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation,
3 one hundred dollars (\$100) for each underpaid employee for each pay period for which the
4 employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Labor
5 Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition
6 to any other civil or criminal penalty provided by law.” Gaslamp Fish House, at all relevant times,
7 was an employer or person acting on behalf of an employer(s) who violated PUENTES and
8 RIVERA and other similarly situated and/or aggrieved employees’ rights by violating various
9 sections of the California Labor Code.

10 57. Accordingly, PUENTES and RIVERA seek the remedies set forth in Labor Code
11 section 558 for themselves, the State of California, and all other similarly situated and/or
12 aggrieved employees.

13 58. For the reasons stated herein, Plaintiff alleges that as a result of Defendants’
14 unlawful practices and policies, Plaintiff and the Class Members were:

- 15 A. Not paid for all time worked;
- 16 B. Not paid overtime for hours worked in excess of eight in a day and forty in
17 a week;
- 18 C. Not provided with all off duty meal periods;
- 19 D. Not authorized and permitted to take all rest break periods;
- 20 E. Not paid one hour’s pay for each workday in which Defendants failed to
21 authorize and permit them to take one or more timely rest periods;
- 22 F. Not paid one hour’s pay for each workday in which Defendants failed to
23 provide them with one or more timely meal periods;
- 24 G. Not indemnified for all necessary business expenditures incurred during the
25 discharge of their duties, including but not limited to credit card processing fees for their tips;
- 26 H. Not provided with accurate and complete wage statements; and
- 27 I. Not timely paid all earned and unpaid wages at the time their employment
28 ended.

FIRST CAUSE OF ACTION

FAILURE TO PAY WAGES AND/OR OVERTIME

Labor Code §§ 510, 1194, and 1199

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

59. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

60. Labor Code §§ 510, 1194 and 1199 require an employer to compensate its employees at the rate of no less than one and one-half times the regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek.

61. Plaintiff and all of the other Class Members were forced to work on a regular and consistent basis without receiving compensation for all hours worked at the proper rate. Specifically, Defendants failed to accurately track, record, and maintain accurate time-keeping records for all time actually worked by Plaintiff and all of the other Class Members, and unlawfully deducted time worked, in order to avoid paying for it, and for paying meal break premium pay. Additionally, Defendants did not pay any overtime premium wages when Plaintiff and all of the other Class Members worked more than eight hours in a day, or forty hours in a week.

62. Furthermore, Defendants required Plaintiff and all other Class Members to remain on-call during all rest and meal breaks. As a result, they are entitled to minimum wage for each and every rest and meal period provided by Defendant.

63. Additionally, Plaintiff and all of the other Class Members had to work into and/or through their present meal periods on occasion, but Defendants did not count, track, or record this working time, and did not pay Plaintiff or any of the other Class Members their regular wages for it. By their policy of failing to pay for all hours worked, and by requiring Plaintiff and members of the Proposed Classes to work through their rest and meal breaks without compensation, and to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194 and 1199.

64. As a result of the unlawful acts of Defendant, Plaintiff and the Class Members have been deprived of the require minimum wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus liquidated damages under Labor Code § 1194.2, interest and penalties thereon, attorneys' fees, and costs.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7 and 512

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

65. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

66. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

67. In relevant part, California Labor Code § 1198 states

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

68. In relevant part, In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30-minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

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

69. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30-minutes, except that when a work period of not more than

six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30-minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

70. In relevant part, California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.
- (c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

71. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30-minutes for each day

1 they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled
2 to a second 30-minute meal period when they worked more than 10 hours in a workday.

3 72. Defendants intentionally failed to provide Plaintiff and the Class Members with all
4 required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants
5 directed Plaintiff and the other Class Members to skip their meal periods, and unlawfully deducted
6 time worked so that it appeared they had not worked more than 6 hours, to avoid paying meal
7 break premium pay.

8 73. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
9 with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members
10 their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants
11 failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class
12 Members with timely meal periods.

13 74. Plaintiff is informed and believes and thereon alleges that, at all relevant times
14 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
15 which resulted in Defendants not providing the and the Class Members with all off-duty meal
16 periods required by California law.

17 75. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
18 suffered damages in amounts subject to proof to the extent they were not paid additional wages
19 owed for all meal periods not provided to them.

20 76. By reason of the above, Plaintiff and the Class Members are entitled to premium
21 wages for workdays in which one or more meal periods were not provided to them pursuant to
22 California Labor Code § 226.7.

23 **THIRD CAUSE OF ACTION**

24 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

25 **Lab. Code § 226.7**

26 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

27 77. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

28 ///

1 78. At all relevant times during the applicable limitations period, Plaintiff and the Class
2 Members have been employees of Defendants and entitled to the benefits and protections of
3 California Labor Code §§ 226.7 and 1198, and the Wage Order.

4 79. In relevant part, California Labor Code § 1198 states:

5 The maximum hours of work and the standard conditions of labor
6 fixed by the commission shall be the maximum hours of work and
7 the standard conditions of labor for employees. The employment of
 any employee for longer hours than those fixed by the order or
 under conditions of labor prohibited by the order is unlawful.

8 80. In relevant part, Section 12 of the Wage Order states:

9 Rest Periods:

10 (A) Every employer shall authorize and permit all employees to
11 take rest periods, which insofar as practicable shall be in the
12 middle of each work period. The authorized rest period time
13 shall be based on the total hours worked daily at the rate of ten
14 (10) minutes net rest time per four (4) hours or major fraction
15 thereof. However, a rest period need not be authorized for
16 employees whose total daily work time is less than three and
17 one-half (3 1/2) hours. Authorized rest period time shall be
18 counted as hours worked for which there shall be no deduction
19 from wages.

20 (B) If an employer fails to provide an employee a rest period in
21 accordance with the applicable provisions of this order, the
22 employer shall pay the employee one (1) hour of pay at the
23 employee's regular rate of compensation for each workday that
24 the rest period is not provided.

25 81. In relevant part, California Labor Code § 226.7 states:

26 (b) An employer shall not require an employee to work during a
27 meal or rest period mandated pursuant to an applicable statute,
28 or applicable regulation, standard, or order of the Industrial
 Welfare Commission, the Occupational Safety and Health
 Standards Board, or the Division of Occupational Safety and
 Health.

 (c) If an employer fails to provide an employee a meal period or
 rest period in accordance with a state law, including, but not
 limited to, an applicable statute or applicable regulation,
 standard, or order of the Industrial Welfare Commission, the
 Occupational Safety and Health Standards Board, or the
 Division of Occupational Safety and Health, the employer
 shall pay the employee one additional hour of pay at the
 employee's regular rate of compensation for each work day
 that the meal or rest period is not provided.

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1 82. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
2 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of
3 work, or major fraction thereof.

4 83. Defendants intentionally failed to authorize and permit Plaintiff and the Class
5 Members to take all 10-minute rest periods free from any work duties in accordance with the
6 Wage Order.

7 84. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
8 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
9 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
10 Plaintiff and the other Class Members to take timely rest periods.

11 85. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
12 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
13 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
14 Wage Order from the California Division of Labor Standards Enforcement. Moreover, Defendants
15 failed to pay Plaintiff and the Class Members premium wages on workdays they failed to
16 authorize and permit them to take 10-minute rest periods every four hours worked or major
17 fraction thereof.

18 86. Plaintiff is informed and believes and thereon alleges that, at all relevant times
19 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
20 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
21 take all rest breaks required by California law.

22 87. Defendants failed to provide Plaintiff with all required rest breaks in accordance
23 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
24 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
25 which resulted- in Defendants not providing the Class Members with all rest breaks required by
26 California law.

27 88. Defendants failed to pay Plaintiff the additional wages required by California Labor
28 Code § 226.7 for all rest breaks not provided to them. Plaintiff is informed and believes and

1 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
2 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
3 Class Members with additional wages for all rest breaks not provided to them as required by
4 California Labor Code § 226.7.

5 89. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
6 suffered damages in amounts subject to proof to the extent they were not paid additional wages
7 owed for all rest breaks not provided to them.

8 90. By reason of the above, Plaintiff and the Class Members are entitled to premium
9 wages for workdays in which one or more rest breaks were not provided to them pursuant to
10 California Labor. Code § 226.7.

11 **FOURTH CAUSE OF ACTION**

12 **FAILURE TO INDEMNIFY**

13 **Lab. Code § 2802**

14 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

15 91. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

16 92. In pertinent part, California Labor Code § 2802(a) states: "An employer shall
17 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
18 consequence of the discharge of his or her duties," Additionally, the Wage Order states

19 (B) When tools or equipment are required by the employer or are
20 necessary to the performance of a job, such tools and
21 equipment shall be provided and maintained by the employer,
22 except that an employee whose wages are at least two (2)
times the minimum wage provided herein may be required to
provide and maintain hand tools and equipment customarily
required by the trade or craft.

23 Wage Order, § 9 (B).

24 93. California Labor Code § 1198 prohibits employers from employing their employees
25 under conditions prohibited by the Wage Order.

26 94. At all relevant times, and as described above, Defendants required Plaintiff and the
27 Class Members to incur certain business expenses in the course of performing their duties,
28 including paying for credit card charges for processing their tips, in violation of Labor Code § 351,

1 which states in relevant part, ““An employer that permits patrons to pay gratuities by credit card
2 shall pay the employees the full amount of the gratuity that the patron indicated on the credit card
3 slip, without any deductions for any credit card payment processing fees or costs that may be
4 charged to the employer by the credit card company.” (Labor Code § 351.)

5 95. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
6 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
7 failure to indemnify Plaintiff and the Class Members for the reasonable and necessary expenses
8 they incurred during the course of performing their duties.

9 **FIFTH CAUSE OF ACTION**

10 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

11 **Lab. Code §§ 226 and 226.2**

12 **(By Plaintiff and the Class against all Defendants)**

13 96. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 97. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
15 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
16 statement showing:

17 A. Gross wages earned;

18 B. Total hours worked by the employee, except for any employee whose
19 compensation is solely based on a salary and who is exempt from payment of overtime under
20 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

21 C. The number of piece rate units earned and any applicable piece rate if the
22 employee is paid on a piece-rate basis;

23 D. All deductions, provided that all deductions made on written orders of the
24 Employee may be aggregated and shown as one item;

25 E. Net wages earned;

26 F. The inclusive dates of the period for which the employee is paid;

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1 G. The name of the employee and his or her social security number, except that
2 by January 1, 2008, only the last four digits of his or her social security number or an employee
3 identification number other than a social security number may be shown on the itemized statement;

4 H. The name and address of the legal entity that is the employer; and

5 I. All applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee.

7 98. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury if
8 the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if the
9 employer fails to provide accurate and complete information as required by California Labor Code
10 § 226(a) and the employee cannot “promptly and easily determine” from the wage statement alone
11 one or more of the following:

12 A. The amount of the gross wages or net wages paid to the employee during the
13 pay period or any of the other information required to be provided on the itemized wage statement
14 pursuant to California Labor Code § 226(a);

15 B. Which deductions the employer made from gross wages to determine the net
16 wages paid to the employee during the pay period;

17 C. The name and address of the employer and, if the employer is a farm labor
18 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
19 and address of the legal entity that secured the services of the employer during the pay period;

20 D. The name of the employee and only the last four digits of his or her social
21 security number or an employee identification number other than a social security number; and

22 E. The number of piece-rate units earned and the piece rate.

23 99. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
24 means a reasonable person would be able to readily ascertain the information without reference to
25 other documents or information.

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100. Similarly, section 6(B) of the Wage Order states

Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an itemized statement in writing showing:

- (1) all deductions;
- (2) the inclusive dates of the period for which the employee is paid;
- (3) the name of the employee or the employee's social security number; and
- (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. (See Labor Code Section 226.)

101. This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee's wages.

102. As alleged herein, at all relevant times during the applicable limitations period, Defendants violated California Labor Code section 226 because they did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Defendants failed to state in the wage statements they issued to Plaintiff and the other Class Members all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed, which did not exactly match the pre-set calendar entries in each employee's respective Simple Practice account, as described above. Defendants knowingly and intentionally did not issue either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, statements to Plaintiff and the Class Members that state all meal period premium wages earned, and all rest break premium wages earned.

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104. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the other Class Member were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code section 226(a).

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

20 105. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

106. At all relevant times during the applicable limitations period, Plaintiffs and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201-203, and the Wage Order.

24 107. Labor Code § 201 provides that all earned and unpaid wages of an employee who is
25 discharged are due and payable immediately at the time of discharge.

26 |||

27 |||

28 |||

108. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

109. The Defendants failed to pay Plaintiff and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Plaintiff, including unprovided minimum wages, regular wages, overtime premium wages, meal period premium wages, and unprovided rest break premium wages.

110. By failing to pay such earned wages to Plaintiff and the Class Members, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

111. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Class Members all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

112. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, et seq.)

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

113. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

114. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, et seq.

115. The unlawful conduct of Defendants alleged herein amount to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, et

1 seq. Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
2 gained a competitive advantage over other comparable companies doing business in California that
3 comply with their legal obligations to compensate employees for all earned wages.

4 116. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
5 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
6 Members were deprived of meal and rest period premium wages and reimbursement for mobile
7 phones and their use, and comparable money and property.

8 117. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
9 Class Members are entitled to restitution of all monies rightfully belonging to them that
10 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
11 practices.

12 118. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
13 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
14 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

15 **II. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for relief and
17 judgment against Defendants as follows:

- 18 A. An order that the action be certified as a class action with respect to
19 Plaintiff's claims for violations of California law;
- 20 B. An order that Plaintiff be appointed class representative;
- 21 C. An order that counsel for Plaintiff be appointed class counsel;
- 22 D. Unpaid wages, including missed meal period, and missed rest period wages;
- 23 E. Statutory penalties, including liquidated damages and waiting time penalties;
- 24 F. Restitution;
- 25 G. Declaratory relief;
- 26 H. Actual damages;
- 27 I. Pre-judgment interest;
- 28 J. Costs of suit;

K. Reasonable attorneys' fees; and

L. Such other relief as the Court deems just and proper.

III. DEMAND FOR JURY TRIAL

119. Plaintiff, on behalf of themselves and all other Class Members, hereby demands a jury trial all issues so triable.

KLINEDINST PC

DATED: September 26, 2024

By:



Thomas E. Daugherty

Attorneys for Plaintiffs SHAWN RIVERA and
BRI PUENTES

25371912.1

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

CAPTAIN SPIKE, LLC DBA GASLAMP FISH HOUSE, a California limited liability company; FRANCOIS PATANCHON, an individual; and NINO RABBAA, an individual, and DOES 1 through 50, inclusive

YOU ARE BEING SUED BY PLAINTIFFS

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

SHAWN RIVERA, an individual, and BRI PUENTES, an individual

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
9/26/2024 3:31:19 PM

Clerk of the Superior Court
By A. Villasenor, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court
330 West Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

24CU013669C

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Thomas E. Daugherty, Bar No. 269063 KLINEDINST PC
501 West Broadway, Suite 1100
San Diego, California 92101; (619) 400-8000/FAX (619) 238-8707

DATE:

(Fecha) September 30, 2024

Clerk, by
(Secretario)

A. Villasenor

A. Villasenor

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under:

☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Thomas E. Daugherty, Bar No. 269063 Klinedinst PC 501 West Broadway, Suite 1100 San Diego, California 92101 TELEPHONE NO.: (619) 400-8000 FAX NO.: (619) 238-8707 EMAIL ADDRESS: tdaugherty@klinedinstlaw.com ATTORNEY FOR (Name): Plaintiffs SHAWN RIVERA and BRI PUENTES	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 9/26/2024 3:31:19 PM Clerk of the Superior Court By A. Villaseñor, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego 92101 BRANCH NAME: Hall of Justice	
CASE NAME: Rivera v. Captain Spike, LLC dba Gaslamp Fish House, et al.	
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$35,000) ☐ Limited (Amount demanded is \$35,000 or less)	Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER: 24CU013669C JUDGE: DEPT.:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|---|
| a. ☐ Large number of separately represented parties
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. ☒ Substantial amount of documentary evidence | d. ☒ Large number of witnesses
e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. ☐ Substantial postjudgment judicial supervision |
|---|---|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 7
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: Sept. 26, 2024

Thomas E. Daugherty

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS: 330 W. Broadway
 MAILING ADDRESS: 330 W. Broadway
 CITY AND ZIP CODE: San Diego, 92101
 BRANCH NAME: Central
 TELEPHONE NUMBER: 619-450-7073

PLAINTIFF(S) / PETITIONER(S): Shawn Rivera

DEFENDANT(S) / RESPONDENT(S): Francois Patanchon

RIVERA VS CAPTAIN SPIKE LLC

**NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT
CONFERENCE
(CIVIL)**

CASE NUMBER:
24CU013669C

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: JOEL R WOHLFEIL

Department: C-73

COMPLAINT/PETITION FILED: 09/26/2024

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT
Case Management Conference	04/25/2025	1:30 PM	C-73

Case Management Conferences (CMCs) may be conducted virtually or in person. Anyone wishing to appear remotely should visit the "Appearing for Hearings" page for the most current instructions on how to appear for the applicable case-type/department on the court's website at www.sdcourt.ca.gov.

A Case Management Statement (JC Form #CM-110) must be completed by counsel for all parties and by all self-represented litigants and timely filed with the court at least 15 days prior to the initial CMC. (San Diego Superior Court (SDSC) Local Rules, rule 2.1.9; Cal. Rules of Court, rule 3.725).

All counsel of record and self-represented litigants must appear at the CMC, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of Alternative Dispute Resolution (ADR) options.

It is the duty of each plaintiff (and cross-complainant) to serve a copy of this Notice of Case Assignment and Case Management Conference (SDSC Form #CIV-721) with the complaint (and cross-complaint), the Alternative Dispute Resolution (ADR) Information Form (SDSC Form # CIV-730), a Stipulation to Use Alternative Dispute Resolution (ADR) (SDSC Form # CIV-359), and other documents on all parties to the action as set out in SDSC Local Rules, rule 2.1.5.

TIME FOR SERVICE AND RESPONSE: The following rules apply to civil cases except for collections cases under California Rules of Court, rule 3.740(a), unlawful detainer actions, proceedings under the Family Code, and other proceedings for which different service requirements are prescribed by law (Cal. Rules of Court, rule 3.110; SDSC Local Rules, rule 2.1.5):

- **Service:** The complaint must be served on all named defendants, and proof of service filed with the court within 60 days after filing the complaint. An amended complaint adding a defendant must be served on the added defendant and proof of service filed within 30 days after filing of the amended complaint. A cross-complaint against a party who has appeared in the action must be accompanied by proof of service on that party at the time it is filed. If it adds a new party, the cross-complaint must be served on all parties and proof of service on the new party must be filed within 30 days of the filing of the cross-complaint.
- **Defendant's appearance:** Unless a special appearance is made, each defendant served must generally appear (as defined in Code of Civ. Proc. § 1014) within 30 days of service of the complaint/cross-complaint.
- **Extensions:** The parties may stipulate without leave of court to one 15-day extension beyond the 30-day time period prescribed for the response after service of the initial complaint (SDSC Local Rules, rule 2.1.6). If a party fails to serve and file pleadings as required under this rule, and has not obtained an order extending time to serve its pleadings, the court may issue an order to show cause why sanctions shall not be imposed.

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Official Court Reporters are not normally available in civil matters, but may be requested in certain situations no later than 10 days before the hearing date. See SDSC Local Rules, rule 1.2.3 and Policy Regarding Normal Availability and Unavailability of Official Court Reporters (SDSC Form #ADM-317) for further information.

ALTERNATIVE DISPUTE RESOLUTION (ADR): The court discourages any unnecessary delay in civil actions; therefore, continuances are discouraged and timely resolution of all actions, including submitting to any form of ADR is encouraged. The court encourages and expects the parties to consider using ADR options prior to the CMC. The use of ADR will be discussed at the CMC. Prior to the CMC, parties stipulating to the ADR process may file the Stipulation to Use Alternative Dispute Resolution (SDSC Form #CIV-359).

NOTICE OF E-FILING REQUIREMENTS AND IMAGED DOCUMENTS

Effective April 15, 2021, e-filing is required for attorneys in represented cases in all limited and unlimited civil cases, pursuant to the San Diego Superior Court General Order: In Re Procedures Regarding Electronically Imaged Court Records, Electronic Filing and Access to Electronic Court Records in Civil and Probate Cases. Additionally, you are encouraged to review CIV-409 for a listing of documents that are not eligible for e-filing. E-filing is also encouraged, but not mandated, for self-represented litigants, unless otherwise ordered by the court. All e-filers are required to comply with the e-filing requirements set forth in Electronic Filing Requirements (Civil) (SDSC Form #CIV-409) and Cal. Rules of Court, rules 2.250-2.261.

All Civil cases are assigned to departments that are part of the court's "Imaging Program." This means that original documents filed with the court will be imaged, held for 30 days, and then destroyed, with the exception of those original documents the court is statutorily required to maintain. The electronic copy of the filed document(s) will be the official court record, pursuant to Government Code § 68150. Thus, original documents should not be attached to pleadings filed with the San Diego Superior Court, unless it is a document for which the law requires an original be filed. Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant, or petitioner to serve a copy of this Notice of Case Assignment and Case Management Conference (Civil) (SDSC Form #CIV-721) with the complaint, cross-complaint, or petition on all parties to the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words "IMAGED FILE" in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.

The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and may be found on the court's website at www.sdcourt.ca.gov.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego, 92101 BRANCH NAME: Central	FOR COURT USE ONLY
PLAINTIFF(S): Shawn Rivera	
DEFENDANT(S): Francois Patanchon	
SHORT TITLE: RIVERA VS CAPTAIN SPIKE LLC	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 24CU013669C

Judge: JOEL R WOHLFEIL

Department: C-73

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|--|--|
| ☐ Mediation (court-connected) | ☐ Non-binding private arbitration |
| ☐ Mediation (private) | ☐ Binding private arbitration |
| ☐ Voluntary settlement conference (private) | ☐ Non-binding judicial arbitration (discovery until 15 days before trial) |
| ☐ Neutral evaluation (private) | ☐ Non-binding judicial arbitration (discovery until 30 days before trial) |
| ☐ Other (<i>specify e.g., private mini-trial, private judge, etc.</i>): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 09/30/2024

JUDGE OF THE SUPERIOR COURT



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 24CU013669C

CASE TITLE: Rivera vs Captain Spike LLC

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.