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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MONTGOMERY NICHOLAS MANIBOG,
an individual, on behalf of himself and others
similarly situated,

Plaintiff,

vs.

SBH RESTAURANT ASSOCIATES, LLC,
a California limited liability company;
WOLFGANG PUCK FINE DINING
GROUP LLC, a California limited liability
company; WOLFGANG PUCK
WORLDWIDE, INC., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages and for All Hours Worked;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Labor Code § 226.7;
4. Rest-Break Liability Labor Code § 226.7;
5. Failure to Pay Reporting 8 CCR § 11040(5);
6. Failure to Pay for On-call Time Under Labor Code §§ 204, 510, 1194;
7. Violation Labor Code § 351;
8. Failure To Provide One Day's Rest In Seven - Labor Code § § 551, 552;
9. Violation of Labor Code § 226(a);
10. Violation of Labor Code § 221;
11. Violation of Labor Code § 204;
12. Violation of Labor Code § 203;
13. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
14. Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802;
15. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff MONTGOMERY NICHOLAS MANIBOG (hereinafter “Plaintiff”), on behalf of
2 himself and all other similarly situated non-exempt, hourly employees employed by Defendants in
3 California during the relevant period (collectively, “Employees”; individually, “Employee”),
4 complains of Defendants as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of himself and all current and former
7 Employees within the State of California who, at any time during the four years prior to the filing
8 of this lawsuit, are or were employed as non-exempt, hourly employees by Defendants SBH
9 RESTAURANT ASSOCIATES, LLC, a California limited liability company; WOLFGANG
10 PUCK FINE DINING GROUP LLC, a California limited liability company; WOLFGANG PUCK
11 WORLDWIDE, INC., a Delaware corporation, and DOES 1 through 50 (all defendants being
12 collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants violated various
13 provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission
14 (IWC), and California Business & Professions Code, and seeks redress for these violations.

15 2. Plaintiff worked as a server at Defendants’ facilities and restaurants in California.
16 Defendants employed other similarly situated Class members as servers, bussers, dishwashers,
17 hosts, cooks, and in similar and related positions in connection with restaurant and food services
18 they provided to Defendants’ customers and guests throughout California. Plaintiff and the other
19 similarly situated Class members worked at Defendants’ behest without being paid all wages due
20 and without being provided all required breaks. More specifically, Plaintiff and the other similarly
21 situated Class members were employed by Defendants and shared similar job duties and
22 responsibilities, were subjected to the same policies and practices, endured similar violations at the
23 hands of Defendants as the other Employees who served in similar and related positions.

24 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
25 and failed to record accurate time worked by these Employees, failed to pay them at the
26 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
27 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that
28 prevented them from learning of these unlawful pay practices. Defendants also failed to provide

1 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain
2 under Defendants' control and were not provided with the opportunity to take full uninterrupted,
3 timely, and duty-free rest periods and meal breaks, as required by the Labor Code and the
4 applicable paragraphs of the IWC Wage Orders.

5 4. Defendant SBH RESTAURANT ASSOCIATES, LLC ("SBH") is a California
6 company which lists its principal address with the California Secretary of State in Las Vegas,
7 Nevada with its registered corporate agent located in Sacramento, California. It lists its type of
8 business as "Restaurant and Food Services Management." Defendant SBH is listed as the
9 employer on the wage statements issued to Plaintiff by Defendants, and upon information and
10 belief to other Class members, with the same Las Vegas, Nevada address. Upon information and
11 belief, SBH employs servers at various facilities and restaurants throughout California, including
12 in Los Angeles County where Plaintiff predominantly worked. On information and belief, SBH
13 does business as Spago, Beverly Hills. Spago, Beverly Hills's website provides that it is
14 "[l]ocated in the heart of Beverly Hills along Canon Drive, Spago is the flagship restaurant of the
15 Wolfgang Puck Fine Dining Group. The sleek and simple design of the restaurant enhances the
16 iconic, market-driven menus and exceptional level of service for which the restaurant is best
17 known. Guests can choose from a seasonal a la carte menu, or explore the best of the west with the
18 chefs' multi-course California Tasting Menu."

19 5. Defendant WOLFGANG PUCK FINE DINING GROUP LLC ("WOLFGANG
20 PUCK FINE DINING") is a California company which lists its principal address with the
21 California Secretary of State in Las Vegas, Nevada with its registered corporate agent located in
22 Sacramento, California. It lists its type of business as "Restaurant Operations." Upon information
23 and belief, WOLFGANG PUCK FINE DINING creates and publishes its logos on employee
24 manuals and other employment materials that were distributed by Defendants to Plaintiff and the
25 other Class Members.

26 6. Defendant WOLFGANG PUCK WORLDWIDE, INC. ("WOLFGANG PUCK
27 WORLDWIDE") is a Delaware corporation which lists its principal address with the California
28 Secretary of State in West Hollywood, Los Angeles County, California with its registered

1 corporate agent located in Sacramento, California. It lists its type of business as “Restaurant
2 Services.” Defendant WOLFGANG PUCK WORLDWIDE is listed as the employer of the
3 director of human resources, Gina Borowitz, who signed a letter to plaintiff confirming the end of
4 his employment. Upon information and belief, WOLFGANG PUCK WORLDWIDE employs
5 servers at various facilities and restaurants throughout California, including in Los Angeles
6 County where Plaintiff predominantly worked. The Wolfgangpuck.com website states: “The
7 famed chef has built a brand that encompasses three companies: Wolfgang Puck Fine Dining
8 Group, Wolfgang Puck Catering, and Wolfgang Puck Worldwide, Inc...Today Wolfgang Puck
9 Fine Dining restaurants can be found in Las Vegas, Beverly Hills, Maui, London...”

10 7. This Court has jurisdiction over this Action pursuant to California Code of Civil
11 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
12 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
13 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
14 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
15 obligations and liabilities giving rise to this lawsuit occurred, at least in part, in Los Angeles
16 County, where Defendants’ flagship restaurant is headquartered and located and where Plaintiff
17 worked.

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

26 9. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
27 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
28 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of

1 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
2 all respects as the employers or joint employers of Employees. Defendants, and each of them,
3 exercised control over the wages, hours or working conditions of Employees, created and
4 implemented the policies and practices that governed the employment of Plaintiff and the Class
5 members and dictated their job duties and responsibilities, or otherwise suffered or permitted
6 Plaintiff and the other Employee Class members to work, or engaged, thereby creating a common
7 law employment relationship, with the Employee Class members. Therefore, Defendants, and each
8 of them, employed or jointly employed the Employee Class members.

9 **FACTUAL BACKGROUND**

10 10. The Employees who comprise the Class, including Plaintiff, are non-exempt
11 employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare
12 Commission (“IWC”). During the period of four years prior to the filing of this action through its
13 resolution, Plaintiff and the Class members were employed by Defendants and either were not
14 paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and
15 overtime rates, including for meal period and rest break premium payments. Plaintiff also
16 contends that Defendants failed to pay him and the Class members all wages due and owing,
17 including by miscalculating wages owed and by requiring off the clock work, failed to provide
18 meal and rest breaks, and failed to furnish accurate wage statements and timely pay all wages
19 owed, all in violation of various provisions of the California Labor Code and applicable
20 paragraphs of the IWC Wage Orders.

21 11. During the course of Plaintiff’s and the Class members’ employment with
22 Defendants, they were not paid all wages they were owed, including for all work performed
23 (resulting in “off the clock” work) and for all their overtime hours worked, or were not paid at the
24 correct rates. This has resulted in systematic and ongoing violations of the California Labor Code
25 and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-
26 exempt, hourly employees as servers and related positions based out of Defendants’ facilities in
27 California.

1 12. Plaintiff was employed by Defendant as a server, with duties that included serving
2 tables and guests, bringing out food, and serving drinks to Defendants' guests. Plaintiff generally
3 worked over 40 hours per week, four to five shifts per week, excluding on-call time. Plaintiff's
4 scheduled hours were generally from 2:00 p.m. through 10:00 p.m., and Plaintiff was required to
5 habitually work an on-call schedule depending on the staffing needs of Defendants' restaurants.

6 13. Despite their obligation to maintain accurate timekeeping records for hours worked
7 by the Class members, Defendants maintained improper time record-keeping systems across their
8 California restaurants and facilities.

9 14. Employees were purportedly required to record their hours worked on one of three
10 iPads located in the restaurant. Two iPads were in the back of the restaurant and the third was at
11 the front of the restaurant and doubled as the device to maintain Defendants' guest reservations.
12 There were often lines of other employees to access the iPad to clock in and Plaintiff and class
13 members were required to endure 5-10 minutes of unpaid work while waiting to clock in. In all
14 these instances, Plaintiff was not permitted to record the additional hours worked beyond his
15 scheduled hours, and thus Defendants failed to compensate Plaintiff's and on information and
16 belief other Employees' actual time worked.

17 15. Employees were also instructed to record a meal period of 30 minutes, even when
18 they did not actually take one or did so untimely or for less than 30 minutes. Defendants required
19 that Employees work through their meal periods and rest breaks in order to complete their job
20 duties and requirements within scheduled hours. On occasion, Defendants would edit in 30-minute
21 meal breaks that had not been taken resulting in more unpaid off-the -clock work.

22 16. On information and belief, Defendants' flawed timekeeping systems failed to
23 accurately record Employees' actual time worked to the detriment of Employees. To maintain the
24 appearance of compliance with Labor laws, Defendants also demanded that Employees record a
25 thirty-minute meal period. In doing so, Defendants effectively automatically deducted thirty-
26 minute meal periods from Employees' time worked. By virtue of deducting thirty minutes for
27 meal periods and manipulating daily hours actually worked to conform to scheduled hours,
28 Defendants further unlawfully deducted many hours Employees actually worked from the total

1 hours Defendants recorded for them for payroll purposes during the relevant pay period.

2 17. The failure to maintain accurate timekeeping and payroll records perpetrated by
3 Defendants has also been exacerbated by other off the clock work Defendants required their
4 Employees to endure. Plaintiff also spent approximately one hour per week checking and
5 responding to emails and calls from Defendants' management. Plaintiff was compelled to be
6 subjected to COVID testing before work, before clocking in and Plaintiff was not compensated for
7 this time. Thus, all of Plaintiff's pre- or post-shift time worked, and on information and belief that
8 of other Class members, went uncompensated.

9 18. Additionally, by virtue of requiring Plaintiff to be on call regularly, without any
10 relief, Defendants required that Plaintiff work seven days in a row without rest, and failed to pay
11 him at the correct overtime and double time rates for the demanding schedule he was required to
12 work. On information and belief, Defendants' policy and practice was to regularly schedule Class
13 members to work seven consecutive days despite the fact that such a schedule directly violates
14 Labor Code §§ 551 and 552.

15 19. Defendants also failed to pay reporting time pay to Plaintiff and Class members.
16 On several occasions, Plaintiff reported to on-call work and completed the assignment in under
17 two hours. Defendants failed to pay Employees in such instances for half of their usual or
18 scheduled day's work, at the correct regular rate of pay.

19 20. Defendants followed a similar unlawful practice, upon information and belief, in
20 connection with other Employees in a concerted effort to limit and restrict regular and overtime
21 hours earned by and owing to Plaintiff and the other Class members. Time worked off the clock
22 also caused Plaintiff and other Class members to work beyond eight hours in a shift. As a result
23 of the above-described off the clock work, Defendants failed to pay Plaintiff and Class members
24 overtime for several minutes to hours at the end of work shifts which Defendants did not record
25 in any timekeeping or payroll records.

26 21. Plaintiff was therefore not paid for all his hours worked at the required minimum,
27 overtime and double time wage rates due to Defendants' policy and practice of requiring them to
28 work off the clock and without pay. With work shifts generally scheduled for eight hours or

1 more, this unpaid off the clock work resulted in Plaintiff and the Class members working past
2 eight hours on a shift, which required that they be paid at the correct overtime rate of 1.5 times
3 their regular rate. Defendants thus systematically underpaid Plaintiff and the Class members by
4 failing to pay them at the required overtime rates for all hours over eight in a work shift or over
5 forty in a work week, and all hours over twelve in a day at the required double time rate. Upon
6 information and belief, the Class members were bound by similar scheduling and work policies
7 which Defendants required them to follow and endured similar violations at Defendants' hands as
8 Plaintiff.

9 22. Defendants have either failed to maintain timekeeping records for Plaintiff that
10 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants
11 required and the actual hours Plaintiff worked or have otherwise declined to produce them to
12 Plaintiff in response to a timely and lawful request. By failing to pay for all hours worked,
13 Defendants have committed knowing and intentional ongoing violations of the record keeping
14 requirements under the Labor Code §§ 226 and 1174.

15 23. As a result of the above-described unlawful requirements to work off the clock,
16 the failure to accurately record all hours worked and unlawful rounding, and the other wage
17 violations they endured at Defendants' hands, Plaintiff and the Class members were not properly
18 paid all wages earned and all wages owed to them by Defendants, including when working more
19 than eight hours in any given day and/or more than forty hours in any given week. As a result of
20 Defendants' unlawful policies and practices, Plaintiff and Class members incurred overtime hours
21 worked for which they were not adequately and completely compensated, in addition to the hours
22 they were required to work off the clock at their regular rates.

23 24. The failure to pay for all hours worked and underpayment of wages to Plaintiff
24 and the Class members is and has been a direct consequence of Defendants' unlawful
25 compensation policies and practices, which upon information and belief applied uniformly to the
26 Class members working based out of Defendants' locations and facilities. As a result of the
27 above-described unlawful requirements to work off the clock and regular rate miscalculation, the
28 failure to accurately record all hours worked and pay wages at the correct rates, and the other

1 wage violations they endured at Defendants' hands, Plaintiff and the Class members were not
2 properly paid all wages earned and all wages owed to them by Defendants, including when
3 working more than eight hours in any given day and/or more than forty hours in any given week.

4 25. Moreover, Defendants required Plaintiff and Class members to attend training
5 sessions to obtain food and alcohol certifications. These trainings lasted from about 1-2 hours and
6 Plaintiff and Class Members were required to attend these trainings off the clock and were not
7 paid for this time.

8 26. Furthermore, tips paid to Plaintiff were not always listed or were listed incorrectly
9 on Plaintiff's wage statements. Plaintiff and Class members would review all their tips for each
10 shift and total them up and often noted that their tips were not timely paid in the corresponding
11 pay period or in their entirety, if at all. In those instances, Plaintiff and the Class members were
12 compelled to complain to Defendants' managers that their tips were not timely paid and were not
13 paid in their entirety, and Plaintiff further contends that the monthly gratuity reports were not
14 properly distributed to Employees.

15 27. Moreover, Defendants altered the "tipping policy" to redistribute tips to those
16 employees who did not provide direct services to the guests by reducing the tips received by the
17 servers. Thus, Plaintiffs were not paid in the current or corresponding pay period for all their tips
18 Defendants' required tip arrangement violated Labor Code §351, including to the extent
19 Defendants deducted taxes and withholding from the gratuities, because supervisors drew from the
20 tip pool, and because Plaintiffs were not timely paid all the gratuities they were entitled to receive
21 in the appropriate pay period when they were earned.

22 28. Therefore, from at least four years prior to the filing of this lawsuit and continuing
23 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
24 hours worked and failing to pay minimum wages for all time worked, as required by California
25 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
26 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
27 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
28 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of

1 Labor Code § 510 and the corresponding sections of IWC Wage Orders. To the extent Defendants
2 paid Plaintiff and the Class members and other forms of remuneration above and beyond their
3 hourly pay, upon information and belief Defendants miscalculated and therefore underpaid any
4 overtime they paid during these pay periods by failing to include all forms of remuneration in the
5 regular rate used to calculate and pay overtime.

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

13 30. More specifically, Plaintiff worked shifts that entitled him to at least one meal
14 period, but Defendants' required Plaintiff and the Class members to prioritize work over taking
15 proper meal periods. In fact, Defendants made no effort to even schedule or otherwise account for
16 time for Plaintiff and the Class members to use for duty-free, net thirty minute meal periods.
17 Moreover, Plaintiff was prohibited from leaving the customers' premises for meal periods and rest
18 breaks. To the extent Defendants required Plaintiff to work over ten hours on a work shift,
19 Defendants also failed to provide second meal periods and Defendants have produced no evidence
20 of premium payments for meal period violations under Labor Code 226.7.

21 31. Defendants thus failed to provide all the legally required unpaid, off-duty meal
22 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
23 members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
24 members were required to perform work as ordered by Defendants for more than five hours during
25 a shift without receiving compliant meal periods. Additionally, as addressed above, Defendants
26 followed a practice of requiring off the clock work in a manner that would impact when
27 Employees were to receive meal periods and rest breaks and required them to respond to work
28 inquiries and other demands during breaks, thus leading to further violations.

1 32. Upon information and belief, Defendants' systems did not automatically generate a
2 meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours
3 into a work shift or in the event the time punch records reflected a meal period of less than thirty
4 minutes. However, upon information and belief, in the event Defendants did pay any meal period
5 premiums, they did so at the employee's customary regular rate of hourly compensation without
6 including all forms of remuneration in that hourly rate calculation, for example by omitting
7 bonuses, wage differentials and prevailing wages and the like from the rate at which meal
8 premiums were paid.

9 33. As a result, Defendants' failure to provide Plaintiff and the Class members with all
10 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
11 periods is and will be evidenced by Defendants' business records, or lack thereof. Therefore, for at
12 least four years prior to the filing of this action and through to the present, Plaintiff and the Class
13 members were unable to take off-duty breaks or were otherwise not provided with the opportunity
14 to take required breaks as required under the Labor Code and Wage Orders due to Defendants'
15 policies and practices. On the occasions when Plaintiff and the Class members were provided with
16 a meal period, it was often untimely or interrupted, or was impermissibly shortened, and
17 Employees were not provided with one hour's wages in lieu thereof. Meal period violations thus
18 occurred in one or more of the following manners:

- 19 (a) Class members were not provided full thirty-minute duty free meal periods
20 for work days in excess of five hours and were not compensated one hour's
21 wages in lieu thereof, all in violation of, among others, Labor Code §§
22 226.7, 512, and the applicable Industrial Welfare Commission Wage
23 Order(s);
- 24 (b) Class members were not provided second full thirty-minute duty free meal
25 periods for work days in excess of ten hours;
- 26 (c) Class members were required to work through at least part of their daily
27 meal period(s);
- 28 (d) Meal periods were provided after five hours of continuous work during a

1 shift; and

2 (e) Class members were restricted in their ability to take a full thirty-minute
3 meal period and were not permitted to leave their work premises during
4 meal periods and were otherwise required to remain under Defendants'
5 control during meal periods.

6 34. Similar violations resulted from Defendants' failure to authorize and permit
7 Plaintiff and the Class members to take duty-free, net ten minute rest breaks for every four hours
8 of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class members
9 were either not authorized permitted the opportunity to take a rest break, or were required to
10 remain under Defendants' control and respond to instructions from management and job and
11 customer demands if and when they even attempted to take one. Upon information and belief,
12 Defendants also failed to authorize and permit employees to leave the worksite during rest breaks,
13 evidencing Defendants' policy and practice of requiring Plaintiff and the Class members to
14 remain under their control during required off-duty rest break times.

15 35. Defendants thus failed to authorize and permit duty-free ten minute rest breaks as
16 required under the Labor Code and IWC Wage Orders. In fact, Defendants made no effort to even
17 schedule or otherwise account for time for Plaintiff and the Class members to use for duty-free,
18 net ten minute rest breaks. This common and unlawful policy uniformly applied to the Employees
19 during the relevant period, meaning Defendants' rest break policy was not to schedule or
20 otherwise authorize and permit them. Plaintiff and the Class members worked eight to twelve
21 hours on an average shift, and were required to receive at least two rest breaks or three rest breaks
22 on shifts over ten hours. Given the work demands, and pressure from Defendants' management,
23 Plaintiff and the Class members were compelled to not take rest breaks despite working extended
24 shifts. Defendants have produced no evidence of any payments for rest break violations under
25 Labor Code § 226.7. To the extent Defendants have paid any such premiums, upon information
26 and belief they failed to include all forms of remuneration, including bonuses, wage differentials,
27 prevailing wages and the like in the regular rate at which Defendants paid the premium.

1 36. Defendants' uniformly applied policies and practices thus resulted in untimely and
2 shortened or on-duty rest breaks when they were authorized and permitted. Plaintiff and the Class
3 members worked shifts of at least eight hours, which required at least two rest breaks, and often
4 worked shifts over ten hours, which required at least three rest breaks. Even on the occasions
5 when Defendants authorized and permitted Plaintiff to take a first rest break, he was not
6 permitted to take a second or a third break, and those that were provided were often late and
7 generally interrupted by job duties and requirements.

8 37. During rest periods, employers must relieve employees of all duties and relinquish
9 control over how employees spend their time. Plaintiff and the Class members were and are under
10 Defendants' control when they are working through rest breaks and remaining under Defendants'
11 control. Defendants have also provided either impermissibly shortened or untimely meal and rest
12 breaks to Plaintiff and the Class members. Plaintiff and the Employees in the Class were thus not
13 authorized and permitted to take lawful rest periods, were systematically required by Defendants
14 to work through or during breaks, and were not provided with one hour's wages in lieu thereof.
15 They were required to remain on-duty during breaks or portions of their breaks, thus making
16 them either untimely or shortened and on-duty, and they were also prevented from leaving the
17 worksite and otherwise remain under Defendants' control during rest breaks under Defendants'
18 uniformly applied policies and practices. Rest period violations therefore arose in one or more of
19 the following manners:

20 (a) Class members were required to work without being provided a minimum
21 ten minute rest period for every four hours or major fraction thereof worked
22 and were not compensated one hour of pay at their regular rate of
23 compensation for each workday that a rest period was not provided, and to
24 the extent Defendants paid any premiums, they failed to include all forms of
25 remuneration in the regular rate used to calculate and pay them.

26 (b) Class members were not authorized and permitted to take timely rest periods
27 for every four hours worked, or major fraction thereof;
28

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

4 38. From at least four years prior to the filing of this lawsuit and continuing to the
5 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
6 deducting the Employees' earned wages, including by requiring off the clock work during breaks
7 and before and after work shifts and by miscalculating the regular rate and accordingly
8 underpaying overtime wages and meal and rest break premiums. By not compensating Employees
9 for all hours worked at the correct rates, Defendants unlawfully deducted wages earned by and
10 owed to Plaintiff and the Class members, in violation of Labor Code § 221.

11 39. Defendants also violated California Labor Code § 246 by not providing all
12 required paid sick days to Plaintiff and the similarly aggrieved Employees. Labor Code § 246
13 provides that an Employee who "works in California for the same employer for 30 or more days
14 within a year from the commencement of employment is entitled to paid sick days as specified in
15 this section." Paid sick time for nonexempt employees shall be calculated in the same manner as
16 the regular pay rate for the workweek in which the employee uses the paid sick time. Defendants
17 failed to provide Plaintiff and the other similarly Aggrieved Employees with all their required and
18 earned sick days paid at the correct rate of pay, in violation of Labor Code § 246. Additionally
19 and upon information and belief, Defendants have failed to provide COVID-19 supplemental sick
20 leave to the Class members during the relevant time period, including by failing to provide two
21 work weeks of COVID-19 supplemental paid sick leave paid at the correct rates as required under
22 Labor Code §§ 248.1 and 248.2 and including damages and penalties as these sections are
23 enforced through Labor Code § 248.5, which requires that: "If paid sick days were unlawfully
24 withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or
25 two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate
26 penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty."
27 Plaintiff accordingly seeks this relief available for Defendants' failure to provide Employees with
28 all their required and earned sick days and all their COVID-19 supplemental sick leave in

violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

40. Upon information and belief, Defendants also failed to provide Employees such as Plaintiff at the time of his employment and thereafter with written notice complying with all the requirements of Labor Code § 2810.5, which provides that: "At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing" specific required information. Upon information and belief, Defendants failed to provide this information to the Aggrieved Employees as required under Labor Code § 2810.5. Defendants were required to provide Plaintiff and the aggrieved employee Class members certain specific information upon hiring pursuant to California Labor Code § 2810.5. Defendants failed to provide Plaintiff with any such information when he was hired, or have failed to produce it, and upon information and belief Defendants committed similar violations in connection with similarly situated and aggrieved Class members.

41. As a result of these illegal policies and practices, Defendants also engaged in and enforced the following additional unlawful practices and policies against Plaintiff and the Class members he seeks to represent:

- (a) failing to pay all wages owed to Class members who either were discharged, laid off, or resigned in accordance with the requirements of Labor Code §§ 201, 202, 203;
- (b) failing to pay all wages owed to the Class members twice monthly in accordance with the requirements of Labor Code § 204;
- (c) failing to pay Class members all wages owed, including all meal and rest period premium wages, and failing to pay them at the regular rate of compensation;
- (d) failing to maintain accurate records of Class members' hours worked and earned wages and meal periods in violation of Labor Code §§ 226 and

1 1174(d) and section 7 of the applicable IWC Wage Orders; and

2 (e) failing to produce timekeeping records in response to Plaintiff's timely and
3 lawful request to receive them under these authorities.

4 42. Defendants have also consistently failed to provide Class members with timely,
5 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,
6 including by the above-described requirement of off the clock work, failure to pay all overtime
7 and double time wages owed and failure to pay them at the appropriate premium rates, and failure
8 to pay premium wages for unprovided or otherwise unlawful meal and rest breaks, or by
9 miscalculating any overtime or meal period or rest break premium wages and by the systematic
10 and unlawful deductions Defendants took from Employee wages. Defendants have also made it
11 difficult to account with precision for the unlawfully withheld wages and meal and rest period
12 compensation owed to Plaintiff and the Class, during the liability period, including because they
13 did not calculate the regular rate of pay correctly when paying overtime or meal period premiums
14 and because they did not implement and preserve a record-keeping method as required for non-
15 exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable
16 California Wage Orders. Upon information and belief, time clock punches were not maintained or
17 were not accurately maintained for work shifts and meal periods. Defendants also failed to
18 accurately record and pay for all regular and overtime hours worked and submitted by Plaintiff
19 and the Class members, including by failing to pay all overtime hours at the correctly calculated
20 overtime premium rate.

21 43. Defendants also provided Plaintiff and the Class members with wage statements
22 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
23 For the same reasons as explained above, Plaintiff and the Class members were provided with
24 unlawful wage statements that failed to reflect all hours worked and failed to pay for all overtime
25 hours or failed to pay overtime wages at the correct overtime premium rate, and Defendants
26 miscalculated meal and rest break premiums, and sick time if and when they did pay them.
27 Defendants followed this unlawful policy and practice even though both Plaintiff and Defendants
28 were aware that Plaintiff and the Class members worked more total hours than were reflected on

1 the wage statements, including overtime hours, and tips and were underpaid by regular rate
2 miscalculation. Additionally, Regular Pay and Overtime Pay were not designated on Plaintiff's
3 wage statements. Upon information and belief, wage statements show that a "service charge" was
4 paid at the same time as overtime which was paid by Defendants at varying rates. Additionally,
5 upon information and belief, wage statements generated by the Defendants showed employees
6 were paid a "Shift Premium" in the Year to Date section without specifying what hours are
7 covered by a "Shift Premium." Plaintiff and the Employees in the Class were unable to discern
8 from their wage statements alone the actual hours they worked in total, during a pay period and the
9 rates they were paid for those hours worked, and the amount of tips earned during that time period.

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

19 45. Defendants also required Plaintiff and the Class members to work hours off the
20 clock for which they were not compensated. They were required to endure off the clock work
21 addressed above, including during interrupted or otherwise on-duty meal and rest periods and were
22 not provided with sick pay and supplemental sick leave and were subjected to systematic off the
23 clock work. Defendants also failed to pay all overtime premium wages owed for work conducted
24 on a work shift and a workday or failed to pay it at the correct rate, as addressed above. Therefore,
25 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to
26 Plaintiff and other similarly situated Employees at the time of their termination or within seventy-
27 two hours of their resignation, as required by California law, including Labor Code § 203.

28

46. Additionally, from at least four years prior to the filing of this lawsuit and continuing to the present, Defendants have regularly required Plaintiff and the Class members to incur necessary business expenses in the course of performing their required job duties without reimbursement. These included the required use of personal cell phones for work-related activities, such as texting, calling, and communicating with Management and work specific applications for about one hour per day. This also included the purchase of a wine key, lighter, and server book required to do Plaintiff's job. Class members must be reimbursed for these necessary business expenses under Labor Code § 2802, and Defendants systematically failed to do so.

47. In light of the foregoing, Plaintiff and the Employees in the Class bring this action pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4, 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1198, 1198.5, 1199, 2802, 2810.5, and California Code of Regulations, Title 8, section 11000 *et seq.*

48. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff and the Class members seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or fraudulent practices alleged in this Complaint.

CLASS ALLEGATIONS

49. Plaintiff brings this class action on behalf of himself, and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as determined by the Court (“the Class Period”), and who have been employed as non-exempt, hourly employees within the State of California.” This includes servers, bussers, dishwashers, hosts, cooks, and those in similar and related positions in connection with providing restaurant related services to Defendants’ customers throughout California. Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

- 1 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
2 compensated for all hours worked for Defendants at the applicable minimum wage.
- 3 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
4 compensated for all hours worked for Defendants at the required rates of pay, including for all
5 hours worked in excess of eight in a day and/or forty in a week.
- 6 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
7 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
8 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.
- 9 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
10 Defendants' policy and/or practice of failing to authorize and permit Employees to take
11 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
12 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.
- 13 e. Subclass 5. Reporting Time Pay Subclass: All Class members who were not
14 compensated reporting time pay.
- 15 f. Subclass 6. On-Call Subclass: All Class members who were not compensated for
16 all hours worked for Defendants at the required rates of pay, including for all hours worked more
17 than eight in a day and/or forty in a week while they were on-call.
- 18 g. Subclass 7. Day of Rest Subclass. All Class members who, within the applicable
19 limitations period, were not provided one day's rest from seven under Labor Code §§551 and 552.
- 20 h. Subclass 8. Wage Statement Subclass. All Class members who, within the
21 applicable limitations period, were not provided with accurate itemized wage statements.
- 22 i. Subclass 9. Unauthorized Deductions from Wages Subclass. All Class members
23 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,
24 including by requiring off the clock work.
- 25 j. Subclass 10. Failure to Timely Pay Wages Twice Monthly Subclass. All Class
26 members who were subject to Defendants' policy and practice of not timely paying all wages
27 earned when they were due and payable at least twice monthly.
- 28

1 k. Subclass 11. Termination Pay Subclass. All Class members who, within the
2 applicable limitations period, either voluntarily or involuntarily separated from their employment
3 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
4 termination.

5 l. Subclass 12. Payroll Records Subclass. All Class members who were subject to
6 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
7 by California wage-and-hour laws.

8 m. Subclass 13. Expense Reimbursement Subclass. All Class members who incurred
9 necessary and reasonable expenses in connection with performing their job duties for Defendants
10 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

11 n. Subclass 14. UCL Subclass. All Class members who are owed restitution as a
12 result of Defendants' business acts and practices, to the extent such acts and practices are found to
13 be unlawful, deceptive, and/or unfair.

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

18 51. Defendants, as a matter of company policy, practice and procedure, and in violation
19 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,
20 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
21 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time
22 worked by Plaintiff and the other members of the Class, even though Defendants enjoyed the
23 benefit of this work, required Employees to perform this work and permitted or suffered to permit
24 this work. Defendants have uniformly denied these Class members wages to which these
25 employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in
26 order to unfairly cheat the competition and unlawfully profit.

27 52. This action has been brought and may properly be maintained as a class action
28 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community

of interest in this litigation and the proposed Class is easily ascertainable from the employment records for Plaintiff and the Class members that Defendants are required to maintain under California law.

A. Numerosity

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

B. Commonality

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

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants paid reporting time pay under the applicable wage order and 8 CCR § 11040(5);
- e. Whether Defendants failed to compensate Employees for on-call time;
- f. Whether Defendants failed to provide one day's rest from seven under Labor Code §§ 551 and 552;
- g. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or

premium pay in lieu thereof;

- h. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Employees to take requisite rest breaks, or provide premium pay in lieu thereof;
- i. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements and wage statements that omitted many of the Section 226(a) requirements.
- j. Whether Defendants violated Labor Code § 221;
- k. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- l. Whether Defendants' conduct was willful;
- m. Whether Defendants violated Labor Code § 226 and § 1174 and §1198 and the IWC Wage Orders by failing to maintain accurate records of Class members' earned wages and work periods;
- n. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- o. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- p. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees;
- q. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not providing employees with all required sick days and COVID-19 supplemental sick leave;
- r. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- s. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- t. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

1 **C. Typicality**

2 55. The claims of the named Plaintiff are typical of those of the other Employees. The
3 Employee Class members all sustained injuries and damages arising out of and caused by
4 Defendants' common course of conduct and uniformly applied policies in violation of statutes, as
5 well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for
6 the off the clock work and meal and rest violations he was required to endure are typical of those
7 of the other Class members.

8 **D. Adequacy of Representation**

9 56. Plaintiff will fairly and adequately represent and protect the interest of the
10 Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are
11 experienced and competent in litigating employment class actions.

12 **E. Superiority of Class Action**

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

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

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

8 60. Defendants, as prospective and actual employers of the Employees in the Class,
9 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
10 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
11 Employees as well as the effect of any alleged arbitration agreements that may have been forced
12 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
13 and policies, most notably intentionally refusing to pay for all hours actually worked which should
14 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
15 agreements and policies and practices on the Employees and Class as a whole.

16 61. Plaintiff and the Employees in the Class did not discover the fact that they were
17 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
18 any discussion about Plaintiff's and the Class members' waiver of their Constitutional rights of
19 trial by jury, to collectively organize and oppose unlawful pay practices under California law as
20 well as obtain injunctive relief preventing such practices from continuing. As a result, the
21 applicable statutes of limitation tolled until such time as Plaintiff and the Class members
22 discovered their claims.

23 **FIRST CAUSE OF ACTION**
24 **FAILURE TO PAY MINIMUM WAGES**
25 **(Against All Defendants)**

26 62. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.
28

1 63. Defendants failed to pay Employees minimum wages for all hours worked.
2 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
3 would work hours and not receive wages, including as alleged above in connection with off the
4 clock work, including all the time required to remain on duty and under Defendants' control
5 during breaks and due to the work demands placed upon them by Defendants' management and
6 by paying what should have been overtime hours as regular hours. Defendants' uniformly applied
7 policies required systematic off the clock work and underpayment of all wages owed to
8 Employees over a period of time, while benefiting Defendants. During the relevant time period,
9 Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class members,
10 including by requiring systematic off the clock work. To the extent any local wage ordinances
11 were also applicable to paying the employees an hourly rate above the minimum wage rate,
12 Defendants failed to comply with the local wage ordinances. To the extent any prevailing rates
13 and fringe benefits were also applicable to paying the employees an hourly rate above the
14 minimum wage rate, Defendants failed to comply with the prevailing rate requirements.
15 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,
16 applicable to the Class as a whole, as a result of implementing a uniform policy and practice that
17 denied accurate compensation to Plaintiff and the other members of the Class as to minimum
18 wage pay.

19 64. In California, employees must be paid at least the applicable state minimum wage
20 for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and
21 paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Also, pursuant to
22 California Labor Code § 204, other applicable laws and regulations, and public policy, an
23 employer must timely pay its employees for all hours worked. Defendants failed to do so.

24 65. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
25 states: "The minimum wage for employees fixed by the commission is the minimum wage to be
26 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The
27 applicable minimum wage rate fixed by the commission for work during the relevant period is
28 found in the Wage Orders.

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

7 67. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
8 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
9 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
10 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
11 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
12 the absence of a contractually agreed upon one.

13 68. In committing these violations of the California Labor Code, Defendants
14 inaccurately recorded, or required Plaintiff and the Class members to input times that did not
15 reflect their actual hours worked, or miscalculated hours or rates or otherwise underpaid the actual
16 time worked by Plaintiff and other members of the Class, including by requiring off the clock
17 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of
18 all earned wages, and other benefits in violation of the California Labor Code, the Industrial
19 Welfare Commission requirements and other applicable laws and regulations. As a result of these
20 violations, Defendants also failed to timely pay all wages earned in accordance with California
21 Labor Code § 1194.

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

26 70. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
27 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
28 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to

1 pay each employee minimum wages.

2 71. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
3 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
4 interest thereon.

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

8 73. Plaintiff and the Class members are entitled to recover the unpaid minimum wages
9 (including double minimum wages) and local wage ordinance wages and liquidated damages in an
10 amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's
11 fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other
12 members of the Class further request recovery of all unpaid wages, according to proof, interest,
13 statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as
14 provided by the California Labor Code and/or other applicable statutes. To the extent minimum
15 wage compensation is determined to be owed to the Class members who have terminated their
16 employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore
17 these individuals are also be entitled to waiting time penalties under California Labor Code § 203,
18 which penalties are sought herein on behalf of these Class members. Defendants' failure to timely
19 pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code §
20 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as
21 alleged herein was willful, intentional, and not in good faith. Further, Plaintiff and other Class
22 members are entitled to seek and recover statutory costs.

23 **SECOND CAUSE OF ACTION**

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

25 **(Against All Defendants)**

26 74. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.

1 75. California Labor Code § 1194 provides that “any employee receiving less than the
2 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
3 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
4 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” The action
5 may be maintained directly against the employer in an employee’s name without first filing a
6 claim with the Division of Labor Standards and Enforcement.

7 76. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
8 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
9 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular
10 hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40)
11 hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any
12 one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12)
13 hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of
14 work in a workweek.

15 77. Defendants had a consistent policy of not paying Employees wages for all hours
16 worked, including by requiring off the clock work as addressed above, by unlawful deductions, by
17 under-reporting actual hours worked, and by requiring Employees to do so as well. Defendants
18 have also failed to include all forms of remuneration in the regular rate of pay used to calculate
19 and pay overtime, and failed to begin paying overtime when it was incurred due to the off the
20 clock work, as detailed above.

21 78. Defendants thus had a consistent policy of not paying Employees wages for all
22 hours worked, including hours at their required regular, overtime, and double-time rates.
23 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
24 and/or modified certain employees’ hours, including Plaintiff’s, or required Plaintiff and the Class
25 members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and the
26 Class members all earned and owed straight time and overtime wages and other benefits, in
27 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
28 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants

1 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
2 employees to work through meal periods or remain under Defendants' control when they were
3 required to be clocked out or to otherwise work off the clock to complete their daily job duties and
4 respond to demands from customers and managers.

5 79. Therefore, Employees were not properly compensated, nor were they paid overtime
6 rates for hours worked in excess of eight hours in a given day, and/or forty hours in a given week.
7 Based on information and belief, Defendants did not make available to Employees a reasonable
8 protocol for correcting time records when Employees worked overtime hours or to fix incorrect
9 time entries or those that Defendants unlawfully under-recorded to the Employee's detriment.
10 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated
11 Class members to work through meal periods when they were required to be clocked out or to
12 otherwise work off the clock to complete their daily job duties.

13 80. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
14 regular wages owed and overtime compensation for all hours worked, as required by California
15 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
16 IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly calculate the
17 regular rate used to calculate and pay overtime, and meal and rest premiums, as addressed above.

18 81. Additionally, Labor Code § 558(a) provides "any employer or other person acting
19 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
20 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
21 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
22 pay period for which the employee was underpaid in addition to an amount sufficient to recover
23 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
24 underpaid employee for each pay period for which the employee was underpaid in addition to an
25 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
26 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in
27 this section are in addition to any other civil or criminal penalty provided by law." Defendants
28 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC

1 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
2 Code § 558.

3 82. Defendants' failure to pay compensation in a timely fashion also constituted a
4 violation of California Labor Code § 204, which requires that all wages shall be paid
5 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
6 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
7 and overtime compensation earned by Employees. Each such failure to make a timely payment of
8 compensation to Employees constitutes a separate violation of California Labor Code § 204.

9 83. Employees have been damaged by these violations of California Labor Code §§
10 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
11 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
12 than \$100 for causing Employees "to work for longer hours than those fixed, or under conditions
13 of labor prohibited by an order of the commission" or if the employer pays "a wage less than the
14 minimum fixed by an order of the commission" or "violates...any provision of this chapter or
15 any order or ruling of the commission."

16 84. Consequently, pursuant to the California Labor Code, including Labor Code §§
17 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
18 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
19 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
20 their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties
21 against Defendants, and each of them, and any additional sums as provided by the Labor Code
22 and/or other statutes.

23 **THIRD CAUSE OF ACTION**

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

25 **(Against All Defendants)**

26 85. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.

28

1 86. Employees regularly worked shifts greater than five (5) hours and in some
2 instances, greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the
3 applicable IWC Wage Order, an employer may not employ someone for a shift of more than five
4 (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or
5 for a shift of more than ten (10) hours without providing him or her with a second meal period of
6 not less than thirty (30) minutes.

7 87. Defendants failed to provide Employees with meal periods as required under the
8 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
9 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
10 provided them after Employees worked beyond the fifth hour of their shifts or Employees
11 otherwise had them shortened and interrupted by work demands and requirements to perform off
12 the clock work and remain under Defendants' control. Furthermore, upon information and belief,
13 on the occasions when Employees worked more than ten hours in a given shift, they did so
14 without receiving a second uninterrupted thirty-minute meal period as required by law.

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

19 89. Moreover, Defendants failed to compensate Employees for each meal period not
20 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
21 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
22 employee a meal period in accordance with this section, the employer shall pay the employee one
23 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
24 period is not provided. As detailed above, on the occasions when Defendants did pay any meal
25 period premiums, they upon information and belief underpaid them by miscalculating the regular
26 rate of compensation by not including all forms of remuneration in it. Defendants thus failed to
27 compensate the Employees in the Class for each meal period not provided or inadequately
28 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC

1 Wage Order.

2 90. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
3 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
4 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or
5 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory
6 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and
7 other statutes and applicable IWC Wage Order paragraphs.

8 **FOURTH CAUSE OF ACTION**

9 **REST-BREAK PERIOD LIABILITY UNDER LABOR CODE § 226.7**

10 **(Against All Defendants)**

11 91. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
12 full herein.

13 92. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
14 provide that employers must authorize and permit all employees to take rest periods at the rate of
15 ten minutes net rest time per four (4) work hours.

16 93. Employees consistently worked consecutive four hour shifts and were generally
17 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
18 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
19 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
20 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
21 breaks of not less than ten minutes for each consecutive four hour shifts. Defendants made no
22 effort to authorize and permit Plaintiff and the Class members to take lawful rest breaks.
23 Employees were often required to work or to otherwise remain under Defendants' control during
24 rest periods, including by responding to work requirements, being prohibited from leaving the
25 worksites, and had breaks provided untimely as a result of the above described off the clock work.
26 94. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage
27 Orders provide that if an employer fails to provide an employee rest period in accordance with this
28 section, the employer shall pay the employee one hour of pay at the employee's regular rate of

1 compensation for each workday that the rest period is not provided. Defendants failed to do so.

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

5 96. Defendants failed to authorize and permit Plaintiff and the Class members to take
6 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
7 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
8 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
9 12 and 20 of the applicable IWC Wage Orders. To the extent Defendants paid any rest break
10 premiums, they upon information and belief, underpaid them by miscalculating the regular rate of
11 compensation by not including all forms of remuneration in it. Defendants thus failed to
12 compensate the Employees in the Class for each rest period not provided or inadequately
13 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
14 Wage Order.

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

20 **FIFTH CAUSE OF ACTION**

21 **FAILURE TO PAY REPORTING TIME PAY UNDER WAGE ORDER 16-2001,**

22 **8 CCR § 11040(5)**

23 **(Against All Defendants)**

24 98. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
25 full herein.

26 99. Wage Order 4-2001 provides that "[e]ach workday an employee is required to report
27 for work and does report, but is not put to work or is furnished less than half said employee's usual
28 or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but

1 in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate
2 of pay, which shall not be less than the minimum wage.” Cal. Code Regs., tit, 8, § 11040(5)(A).

3 100. As set forth herein, Plaintiff and Employees were required to report for on-call work
4 but were only compensated for the actual time spent working on the assignment and not paid for
5 their on-call time. Defendants failed to pay Plaintiff and Employees for half of their scheduled days’
6 work in violation of the applicable Wage Order.

7 101. As a direct and proximate results of Defendants' actions as set forth herein, Plaintiff
8 and the Class have been damaged in that Plaintiff and the Class have not been paid all required
9 reporting time pay.

10 102. Consequently, pursuant to the California Labor Code, including Labor Code §§
11 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
12 paragraphs 5(A-D), Defendants are liable to Employees for the full amount of all their unpaid
13 wages, including reporting time pay, with interest, plus their reasonable attorneys’ fees and costs,
14 as well as the assessment of any statutory penalties against Defendants, and each of them, and
15 any additional sums as provided by the Labor Code and/or other statutes.

16 **SIXTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ON-CALL PAY UNDER LABOR CODE §§ 204, 510, 1194,**
18 **and 8 CCR § 11160(3)(4)**
19 **(Against All Defendants)**

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

22 104. Wage Order 16-2001 provides that “hours worked means the time during which an
23 employee is subject to the control of an employer and includes all the time the employee is suffered
24 or permitted to work, whether or not required to do so.” (*Internal quotations omitted*, Cal. Code
25 Regs., tit, 8, § 11160(2)(J)).

26 105. As set forth herein, Defendants followed a common practice and policy of requiring
27 Plaintiff and Employees to remain on-call after normal scheduled hours, without proper
28 compensation. Defendants scheduled Employees for on-call shifts on the same day as the employees

1 were also scheduled for regular shifts (e.g., by tacking the on-call shift at the end of the regular
2 shift). Plaintiff and Employees remain under the control of Defendants while they are under
3 Defendant's control and on-call waiting for after-hours work orders to come in and thus were
4 compelled to refrain from other personal activities and could not use their off-duty time for their
5 own purposes. During this waiting time, Employees cannot easily trade in their on-call
6 responsibilities with another employee because there may not be another worker available for
7 coverage.

8 106. As a direct and proximate results of Defendants' actions as set forth herein, Plaintiff
9 and the Class have been damaged in that Plaintiff and the Class have not been paid all required
10 wages, including overtime pay, associated with their on-call work.

11 107. The forgoing uncompensated work caused Plaintiff and Employees to work in excess
12 of eight (8), ten (10), and twelve (12) hours a day, and/or forty (40) hours a week, entitling them to
13 overtime and double-time wages which were systemically denied.

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

20 109. Employees have been damaged by these violations of California Labor Code §§ 204
21 and 510 (and the relevant orders of the Industrial Welfare Commission).

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

SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 351
(Against All Defendants)

111. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

112. Labor Code § 351 provides that "No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for". The section has been interpreted to allow for involuntary tip pooling so long as the tip pooling policy is not used to compensate the owner(s), manager(s), or supervisor(s) of the business, even if these individuals should provide direct table service to a patron or are in the chain of service to a patron. In addition, the policy must be fair and reasonable. Therefore, your employer can require that you share your tips with other staff that provide service in the restaurant so long as the employees that share in the tip pooling policy are employees to whom the tip was paid, given, or left for. In this regard, the courts have validated policies that distributed tips among employees who provide "direct table service" or who are in the "chain of service" provided that employee in the chain of service bears a relationship to the customers' overall experience.

113. Labor Code § 351 thus prohibits employers and their agents from sharing in or keeping any portion of a gratuity left for or given to one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using gratuities as direct or indirect credits against an employee's wages. The law further states that gratuities are the sole property of the employee or employees to whom they are given. "Gratuity" is defined in the Labor Code as a tip, gratuity, or money that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due for services rendered or for goods, food, drink, articles sold or served to patrons.

1 114. Plaintiffs are informed and believe and based thereon allege that throughout the
2 period applicable to this Complaint that Defendants either kept or did not share the full portion of
3 gratuity owed to Plaintiffs. Plaintiffs further allege that gratuity was not properly calculated into
4 their pay periods as wages earned and owed.

5 115. Further, Plaintiffs are entitled to costs and attorney's fees pursuant to Labor Code
6 § 351.

7 **EIGHTH CAUSE OF ACTION**
8 **FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN - LABOR CODE § § 551, 552**
9 **(Against All Defendants)**

10 116. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 117. California Labor Code § 551 provides that "[e]very person employed in any
13 occupation of labor is entitled to one day's rest therefrom in seven." California Labor Code §
14 552 provides that "[n]o employer of labor shall cause his employees to work more than six days
15 in seven."

16 118. Plaintiff alleges that he and certain other Class members were scheduled or directed
17 to work seven days in a row in a workweek without a day of rest. Such schedule was not voluntary
18 and Plaintiff and the members of the Class worked more than six (6) hours of work during each
19 shift.

20 119. As a direct and proximate results of Defendants' actions as set forth herein, Plaintiff
21 and the Class have been damaged in that Plaintiff and the Class have not been paid all required
22 wages, including overtime pay, associated with this work.

23 120. The forgoing uncompensated work caused Plaintiff and Employees to work in excess
24 of eight (8), ten (10), and twelve (12) hours a day, and/or forty (40) hours a week, entitling them to
25 overtime and double-time wages which were systemically denied.

26 121. The foregoing uncompensated work caused Plaintiff and Employees to work in
27 excess of eight (8), ten (10), and twelve (12) hours a day, and/or forty (40) hours a week, entitling
28 them to overtime and double-time wages which were systemically denied. Defendants' failure to

1 pay compensation in a timely fashion also constituted a violation of California Labor Code § 204,
2 which requires that all wages shall be paid semimonthly. Defendants have failed to pay all wages
3 and overtime compensation earned by Employees. Each such failure to make a timely payment of
4 compensation to Employees constitutes a separate violation of California Labor Code § 204.
5 Employees have been damaged by these violations of California Labor Code §§ 204 and 510 (and
6 the relevant orders of the Industrial Welfare Commission). In addition, under Labor Code §558,
7 Aggrieved Employees are entitled to civil penalties of \$50 per employee for each pay period for the
8 first violation and \$100/employee per pay period thereafter.

9 122. Consequently, pursuant to the California Labor Code, including Labor Code §§ 204,
10 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
11 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
12 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus their
13 reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against
14 Defendants, and each of them, and any additional sums as provided by the Labor Code.

15 123. Employees have been damaged by these violations of California Labor Code §§ 551
16 and 552 (and the relevant orders of the Industrial Welfare Commission).

17 124. Accordingly, pursuant to the California Labor Code, including Labor Code §§
18 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
19 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
20 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
21 their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties
22 against Defendants, and each of them, and any additional sums as provided by the Labor Code
23 and/or other statutes.

24 **NINTH CAUSE OF ACTION**
25 **VIOLATION OF LABOR CODE § 226**
26 **(Against All Defendants)**

27 125. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

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

8 127. Defendants failed to provide Plaintiff and the similarly situated Employee Class
9 members with accurate itemized wage statements in writing, as required by the Labor Code and
10 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to
11 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
12 including for all overtime and double time hours worked and for deficient meal periods and rest
13 breaks, all of which Defendants knew or reasonably should have known were owed to the
14 Employees, as alleged above.

15 128. Throughout the liability period, Defendants intentionally failed to furnish to
16 Plaintiff and the Class members, upon each payment of wages, itemized statements accurately
17 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
18 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net
19 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
20 the employee and only the last four digits of his or her social security number or an employee
21 identification number other than a social security number, (8) the name and address of the legal
22 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
23 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
24 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
25 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class
26 members with such timely and accurate wage and hour statements.

27 129. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
28 and intentional failure to provide them with the wage and hour statements as required by law and

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

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

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

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

TENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 221
(Against All Defendants)

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

134. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Pursuant to California Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

135. Defendants unlawfully received and/or collected wages from the Employees in the Class by requiring off the clock work, by miscalculating overtime, and by not paying one hour of pay at the regular rate of compensation for every meal and rest period violation endured by Plaintiff and the other Class members, as alleged above. By not compensating Employees for all hours worked and meal and rest period premiums, Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

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

ELEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 204
(Against All Defendants)

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

1 138. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
2 employment are due and payable twice during each calendar month, on days designated in
3 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
4 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
5 during which the labor was performed, and labor performed between the 16th and the last day,
6 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
7 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment
8 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
9 calendar days following the close of the payroll period.” As detailed above, Defendants
10 maintained a consistently applied policy and practice of not paying all wages earned between the
11 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
12 between the 16th and the last day of the month between the 1st and 10th day of the following month.
13 Defendants similarly failed to pay all wages earned by not more than seven calendar days
14 following the close of the payroll period.

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

20 140. Defendants violated Labor Code § 204 by systematically refusing to timely pay
21 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
22 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
23 payday for the period involved, not less than the applicable minimum wage for all hours worked in
24 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
25 hours than those fixed by the order or under conditions of labor prohibited by the order is
26 unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for
27 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
28 penalties under paragraph 20 of the applicable IWC Wage Orders.

1 141. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
2 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
3 to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
4 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
5 applicable IWC Wage Orders.

6 **TWELFTH CAUSE OF ACTION**
7 **VIOLATION OF LABOR CODE § 203**
8 **(Against All Defendants)**

9 142. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
10 full herein.

11 143. Plaintiff and numerous Class members are no longer employed by Defendants; they
12 either quit Defendants' employ or were fired therefrom.

13 144. Defendants failed to pay these Employees all wages due and certain at the time of
14 termination or within seventy-two hours of resignation.

15 145. The wages withheld from these Employees by Defendants remained due and owing
16 for more than thirty days from the date of separation from employment.

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

24 147. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
25 are required "to pay each employee, on the established payday for the period involved, not less
26 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
27 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
28 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members

1 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
2 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
3 IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and
4 Defendants are subject to a fine of not less than \$100 for causing Employees “to work for longer
5 hours than those fixed, or under conditions of labor prohibited by an order of the commission” or
6 if the employer pays “a wage less than the minimum fixed by an order of the commission” or
7 “violates...any provision of this chapter or any order or ruling of the commission.”

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

12 **THIRTEENTH CAUSE OF ACTION**

13 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS, LABOR CODE §§ 1174, 1174.5**

14 **(Against All Defendants)**

15 149. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
16 full herein.

17 150. California Labor Code § 1174 requires that all employers shall keep accurate time
18 and wage records for all employees. California Labor Code § 1174.5 further requires that any
19 employee suffering injury due to a willful violation of the aforementioned obligations may seek
20 damages, including civil penalties, from the employer.

21 151. During the course of Plaintiff’s and Employees’ employment, Defendants
22 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as
23 required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and
24 premium pay as discussed above and failing to document and pay for actual hours worked.
25 Defendants are also required by the California Labor Code § 1198 and the applicable Wage Order
26 to maintain a tracking system that accurately records the times during which Employees work.

27 152. Defendants have maintained a common unlawful policy and practice of failing to
28 accurately record all hours worked and all meal period start and end times.

153. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay them.

154. Accordingly, Defendants are liable for civil penalties pursuant to the California Labor Code including § 1174.5, for the three years prior to the filing of this Complaint.

FOURTEENTH CAUSE OF ACTION
FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES LABOR CODE § 2802
(Against All Defendants)

155. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein. Plaintiff is informed and believes and based thereon alleges that throughout the period applicable, Defendants required Plaintiff and the Class members to pay for necessary work related expenses they incurred. These included the required use of personal cell phones for work-related activities, such as texting, calling, and communicating with Management and work – specific apps for about one hour per day. This also included the purchase of a wine key, lighter, and server book required to do Plaintiff's job. Employees must be reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do so.

156. Defendants thus followed a uniform policy and practice of failing to reimburse Employees for these necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

157. Defendants' knowing and willful failure to reimburse lawful necessary work related expenses and losses to Plaintiff and the Class members resulted in damages because, among other things, Defendants did not inform employees of their right to be reimbursed for those work related expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and necessary expenses was an expected and essential function of their employment with Defendants and that failure to incur those expenses would have adverse consequences on their employment.

1 158. Therefore, Plaintiff and the Class members are entitled to reimbursement for any
2 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9
3 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while
4 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed
5 from the date Plaintiff and the Class members incurred those expenses. Further, Plaintiff and the
6 Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

7 **FIFTEENTH CAUSE OF ACTION**

8 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

9 **(Against All Defendants)**

10 159. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 160. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
13 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
14 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
15 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
16 the public interest within the meaning of Code of Civil Procedure § 1021.5.

17 161. Plaintiff is a "person" within the meaning of Business & Professions Code
18 § 17204, have suffered injury, and therefore have standing to bring this cause of action for
19 injunctive relief, restitution, and other appropriate equitable relief.

20 162. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
21 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
22 fraudulent in that Defendants' policy and practice failed to provide the required amount of
23 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
24 Class members for all hours worked, due to systematic business practices as alleged herein that
25 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
26 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
27 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
28 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

1 163. Wage-and-hour laws express fundamental public policies. Paying employees their
2 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
3 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
4 vigorously to enforce minimum labor standards, to ensure that employees are not required or
5 permitted to work under substandard and unlawful conditions, and to protect law-abiding
6 employers and their employees from competitors who lower costs to themselves by failing to
7 comply with minimum labor standards.

8 164. Defendants have violated statutes and public policies. Through the conduct alleged
9 in this Complaint Defendants have acted contrary to these public policies, have violated specific
10 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices
11 in violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived
12 Plaintiff, and all persons similarly situated, and all interested persons, of the rights, benefits, and
13 privileges guaranteed to all employees under the law.

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

16 166. Defendants, by engaging in the conduct herein alleged, by failing to pay wages
17 and overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise
18 of reasonable care should have known that their conduct was unlawful; therefore, their conduct
19 violates the Business & Professions Code § 17200 *et seq.*

20 167. By the conduct alleged herein, Defendants have engaged and continue to engage in
21 a business practice which violates California and federal law, including but not limited to, the
22 applicable Industrial Wage Order(s), the California Code of Regulations, and the California
23 Labor Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this
24 Court should issue declaratory and other equitable relief pursuant to California Business &
25 Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to
26 constitute unfair competition, including restitution of wages wrongfully withheld.

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

1 169. Unless restrained by this Court Defendants will continue to engage in such
2 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
3 should make such orders or judgments, including the appointment of a receiver, as may be
4 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
5 deceptive practice prohibited by the Business & Professions Code, including but not limited to
6 the disgorgement of such profits as may be necessary to restore Employees to the money
7 Defendants have unlawfully failed to pay.

8 **RELIEF REQUESTED**

9 WHEREFORE, Plaintiff prays for the following relief:

- 10 1. For an order certifying this action as a class action;
- 11 2. For compensatory damages in the amount of the unpaid minimum wages for work
12 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
13 the filing of this action, as may be proven;
- 14 3. For liquidated damages in the amount equal to the unpaid minimum wage and
15 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 16 4. For compensatory damages in the amount of all unpaid wages, including overtime
17 and double-time pay, as may be proven;
- 18 5. For compensatory damages in the amount of the hourly wage made by Employees
19 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
20 years prior to the filing of this action, as may be proven;
- 21 6. For compensatory damages in the amount of the hourly wage made by Employees
22 for each day requisite rest breaks were not provided or were deficiently provided where no
23 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
24 be proven;
- 25 7. For compensatory damages in the amount of the hourly wage made by Employees
26 for shifts where no reporting time pay was paid from at least four (4) years prior to the filing of
27 this action, as may be proven;
- 28 8. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

9. For restitution and/or damages and penalties for Defendants' failure to pay all wages due twice monthly under Labor Code § 204, as may be proven;

10. For restitution and/or damages for all amounts unlawfully withheld from the wages for all class members in violation of Labor Code § 221, as may be proven;

11. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

12. For penalties pursuant to Labor Code § 1174.5, as may be proven;

13. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

14. For damages and restitution for failure to reimburse all reasonable and necessary business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

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

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

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

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

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

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

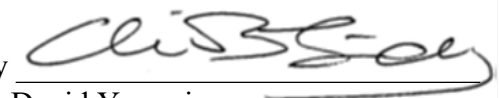
21. For an award of attorneys' fees; and

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

DATED: August 13, 2024

D.LAW, INC.

By



David Yeremian
Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Plaintiff Montgomery Nicholas
Manibog and the putative class

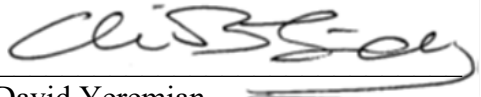
DEMAND FOR JURY TRIAL

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

DATED: August 13, 2024

D.LAW, INC.

By



David Yeremian

Alvin B. Lindsay

Jean Hopkins Power

Attorneys for Plaintiff Montgomery Nicholas
Manibog and the putative class