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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR LOS ANGELES COUNTY

HANNAH GUNIO, an individual, on behalf
of herself, all others similarly situated, and all
other aggrieved employees, and the State of
California,

Plaintiff,

v.

11 PIER AVE. LLC, a California limited
liability company; JUSTIN SAFIER, an
individual; and DOES 1-100 INCLUSIVE,

Defendants.

Case No.: 24STCV25139

(Assigned for all purposes to the Honorable
Stuart M. Rice, Dept. 1)

SECOND AMENDED COMPLAINT FOR
CLASS & PAGA ACTION

1. MEAL BREAK VIOLATIONS
2. WAGE STATEMENT VIOLATIONS
3. WILLFUL FAILURE TO PAY FINAL WAGES
4. CONVERSION
5. FAILURE TO PAY MINIMUM WAGE
6. UNFAIR BUSINESS PRACTICES
7. PRIVATE ATTORNEYS GENERAL ACT VIOLATIONS

DEMAND FOR JURY TRIAL

Action filed: September 30, 2024
Trial date: Not set

1 Plaintiff HANNAH GUNIO, an individual (“Plaintiff”), on behalf of herself, all others
2 similarly situated (“Employees”), all other aggrieved employees (“Aggrieved Employees”), and the
3 State of California, demanding a jury trial, brings this class and Private Attorneys General Act
4 (“PAGA”) action for meal break violations, wage statement violations, waiting time penalties for
5 willful failure to pay final wages, conversion, failure to pay the applicable minimum wage, for
6 unlawful, unfair and deceptive business practices claims pursuant to Business & Professions Code
7 §§ 17200 *et seq.*, and pursuant to PAGA, Labor Code § 2698, *et al.* for violations of the California
8 Labor Code and Industrial Welfare Commission, Wage Order 5-2001 (the “Wage Order”) against
9 Defendant 11 PIER AVE. LLC, a California limited liability company; Defendant JUSTIN SAFIER,
10 an individual; and DOES 1-100 INCLUSIVE (collectively “Defendants”). Plaintiff therefore, upon
11 information and belief, alleges as follows:

12 **Jurisdiction and Venue**

13 1. This Court has jurisdiction over all causes of action asserted herein pursuant to the
14 California Constitution, Article VI, § 10, California Code of Civil Procedure § 410.10, and Business
15 & Professions Code §§ 17200 *et seq.*

16 2. Venue is proper in that some or all of the Defendants have their principal offices in,
17 reside in and/or conduct significant amounts of business in Los Angeles County, Defendants
18 employed Plaintiff, other Employees, and Aggrieved Employees in Los Angeles County, and a
19 substantial part of the events and omissions giving rise to Plaintiff’s claims and Defendants’ Labor
20 Code violations against Plaintiff, other Employees, and Aggrieved Employees occurred in Los
21 Angeles County.

22 **The Parties**

23 3. Plaintiff Hannah Gunio is domiciled in California. She was employed as a
24 non-exempt, hourly employee by Defendants at their Vista restaurant in Los Angeles County,
25 California from approximately 2021 to August 2024.

26 4. Defendant 11 Pier Ave. LLC (“11 Pier”) is a California limited liability company
27 with citizenship in California and with offices in Los Angeles County. 11 Pier employed Plaintiff,
28 Employees, and Aggrieved Employees in Los Angeles County and elsewhere in California.

1 5. Defendant Justin Safier (“Safier”) is domiciled in California. He is an employer of
2 Plaintiff, Employees, and Aggrieved Employees in California and he is a natural person who is an
3 owner, director, officer, and/or managing agent of 11 Pier acting on behalf of 11 Pier as to Plaintiff,
4 Employees, and Aggrieved Employees throughout California, who violated or caused to be violated,
5 provisions regulating minimum wages or hours and days of work in an order of the Industrial
6 Welfare Commission, and violated or caused to be violated Labor Code sections 203, 226, 226.7,
7 and 1194 pursuant to Labor Code section 558.1, and is a manager of 11 Pier. Safier employed
8 Plaintiff, Employees, and Aggrieved Employees in Los Angeles County and elsewhere in California.

9 6. DOES 1 through 100, inclusive, are sued herein under fictitious names. Their true
10 names and capacities are unknown to Plaintiff at this time. When their true names and capacities are
11 ascertained, Plaintiff will amend this Complaint by inserting their true names and capacities herein.
12 Plaintiff is informed and believes, and thereon alleges that each of the fictitiously-named Defendants
13 is responsible in some manner for the occurrences alleged herein, and that the damages alleged
14 herein were actually and/or proximately caused by such Defendants.

15 7. Plaintiff is informed and believes and thereon alleges that at all relevant times
16 each Defendant was the principal, agent, employer, owner, manager, managing agent, joint
17 employer, employee, partner, servant, joint venturer, officer, director, controlling shareholder,
18 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of
19 some or all of the other Defendants, and was engaged with some or all of the other Defendants in
20 a joint enterprise for profit, and bore such other relationships to some or all of the other
21 Defendants so as to be liable for the conduct of them. Plaintiff is also informed and believes that
22 each Defendant solely and/or jointly employed Plaintiff, Employees, and Aggrieved Employees
23 in California pursuant to the California Labor Code and the Wage Order. Plaintiff is further
24 informed and believes and thereon alleges that each Defendant was a sole and/or joint employer
25 or an other person acting on behalf of an employer, including but not limited to the other
26 Defendants, who violated, or caused to be violated, any provision regulating minimum wages or
27 hours and days of work in any order of the Industrial Welfare Commission, or violated, or caused
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1 to be violated, Labor Code §§ 203, 226, 226.7, or 1194, pursuant to Labor Code § 558.1.
2 Plaintiff is further informed and believes and thereon alleges that each Defendant was a sole
3 and/or joint employer or other person acting either individually or as an officer, agent, or
4 employee of another person, including but not limited to the other Defendants, who (a) required
5 or caused any employee to work for longer than those fixed, or under conditions of labor
6 prohibited by an order of the commission, (b) paid or caused to be paid to any employee a wage
7 less than the minimum fixed by an order of the commission, and/or (c) violated or refused or
8 neglected to comply with any provision of Chapter 1 of the Labor Code or any order or ruling of
9 the commission, pursuant to Labor Code § 1199. Plaintiff is further informed and believes and
10 thereon alleges that each Defendant acted pursuant to and within the scope of the relationships
11 alleged above, that each Defendant knew or should have known about, authorized, ratified,
12 adopted, approved, controlled, aided and abetted the conduct of all other Defendants, and that
13 each Defendant acted pursuant to an agreement to do the things alleged herein.
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15 **Defendants Each Solely and Together Jointly Employed Plaintiff, Employees, and**
16 **Aggrieved Employees**

17 8. At all relevant times, Plaintiff, Employees, and Aggrieved Employees were
18 subject to the control, direction and supervision of each Defendant solely and/or two or more
19 Defendants jointly in connection with Plaintiff's, Employees', and Aggrieved Employees' hours
20 worked, and such hours worked were within the usual course of each Defendant's business.

21 9. At all relevant times, each Defendant solely employed and/or two or more
22 Defendants jointly employed Plaintiff, Employees, and Aggrieved Employees in California by,
23 inter alia, exercising control over their wages, hours, or working conditions, suffering or
24 permitting Plaintiff, Employees, and/or Aggrieved Employees to work, and/or engaging Plaintiff,
25 Employees, and Aggrieved Employees.

26 10. Defendants operated individually and in concert with each other and each retained
27 and shared significant control over the terms and conditions of Plaintiff's, Employees', and
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1 Aggrieved Employees' employment, including, without limitation, those terms and conditions
2 related to the claims alleged herein.

3 **General Allegations**

4 11. Defendants employed Plaintiff as a non-exempt, hourly employee at their restaurant,
5 Vista, beginning in 2021. She was discharged or quit in approximately August, 2024. Defendants
6 employed other Employees and Aggrieved Employees at Vista and at other locations in California
7 since at least 2020 or 2021. Plaintiff and some of these other Employees and Aggrieved Employees
8 were also later discharged or quit.

9 12. Every tip is the sole property of the employee or employees to whom it was paid,
10 given, or left for. Defendants and/or their agents have regularly collected, taken, or received tips or
11 parts thereof that are paid, given to, or left for Plaintiff, other Employees, and Aggrieved Employees
12 by Employers' patrons. Defendants and/or their agents have regularly withheld at least some of said
13 tips and failed to pay the full amount of said tips due to Plaintiff, other Employees, and Aggrieved
14 Employees. Defendants and/or their agents also withheld at least some of the tips to Plaintiff, other
15 Employees, and Aggrieved Employees that were paid by Defendants' patrons by credit card and
16 Defendants and/or their agents failed to pay Plaintiff, other Employees, and Aggrieved Employees
17 the full amount of all credit card tips due to them. Defendants and/or their agents also permitted the
18 falsification of time records that were used to divide pooled tips of Plaintiff, other Employees, and
19 Aggrieved Employees, resulting in Defendants and/or their agents withholding of at least some of
20 said tips and Defendants' and/or their agents' failure to pay the full amount of the pooled tips due to
21 Plaintiff, other Employees, and Aggrieved Employees. Defendants also failed to keep accurate
22 records of all tips received by Defendants for Plaintiff, other Employees, and Aggrieved Employees.

23 13. Defendants have regularly failed to provide Plaintiff, other Employees, and
24 Aggrieved Employees with uninterrupted 30-minute meal breaks when they worked shifts of
25 between five and six hours and when they worked shifts of more than six hours. Defendants also
26 regularly failed to pay Plaintiff, other Employees, and Aggrieved Employees premium wages of an
27 additional hour of pay at the employee's regular rate of pay for each workday in which Defendants
28 did not provide them with such meal breaks.

1 14. Defendants have regularly failed to pay Plaintiff, other Employees, and Aggrieved
2 Employees the applicable minimum wage for all hours worked.

3 15. Defendants have regularly failed to timely pay Plaintiff, other Employees, and
4 Aggrieved Employees all wages earned by them twice during each calendar month.

5 16. Defendants have regularly failed to provide Plaintiff, other Employees, and
6 Aggrieved Employees with wage statements or to keep records as required by Labor Code section
7 226(a). Defendants failed to provide Plaintiff, other Employees, and Aggrieved Employees with
8 wage statements that accurately showed their gross wages earned, total hours worked, all deductions,
9 net wages earned, the inclusive dates of the period for which the employees were paid, and all
10 applicable hourly rates in effect during the pay period and the corresponding number of hours
11 worked at each hourly rate. Defendants knowingly and intentionally violated the requirements to
12 provide Plaintiff, other Employees, and Aggrieved Employees with accurate wage statements or to
13 keep copies of accurate wage statements with the required information. Defendants also failed to
14 keep for at least three years payroll records showing the hours worked daily by and the wages paid to
15 Plaintiff, other Employees, and Aggrieved Employees, and Defendants also willfully failed to
16 maintain such records. Defendants also failed to maintain records of the wages and wage rates, job
17 classifications, and other terms and conditions of employment of Plaintiff, other Employees, and
18 Aggrieved Employees for a period of at least three years. Defendants also failed to keep accurate
19 information with respect to each employee, including time records showing when the employee
20 began and ended each work period, meal breaks, split shift intervals and total daily hours worked,
21 total wages paid each payroll period, total hours worked in the payroll period and applicable rates of
22 pay, and Defendants failed to keep such records on file for at least three years at the place of
23 employment or at a central location within California.

24 17. Upon the end of Defendants' employment of Plaintiff, other Employees, and
25 Aggrieved Employees, including by discharge and quitting, Defendants willfully failed to pay
26 Plaintiff, other Employees, and Aggrieved Employees all wages earned and unpaid at the time of
27 discharge or within 72 hours after quitting.

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1 18. Defendants were Plaintiff's, Employees', and Aggrieved Employees' employers
2 when they worked for Defendants because Defendants "directly or indirectly, or through an agent or
3 any other person, employ[ed] or exercise[ed] control over the wages, hours, or working conditions
4 of" Plaintiff, Employees, and Aggrieved Employees. Wage Order, Sec. 2(H); *Turman v. Superior*
5 *Court* (2017) 17 Cal.App.5th 969, 982. Defendants also engage, suffer, or permit Plaintiff,
6 Employees, and Aggrieved Employees to work. Wage Order 5-2001, Sec. 2(E); *Martinez v. Combs*
7 (2010) 49 Cal.4th 35, 64.

8 19. Pursuant to Labor Code section 558.1, Safier is also liable to Plaintiff, Employees,
9 and Aggrieved Employees for violations of provisions regulating minimum wages and hours and
10 days of work in the Wage Order, and for violations of Labor Code sections 203, 226, 226.7, and
11 1194, because as Plaintiff's, Employees', and Aggrieved Employees' employer and as a natural
12 person who was an owner, director, officer and/or managing agent of 11 Pier, Safier was the
13 "employer or other person acting on behalf of an employer, who violate[d], or cause[d] to be
14 violated" said provisions regulating minimum wages and hours and days of work in the Wage Order
15 and Labor Code sections 203, 226, 226.7, and 1194.

16 20. During all times relevant to this Complaint, each Defendant solely and/or jointly
17 employed Plaintiff, Employees, and Aggrieved Employees in California, pursuant to the California
18 Labor Code and the Wage Order.

19 21. During all times relevant to this Complaint, each Defendant was a sole and/or joint
20 employer of Plaintiff, Employees, and Aggrieved Employees who violated or caused to be violated,
21 provisions regulating minimum wages or hours and days of work in the Wage Order, and violated or
22 caused to be violated Labor Code sections 203, 226, 226.7, and 1194, pursuant to Labor Code §
23 558.1.

24 22. Plaintiff, Employees, and Aggrieved Employees were injured each pay period by
25 Defendants' knowing and intentional failure to provide them with accurate itemized wage
26 statements.

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1 23. Throughout Defendants' employment of Plaintiff, Employees, and Aggrieved
2 Employees, they have been subjected to unlawful, unfair, and deceptive conduct, including but not
3 limited to the following:

4 a. Defendants and/or their agents collecting, taking, or receiving tips or parts
5 thereof that are paid, given to, or left for Plaintiff, other Employees, and Aggrieved Employees by
6 Defendants' patrons;

7 b. Defendants and/or their agents withholding at least some of said tips and
8 failing to pay the full amount of said tips due to Plaintiff, other Employees, and Aggrieved
9 Employees;

10 c. Defendants and/or their agents withholding at least some of the tips to
11 Plaintiff, other Employees, and Aggrieved Employees that were paid by Defendants' patrons by
12 credit card and Defendants and/or their agents failing to pay Plaintiff, other Employees, and
13 Aggrieved Employees the full amount of all credit card tips due to them;

14 d. Defendants and/or their agents falsifying time records that were used to divide
15 pooled tips of Plaintiff, other Employees, and Aggrieved Employees, resulting in Defendants and/or
16 their agents withholding at least some of said tips and Defendants and/or their agents failing to pay
17 the full amount of the pooled tips due to Plaintiff, other Employees, and Aggrieved Employees;

18 e. Defendants failing to keep accurate records of all tips received by Defendants
19 for Plaintiff, other Employees, and Aggrieved Employees;

20 f. Defendants failing to provide Plaintiff, other Employees, and Aggrieved
21 Employees with uninterrupted 30-minute meal breaks when they worked shifts of between five and
22 six hours and when they worked shifts of more than six hours;

23 g. Defendants failing to pay Plaintiff, other Employees, and Aggrieved
24 Employees premium wages of an additional hour of pay at the employee's regular rate of pay for
25 each workday in which Defendants did not provide them with such meal breaks;

26 h. Defendants failing to pay Plaintiff, other Employees, and Aggrieved
27 Employees the applicable minimum wage for all hours worked;

28 i. Defendants failing to timely pay Plaintiff, other Employees, and Aggrieved

1 Employees all wages earned by them twice during each calendar month;

2 j. Defendants knowingly and intentionally failing to provide Plaintiff,
3 Employees, and Aggrieved Employees with accurate itemized wage statements;

4 k. Upon the end of Defendants' employment of Plaintiff, other Employees, and
5 Aggrieved Employees, including by discharge and quitting, Defendants' willful failure to pay
6 Plaintiff, other Employees, and Aggrieved Employees all wages earned and unpaid at the time of
7 discharge or within 72 hours after quitting; and

8 l. Defendants committing unlawful, unfair and deceptive business practices in
9 an effort to increase profits and gain an unfair business advantage at Plaintiff's, Employees', and
10 Aggrieved Employees' expense.

11 24. Plaintiff, on behalf of herself, Employees, and Aggrieved Employees, seeks payment
12 of all compensation, the return of all property wrongfully obtained or withheld, all benefits required
13 under California law, plus damages, penalties and interest owed to Plaintiff, Employees, Aggrieved
14 Employees, and the State of California, as well as attorney's fees and costs as provided by Labor
15 Code sections 218.5, 226, 1194, and 2699.

16 25. Plaintiff, on behalf of herself, Employees, and Aggrieved Employees, seeks
17 restitution and disgorgement of all sums wrongfully obtained or withheld by Defendants and/or their
18 agents through their unlawful, unfair and deceptive business practices, pursuant to Business &
19 Professions Code sections 17200 *et seq.*, to prevent Defendants from benefitting from their
20 violations of law and/or their unfair and deceptive acts. Such sums recovered under Business &
21 Profession Code sections 17200 *et seq.* are equitable in nature and are not considered damages.

22 **CLASS ACTION ALLEGATIONS**

23 26. Plaintiff brings her claims for relief for violations of the California Labor Code
24 and the Wage Order pursuant to Code of Civil Procedure § 382 and Business & Professions
25 Code §§ 17200 *et seq.*, as a class action on behalf of all others similarly situated in California
26 (the "Class") with the Class defined as:

27 All non-exempt, hourly employees of Defendants, including
28 Plaintiff: (a) from whom Defendants and/or their agents withheld

1 and did not pay all tips due to them from Defendants' patrons;
2 and/or (b) to whom Defendants did not pay an additional hour of
3 pay for meal break violations; and/or (c) to whom Defendants
4 failed to pay the applicable minimum wage for all hours worked;
5 and/or (d) who suffered injury due to Defendants knowing and
intentional failure to provide with accurate itemized wage
statements; and/or (e) who Defendants willfully failed to pay all
wages due upon the end of employment.

6 27. Numerosity. The Class is so numerous that joinder of all members is
7 impracticable. Plaintiff is informed and believes, and on that basis alleges, that Defendants
8 employed at least scores of people who fall within the Class definition.

9 28. Ascertainability. The Class is ascertainable in objective terms that make eventual
10 identification of Class members possible, including through Defendants' records. Plaintiff
11 reserves the right under Rule 3.765 of the California Rules of Court to amend or modify the class
12 description, divide the class into subclasses, or further limit class treatment to particular issues.

13 29. Community of Interest.

14 a. Typicality. Plaintiff's claims are typical of Class members' claims.
15 Plaintiff, like other Class members, was subjected to Defendants' policies and practices that
16 violated the California Labor Code and the Wage Order, and Plaintiff and Class members
17 sustained injury and economic loss as a result. Defendants' conduct towards Plaintiff in
18 violating the California Labor Code and the Wage Order is typical of Defendants' conduct
19 towards other Class members in violating the California Labor Code and the Wage Order.

20 b. Adequacy. Plaintiff will fairly and adequately represent and protect the
21 interests of the Class. Plaintiff has no interests that are antagonistic to those of the Class and is
22 not subject to any unique defenses. Plaintiff's counsel is experienced in class actions and will
23 fairly and adequately represent and protect the interests of the Class.

24 c. Predominance. Common questions of law and fact exist as to members of
25 the Class that predominate over any individualized questions, including but not limited to the
26 following:
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- Whether Defendants and/or their agents collected, took, or received tips or parts thereof that were paid, given to, or left for Plaintiff or the Class by Defendants' patrons.
- Whether Defendants and/or their agents wrongfully withheld or converted at least some Plaintiff's and the Class's tips and failed to pay the full amount of said tips due to Plaintiff and the Class.
- Whether Defendants and/or their agents wrongfully withheld or converted at least some of the tips to Plaintiff and the Class that were paid by Defendants' patrons by credit card and Defendants and/or their agents failed to pay Plaintiff and the Class the full amount of all credit card tips due to them
- Whether Defendants and/or their agents falsified time records that were used to divide pooled tips of Plaintiff and the Class, resulting in Defendants and/or their agents wrongfully withholding or converting of at least some of said tips and Defendants' and/or their agents' failure to pay the full amount of the pooled tips due to Plaintiff and the Class.
- Whether Defendants failed to keep accurate records of all tips received by Defendants for Plaintiff and the Class.
- Whether Defendants failed to provide Plaintiff and the Class with legally-compliant uninterrupted 30-minute meal breaks when they worked shifts of between five and six hours and when they worked shifts of more than six hours.
- Whether Defendants failed to pay Plaintiff and the Class an additional hour of pay at the employee's regular rate of pay for each workday in which Defendants did not provide them with such meal breaks.
- Whether Defendants failed to pay Plaintiff and the Class the applicable minimum wage for all hours worked.
- Whether Defendants failed to timely pay Plaintiff and the Class all wages earned by them twice during each calendar month.
- Whether Defendants knowingly and intentionally failed to provide Plaintiff and the Class with legally-compliant wage statements
- Whether upon the end of Defendants' employment of Plaintiff and the Class, including by discharge and quitting, Defendants willfully failed to pay Plaintiff and the Class all wages earned and unpaid at the time of discharge or within 72 hours after quitting.
- Whether Defendants committed unlawful, unfair and deceptive business practices in an effort to increase profits and gain an unfair business advantage at Plaintiff's and the Class's expense.
- Whether Plaintiff and the Class are entitled to equitable relief under Business and Professions Code §§ 17200, *et seq.*

1 30. Superiority. Certification of the class would provide substantial benefits to the
2 courts and Class members. The damages suffered by individual Class members are relatively
3 small compared to the significant expense and burden of individual prosecution of this litigation.
4 In addition, class certification will obviate the need for unduly duplicative litigation about
5 Defendants' policies and practices.

6 **FIRST CAUSE OF ACTION**
7 **Meal Break Violations**

8 Violations of Labor Code §§ 226.7, 512 & 558.1; Wage Order No. 5-2001
9 (On Behalf of Plaintiff and the Class Against All Defendants)

10 31. The preceding paragraphs of this Complaint are realleged and incorporated by
11 reference as though fully set forth herein.

12 32. Labor Code section 226.7 prohibits an employer from requiring an employee to work
13 during a meal break mandated pursuant to an applicable statute or applicable regulation, standard, or
14 order of the Industrial Welfare Commission, and if an employer fails to provide an employee with
15 such meal break, then the employer shall pay the employee an additional hour of pay at the
16 employee's regular rate of pay for each workday that such meal break is not provided.

17 33. Labor Code section 512(a) and the Wage Order, section 11 prohibit an employer from
18 employing any person for a work period of more than five hours per day without providing a thirty-
19 minute uninterrupted meal break, except that if the employee is working no more than six hours, the
20 meal break can be waived by the mutual consent of the employer and the employee. An employer is
21 also prohibited from employing any person for a work period of more than ten hours per day without
22 providing a second thirty-minute uninterrupted meal break, except that if the total hours worked is
23 no more than 12 hours, the second meal break may be waived by mutual consent of the employer
24 and the employee only if the first meal break was not waived.

25 34. Defendants regularly failed to provide Plaintiff and the Class with meal breaks as
26 required by Labor Code sections 226.7 and 512 and the Wage Order, Plaintiff and the Class did not
27 consent to the waiver of any of their meal breaks, and Defendants then failed to pay Plaintiff and the
28 Class an additional hour of pay at their regular rates of pay for each workday that Defendants failed
to provide them with a meal break.

35. Defendants, as the employers of Plaintiff and the Class, are subject to and violated Labor Code sections 226.7 and 512 and the Wage Order. Accordingly, Defendants are liable to Plaintiff and the Class for premium wages of one hour of pay at their regular rates of pay for each workday that Defendants failed to provide each of them with a legal meal break.

SECOND CAUSE OF ACTION

Wage Statement Violations

Violations of Labor Code §§ 226 & 558.1

(On Behalf of Plaintiff and the Class Against All Defendants)

36. The preceding paragraphs of this Complaint are realleged and incorporated by reference as though fully set forth herein.

37. Labor Code section 226(a) requires an employer to provide its employees with an accurate itemized statement with their wages. The itemized wage statement must accurately show, among other things, the gross wages earned, the total hours worked by the employee, the net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

38. Defendants failed to provide Plaintiff and the Class with itemized wages statements that accurately showed their gross wages earned, their total hours worked, the net wages they earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours they worked at each hourly rate. Defendants' failure to provide Plaintiff and the Class with accurately itemized wage statements was knowing and intentional.

39. Plaintiff and the Class suffered an injury each pay period because Defendants failed to provide them with accurately itemized wage statements as required by Labor Code section 226(a) and Defendants' inaccurate wage statements prevented Plaintiff and the Class from promptly and easily determining from the wage statement alone the total hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

40. Labor Code section 226(e) provides that an employee suffering an injury as a result of an employer's knowing and intentional failure to provide an accurate itemized wage statement each pay period is entitled to recover the greater of all actual damages or \$50 for the initial pay period in

1 which a violation occurred and \$100 for each violation in subsequent pay periods, up to a maximum
2 of \$4,000 in damages, plus an award of costs and reasonable attorney's fees. Accordingly,
3 Defendants are liable to Plaintiff and the Class for damages of \$50 for the initial pay period in which
4 each of Plaintiff and the Class suffered an injury from Defendants' knowing and intentional failure
5 to provide them with an accurate itemized wage statements and \$100 for each such subsequent pay
6 period, up to the maximum \$4,000 in damages, plus costs and reasonable attorney's fees.

7 **THIRD CAUSE OF ACTION**

8 **Willful Failure to Pay Final Wages**

9 Violations of Civil Code §§ 201, 202, 203 & 558.1
(On Behalf of Plaintiff and the Class Against All Defendants)

10 41. The preceding paragraphs of this Complaint are realleged and incorporated by
11 reference as though fully set forth herein.

12 42. "If an employer discharges an employee, the wages earned and unpaid at the time of
13 discharge are due and payable immediately." Labor Code § 201(a). If a quitting employee provides
14 less than 72 hours notice of quitting, the employee's "wages shall become due and payable not later
15 than 72 hours thereafter." Labor Code § 202(a). "If an employer willfully fails to pay ... in
16 accordance with Sections 201 [and] 202, ... any wages of an employee who is discharged or who
17 quits, the wages of the employee shall continue as a penalty from the due date thereof at the same
18 rate until paid or until an action therefor is commenced; but the wages shall not continue for more
19 than 30 days." Labor Code § 203(a).

20 43. Defendants have willfully failed to pay all wages earned and unearned of Plaintiff and
21 the Class members who have been discharged or quit their employment with Defendants.
22 Accordingly, Defendants are liable to Plaintiff and the Class members who have been discharged or
23 quit their employment with Defendants for waiting time penalties of 30 days of wages to Plaintiff
24 and each such Class member.

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FOURTH CAUSE OF ACTION

Conversion

Violations of Labor Code §§ 350 & 351; Civil Code § 3336
(On Behalf of Plaintiff and the Class Against All Defendants)

44. The preceding paragraphs of this Complaint are realleged and incorporated by reference as though fully set forth herein.

45. Tips that were paid, given, or left for Plaintiff and Class members by Defendants' patrons are the sole property of Plaintiff and said Class members. Defendants and/or their agents engaged in the wrongful conversion of some or all of said tips. Labor Code §§ 350 & 351.

46. Plaintiff and said Class members have been injured by Defendants' and/or their agents' wrongful conversion of their tips and Plaintiff and said Class members are entitled to the possession of said tips. Accordingly, Defendants are liable to Plaintiff and said Class members for the value of their tips converted at the time of the conversion, interest, and fair compensation for the time and money properly expended in the pursuit of their converted tips. Civil Code § 3336. In committing the forgoing acts, Defendants are also guilty of oppression, fraud, or oppression, and Plaintiff and said Class members are entitled to also recover damages for the sake of example and by way of punishing Defendants.

FIFTH CAUSE OF ACTION

Failure to Pay Minimum Wage

Violations of Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1; Wage Order No. 5-2001
(On Behalf of Plaintiff and the Class Against All Defendants)

47. The preceding paragraphs of this Complaint are realleged and incorporated by reference as though fully set forth herein.

48. Labor Code section 1182.12 establishes the applicable minimum wage for all industries for employers who employ 26 or more employees. Under Labor Code section 1194, "any employee receiving less than the legal minimum wage ... is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage ..., including interest thereon, reasonable attorney's fees, and costs of suit." Wage Order 5-2001, Section 4 establishes the same minimum wage as Labor Code section 1181.12 for employers who employ 26 or more employees. Labor Code section 1197 states that the "minimum wage for employees fixed by the commission or by any

1 applicable state or local law, is the minimum wage to be paid to employees, and the payment of a
2 lower wage than the minimum so fixed is unlawful.”

3 49. Under Labor Code section 1197.1, “[a]ny employer or other person acting either
4 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
5 any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
6 of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages
7 payable to the employee, and any applicable penalties pursuant to Section 203” as described in the
8 statute. Under Labor Code section 1194.2, “[i]n any action under Section ... 1194 or 1197.1 to
9 recover wages because of the payment of a wage less than the minimum wage fixed by an order of
10 the commission or by statute, an employee shall be entitled to recover liquidated damages in amount
11 equal to the wages unlawfully unpaid and interest thereon.”

12 50. Defendants failed to pay the applicable minimum wage to Plaintiff and the Class for
13 all hours worked. Accordingly, Defendants are liable to Plaintiff and the Class for the unpaid
14 balance of the full amount of the applicable minimum wage, restitution of wages, civil penalties,
15 liquidated damages, interest thereon, and attorney’s fees and costs of suit.

16 **SIXTH CAUSE OF ACTION**

17 **Unfair Business Practices**

18 Violations of Business & Professions Code §§ 17200 *et seq.*
19 (On Behalf of Plaintiff and the Class Against All Defendants)

20 51. The preceding paragraphs of this Complaint are realleged and incorporated by
21 reference as though fully set forth herein.

22 52. At all times mentioned herein, Defendants were and are subject to the requirements of
23 Business & Professions Code §§ 17200 *et seq.*, which prohibit unlawful, unfair, deceptive or
24 fraudulent business practices.

25 53. Defendants’ conduct, including but not limited to (a) wrongfully converting the tips
26 of Plaintiff and Class members and failing to provide Plaintiff and the Class with meal breaks and
27 then failing to pay Plaintiff and the Class premium wages for not providing them with meal breaks,
28 and (b) failing to pay Plaintiff and the Class the applicable minimum wage for all hours worked, was
unlawful, unfair and deceptive and therefore amounts to violations of Business & Professions Code

1 §§ 17200 *et seq.*, as the unlawful, unfair and deceptive practices occurred in connection with
2 Defendants' conduct of trade and commerce in California.

3 54. Defendants' violations of California law, as alleged above, constitute business
4 practices because they were done repeatedly over a substantial period of time. These practices were
5 the result of policies that worked to Plaintiff's and the Class's detriment because Defendants retained
6 property and wages due to Plaintiff and the Class.

7 55. Due to these unlawful, unfair and deceptive business practices, Defendants gained a
8 competitive advantage over other comparable businesses doing business in the State of California
9 because Defendants retained more profit by unlawfully, unfairly and deceptively underpaying
10 Plaintiff and the Class and by subjecting them to unlawful and unfair working conditions.

11 56. As a direct result of Defendants' unlawful, unfair and deceptive business practices as
12 herein alleged, Defendants have been unjustly enriched, including by their retention of property
13 belonging to and wages due to Plaintiff and the Class. Therefore, Plaintiff seeks restitution and/or
14 disgorgement of all sums wrongfully retained by Defendants during the statutory period.

15 **SEVENTH CAUSE OF ACTION**

16 **Private Attorneys General Act Violations**

17 Violations of Labor Code §§ 2698, *et seq.*

18 (On Behalf of Plaintiff, All Other Aggrieved Employees, and the State of California Against
19 All Defendants)

20 57. The preceding paragraphs of this Complaint are realleged and incorporated by
21 reference as though fully set forth herein.

22 58. Pursuant to Labor Code § 2699(c), an "aggrieved employee" means any person
23 who was employed by the alleged violator and personally suffered each of the violations alleged
24 during the period prescribed under Section 340 of the Code of Civil Procedure." PAGA provides
25 that any provision of law under the Labor Code that sets forth a civil penalty to be assessed and
26 collected by the Labor and Workforce Development Agency ("LWDA"), may, as an alternative,
27 be recovered through a civil action brought by an aggrieved employee on behalf of him/herself
28 and other current or former aggrieved employees pursuant to the procedures outlined in Labor
Code § 2699.3.

1 59. As a result of the California Labor Code violations that Defendants committed
2 against Plaintiff and other current and former Aggrieved Employees of Defendants, Plaintiff and
3 her fellow Aggrieved Employees are all “aggrieved employees” of Defendants within the
4 definition of Labor Code § 2699(c). As an Aggrieved Employee, Plaintiff seeks, on behalf of
5 herself and her fellow Aggrieved Employees and on behalf of the State of California, to recover
6 civil penalties from Defendants under Labor Code §§ 210, 226.3, 558, 1174.5, and 2699, and the
7 Wage Order § 20, for Defendants’ Labor Code violations set forth above, including Defendants’
8 violations of Labor Code §§ 204, 210, 226(a), 226.3, 226.7, 351, 353, 512, 558, 558.1, 1174(d),
9 1174.5, 1197.5, and 1199, and the Wage Order.

10 60. Pursuant to Labor Code § 2699.3, an aggrieved employee may commence a civil
11 action arising under Labor Code § 2699 after the following requirements have been met:

- 12 a. The aggrieved employee or representative shall give written notice (“PAGA Notice”)
13 by filing online with the LWDA and by certified mail to the employer of the specific
14 provisions of the Labor Code alleged to have been violated, including the facts and
15 theories to support the alleged violation. A \$75 filing fee should accompany the
16 notice.
- 17 b. For violations of any provision listed in Labor Code § 2699.5, the LWDA shall notify
18 the employer and the aggrieved employee or representative by certified mail that it
19 does not intend to investigate the alleged violation within 60 calendar days of the
20 postmark date of the PAGA Notice. Upon receipt of the notice from the LWDA
21 (“LWDA Response Notice”) or if no LWDA Response Notice is provided within 65
22 calendar days of the postmark date of the PAGA Notice, the aggrieved employee may
23 commence a civil action pursuant to Section 2699. For violations of any provision
24 other than those listed in Labor Code § 2699.5 or Division 5 (commencing with
25 Section 6300), if the employer is not eligible for the curing processes in Labor Code §
26 2699.3 or chooses not to utilize those processes, and if no LWDA Response Notice is
27 provided by the LWDA within 65 calendar days of the postmark of the PAGA
28

1 Notice, the aggrieved employee may commence a civil action pursuant to Section
2 2699.

3 61. On or about September 30, 2024, Plaintiff gave timely written PAGA Notice by
4 certified mail to Defendants of their violations of Labor Code §§ 204, 210, 226(a), 226.3, 226.7,
5 351, 353, 512, 558, 558.1, 1174(d), 1174.5, 1197.5, and 1199, and the Wage Order alleged in
6 this Complaint, including the facts and theories to support the alleged violations, and Plaintiff
7 filed the PAGA Notice online with the LWDA. Plaintiff also paid the accompanying filing fee
8 of \$75.00. Plaintiff has complied with all notice and exhaustion procedures as required by
9 PAGA.

10 62. The LWDA did not provide a LWDA Response Notice of its intention to
11 investigate Defendants' violations of provisions listed in Labor Code § 2699.5 by the expiration
12 of the 65-day waiting time period. Also, if Defendants are eligible for the curing processes in
13 Labor Code § 2699.3, they have not utilized those processes by the expiration of the 33-day
14 period. Consequently, Plaintiff has complied with all of the requirements set forth in Labor
15 Code § 2699.3 to commence a representative action under PAGA and Plaintiff's right to file the
16 instant lawsuit has then duly accrued.

17 63. Plaintiff, on behalf of herself, her fellow Aggrieved Employees, and on behalf of
18 the State of California, seeks civil penalties under PAGA, 65% of which will be distributed to the
19 State of California, and 35% of which will be distributed to Plaintiff and her fellow Aggrieved
20 Employees. Under this PAGA action, Plaintiff is also entitled to an award of reasonable
21 attorney's fees and costs.

22 64. Pursuant to Labor Code § 2699, for Defendants' violations of Labor Code §§ 204,
23 210, 226.3, 226.7, 351, 353, 512, 558, 558.1, 1174(d), 1174.5, 1197.5, and 1199, and the Wage
24 Order, section 2, Plaintiff is entitled to recover civil penalties of \$100 for each Aggrieved Employee
25 per pay period or the civil penalties and remedies specifically provided by the statutes or the Wage
26 Order, except for violations of Labor Code § 226(a) the civil penalty is \$25 for each Aggrieved
27 Employee per pay period, but if the court determines that Defendants' conduct giving rise to the
28

1 violations was malicious, fraudulent, or oppressive, or if within five years preceding the alleged
2 violation, the LWDA or any court issued a finding or determination to Defendants that their policies
3 or practices giving rise to the violations were unlawful, the civil penalties are \$200 for each
4 Aggrieved Employee per pay period or the civil penalties and remedies specifically provided by the
5 statutes or the Wage Order. Plaintiff may also be awarded injunctive relief. Plaintiff is also entitled
6 to recover reasonable attorney's fees and costs.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on behalf of herself and the Class, prays for relief as follows:

- 9 A. Certification of the Class;
- 10 B. Designation of Plaintiff as Class representative and her counsel as Class
11 counsel;
- 12 C. An award of premium wages for meal break violations according to proof;
- 13 D. The unpaid balance of the full amount of the applicable minimum wage;
- 14 E. Damages for inaccurate wage statements according to proof;
- 15 F. Waiting time penalties of 30 days of wages for Plaintiff and each discharged or
16 quitting Class member according to proof;
- 17 G. The value of Plaintiff's and Class members' tips wrongfully converted
18 according to proof;
- 19 H. Liquidated damages in an amount equal to the wages unlawfully unpaid and
20 interest thereon;
- 21 I. Fair compensation for the time and money properly expended in the pursuit of
22 Plaintiff's and Class members' wrongfully converted tips;
- 23 J. Exemplary damages for the wrongful conversion of Plaintiff's and Class
24 members' tips
- 25 K. Restitution and/or disgorgement of all sums pursuant to Business & Professions
26 Code §§ 17200 *et seq.*;
- 27 L. Interest according to proof, including pursuant to Labor Code § 1194;
- 28

- 1 M. Civil penalties pursuant to Labor Code §§ 210, 226.3, 558, 1174.5, and 2699,
2 and the Wage Order § 20;
3 N. Injunctive relief pursuant to Labor Code § 2699;
4 O. Costs of suit pursuant to Labor Code §§ 218.5(a), 226, 1194 & 2699;
5 P. Attorney's fees pursuant to Labor Code §§ 218.5(a), 226, 1194 & 2699;
6 Q. An appropriate service payment to Plaintiff for her service as Class
7 representative and/or as PAGA representative; and
8 R. For such other and further relief in law or equity as the Court may deem
9 appropriate and just.

10
11 Dated: January 10, 2025

LAW OFFICE OF STEVEN ELSTER

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Steven Elster
Attorney for Plaintiff Hannah Gunio