

Assigned for All Purposes

Judge Melissa R. McCormick

CX-104

Anthony J. Nunes (SBN 290224)
Nunes Law Group, APC
15260 Ventura Blvd, Suite 1200
Sherman Oaks, CA 91403
Telephone: (855) 422-5529
tony@nunesworkerrightslaw.com

Attorneys for Plaintiff LUZ GABRIELA ZAPIAIN, on behalf of herself and all others similarly situated

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

LUZ GABRIELA ZAPIAIN, on behalf of
herself and all others similarly situated,

Plaintiff,

vs.

EL GALLO GIRO CORPORATION, a
California corporation, doing business as EL
GALLO GIRO, and DOES 1-10,

Defendants.

Case No. 30-2025-01460846-CU-OE-CXC

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wage
2. Failure to Pay Overtime
3. Failure to Provide Meal Periods
4. Failure to Provide Paid Rest Breaks
5. Failure to Indemnify Business Expenses (Labor Code Section 2802)
6. Failure to Pay All Wages at Termination (Labor Code Section 201-203)
7. Failure to Provide Accurate Wage Statements
8. Reporting Time Pay
9. Failure to Pay Timely Wages
10. Unfair Business Practices (Business & Practices Section 17200)
11. Violation of Labor Code Section 2699 (PAGA)

DEMAND FOR JURY TRIAL

1 Plaintiff Luz Gabriela Zapiain, on behalf of herself and all others similarly situated,
2 alleges each of these causes of action against Defendants as follows:

3
4 **I.**

5 **INTRODUCTION**

6 1. This is an action brought on behalf of current and former employees for EL
7 GALLO GIRO CORPORATION (hereinafter "Defendants" or "El Gallo Giro").

8 2. Plaintiff LUZ GABRIELA ZAPIAIN (hereinafter "Plaintiff") was a Quality
9 Assurance team member for "El Gallo Giro" in California.

10 3. Defendants violated California's Labor Code, and California Industrial Welfare
11 Commission (IWC) Wage Order No. 4-2001, which include:

- 12
13 a. Failing to pay its employees minimum wage for every hour worked;
14 b. Failing to pay its employees overtime wage when applicable;
15 c. Failing to pay its employees premium wages for missed meal periods;
16 d. Failing to pay its employees premium wages for missed rest periods;
17 e. Failing to maintain accurate employment records; and
18 f. Failing to pay its employees amounts owed at the end of employment.

19
20 4. Plaintiff, on behalf of herself and the proposed class, seeks unpaid wages and
21 penalties for Labor Code violations.

22 **II.**

23 **JURISDICTION AND VENUE**

24 5. The court has jurisdiction over all causes of action herein pursuant to the
25 California Constitution Article VI, § 10, Code of Civil Procedure § 410.10, and Business and
26 Professions Code § 17203.
27
28

6. Venue is proper in this Court under California Code of Civil Procedure sections 395, and 395.5, because Defendants have and continue to operate in Orange County. Plaintiff works in Orange County and the injuries that are the subject of this lawsuit arose in Orange County. EL GALLO GIRO CORPORATION, owns and operates EL GALLO GIRO in Orange County.

7. Venue is proper in Orange County as a result of Defendants owning and operating a business in Orange County. During the liability period, Defendants were licensed to do business and actually doing business in Orange County.

III.

PARTIES

Plaintiff

8. Plaintiff Luz Gabriela Zapiain is a resident of Irvine in Orange County, California.

9. At all relevant times herein, Plaintiff was employed by Defendants as a non-exempt Quality Assurance team member.

10. Plaintiff was regularly directed to work off-the-clock, as well as skip meal and rest breaks. This policy was at the expense of Plaintiff's right to be able to receive minimum wage for all hours worked and take breaks at legally permissible time.

Defendants

11. Plaintiff alleges on information and belief that Defendant EL GALLO GIRO CORPORATION, owns and operates “El Gallo Giro,” and does business as “El Gallo Giro” in Orange County.

12. Defendants operates a restaurant chain in Orange County, Riverside County, and Los Angeles County, and attracts customers from throughout Southern California.

1 13. Plaintiff alleges on information and belief that Defendant EL GALLO GIRO
2 CORPORATION, issues uniform policies and procedures for all non-exempt employees working
3 for Defendant.

4 14. The true names and capacities, whether individual, corporate, associate, or
5 otherwise, of Defendants sued here in as DOES 1 through 10, inclusive, are currently unknown
6 to Plaintiff, who therefore sues Defendants by such fictitious names. Plaintiff is informed and
7 believes, and based thereon alleges, that Defendants designated herein as DOE(S) are legally
8 responsible in some manner for the unlawful acts referred to herein.
9

10 15. Plaintiff will seek leave of court to amend this complaint to reflect the true names
11 and capacities of the Defendants designated hereinafter as DOE(S) when such identities become
12 known.
13

14 16. Plaintiff is informed and believes and thereon alleges that at all relevant times
15 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
16 the other class members, and exercised control over the wages, hours, and working conditions of
17 Plaintiff and the other class members.
18

19 17. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
20 each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling
21 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
22 interest of some or all of the other Defendants, expressly including (but not limited to) RJ Gill
23 Ventures, Inc., and was engaged with some or all of the other Defendants in a joint enterprise for
24 profit, and bore such other relationships to some or all of the other Defendants so as to be liable
25 for their conduct with respect to the matters alleged below.
26
27
28

18. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

IV.

GENERAL ALLEGATIONS

19. Plaintiff was a Quality Assurance team member for Defendants in Orange County, California.

20. Plaintiff alleges that Defendants' corporate policies, procedures, and uniform understaffing, were either written or institutionalized into each Defendants' labor practices, such that Plaintiff and the class she seeks to represent were not able to, or permitted to, take timely rest breaks or lunch periods, pursuant to the Labor Code, Industrial Welfare Commission Wage Order 5-2001, and other applicable Wage Orders.

21. Defendants directed class members to skip breaks to avoid having employees on breaks during the restaurants' shifts, and Defendants did not let employees cover for other employees on breaks. This uniform policy was at the expense of class members' right to be able to take breaks at legally permissible time (even if during busy times) in Defendants' restaurants.

22. Plaintiff alleges Defendants implemented and maintained a company-wide policy to pay non-exempt employees less than the applicable minimum wage, including failing to pay servers for all hours worked. Defendants were aware of the fact that under their system, Plaintiff regularly worked unpaid hours and/or worked for compensation at less than the applicable minimum wage.

23. Plaintiff alleges Defendants also failed to provide overtime wages earned for all hours worked by Plaintiff in excess of eight hours per day and/or forty hours per week. Where

1 overtime compensation was received at all, it was for fewer than all overtime hours worked and
2 was paid at less than the amount required by California law.

3 24. Plaintiff allege that in order to meet Defendants' workload requirement, she
4 typically worked through both meal periods and rest breaks.

5 25. Plaintiff alleges Defendants also failed to provide Plaintiff with all the required
6 meal periods when she worked more than five hours in a day; and Defendants failed to pay
7 Plaintiff a one-hour premium wage in lieu thereof.

8 26. Plaintiff alleges Defendants failed to provide Plaintiff with timely and accurate
9 wage and hour statements.

10 27. Plaintiff alleges Defendants did not maintain adequate records pertaining to when
11 Plaintiff began and finished each work period; meal/rest breaks; hours worked per day; hours
12 worked per pay period; and applicable rates of pay for all regular hours and overtime.

13 28. Plaintiff alleges that Defendants have maintained and continue to maintain
14 uniform practices and procedures which are in inconsistent with state and federal law.

15 29. Plaintiff alleges that Defendants engage in uniform policies and conduct, as
16 alleged herein resulting in violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 1194,
17 and 2750.5.

18 30. Plaintiff brings this action pursuant to Business and Professions Code §§ 17200-
19 17208, seeking injunctive relief and restitution of all benefits obtained by Defendants by
20 engaging in the unlawful conduct complained herein.

21 31. On November 9, 2024, Plaintiff filed and served a Notice of Private Attorney
22 General Act ("PAGA") claim with the California Labor and Workforce Development Agency
23 (LWDA) and served by Certified U.S. Mail on Defendant.

1 32. Plaintiff alleges that Defendants' corporate policies, procedures, and uniform
2 understaffing, were either written or institutionalized into each Defendant's labor practices, such
3 that Plaintiff and the class she seeks to represent were not able to, or permitted to, take timely
4 rest breaks or lunch periods, pursuant to the Labor Code, Industrial Welfare Commission Wage
5 Order 4-2001, and other applicable Wage Orders.
6

7 33. Plaintiff alleges Defendants implemented and maintained a company-wide policy
8 to pay non-exempt employees less than the applicable minimum wage by failing to pay
9 employees for all hours worked. Defendants were aware of the fact that under their system,
10 Plaintiff regularly worked unpaid hours and/or worked for compensation at less than the
11 applicable minimum wage.
12

13 34. Plaintiff alleges Defendants also failed to provide overtime wages earned for all
14 hours worked by Plaintiff in excess of eight hours per day and/or forty hours per week. Where
15 overtime compensation was received at all, it was for fewer than all overtime hours worked and
16 was paid at less than the amount required by California law.
17

18 35. Plaintiff alleges that Defendants' employees do not/did not receive meal breaks,
19 or rest breaks as required by the California Labor Code and Wage Order No. 4.
20

21 36. Plaintiff alleges Defendants also failed to provide Plaintiff with all the required
22 meal periods when she worked more than five hours in a day; and Defendants failed to pay
23 Plaintiff a one-hour premium wage in lieu thereof.
24

25 37. Plaintiff alleges Defendants also failed to provide Plaintiff with all the required
26 rest breaks; and Defendants failed to pay Plaintiff a one-hour premium wage in lieu thereof.
27
28

1 38. Plaintiff alleges Defendants failed and continues to fail to reimburse class
2 members for expenses that were for the benefit of the Defendants and necessary for class
3 members to perform their jobs.

4 39. Plaintiff alleges that Defendants has systematically failed pay class members all
5 wages owed at termination.
6

7 40. Plaintiff alleges that Defendants has systematically failed to record the actual
8 hours that employees worked.

9 41. Plaintiff alleges that Defendants have not paid Plaintiff and class members for all
10 hours worked and Defendant's paychecks do not properly itemize all wages owed.

11 42. Plaintiff alleges Defendants failed to provide Plaintiff with timely and accurate
12 wage and hour statements.
13

14 43. Plaintiff alleges Defendants did not maintain adequate records pertaining to when
15 Plaintiff began and finished each work period; meal/rest breaks; hours worked per day; hours
16 worked per pay period; and applicable rates of pay for all regular hours and overtime.

17 44. Plaintiff alleges that Defendants have maintained and continue to maintain
18 uniform practices and procedures which are in inconsistent with California law.
19

20 45. Plaintiff alleges that Defendants engage in uniform policies and conduct, as
21 alleged herein resulting in violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 1194,
22 and 2750.5.

23 46. Plaintiff brings this action pursuant to Business and Professions Code §§ 17200-
24 17208, seeking injunctive relief and restitution of all benefits obtained by Defendants by
25 engaging in the unlawful conduct complained herein.
26
27
28

47. On November 9, 2024, Plaintiff filed a Private Attorney General Act (PAGA) Notice with the California Labor and Workforce Development Agency (LWDA), and served a copy on Defendant by certified mail.

V.

CLASS ALLEGATIONS

48. Plaintiff brings this cause of action on behalf of herself and on behalf of all persons similarly situated, (“the class”) as alleged herein. This action is brought and may properly be maintained as a class action pursuant to the provisions of California Code of Civil Procedure section 382, and other applicable law pertaining to class actions.

49. The proposed class Plaintiff seeks to represent is presently defined as follows:

Proposed Class: All non-exempt employees of Defendant in California within the four years prior to the date of the filing of this Complaint through the date of the final disposition of this action.

50. Plaintiff is a member of the proposed class.

51. There is a well-defined community of interest in the litigation and the class is ascertainable.

A. **Numerosity**: The class is so numerous that individual joinder of all members is impractical under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that the class consists of 100 persons or more.

B. **Common Questions Predominate:** Common questions of law and fact exist as to all class members, and predominate over any questions that affect only individual members of the class. The common questions of law and fact include, but are not limited to:

- i. What were and are the policies, programs, practices, procedures and protocols of Defendants regarding class members’ actual work and tasks, and their job duties irrespective of job titles;
- ii. Whether Defendants violated California law by their policies, programs, practices, procedures and protocols regarding rest periods for class members;
- iii. Whether Defendants violated California law by their policies, programs, practices, procedures and protocols regarding lunch breaks for class members;
- iv. What were and are the policies, programs, practices, procedures and protocols of Defendants regarding furnishing to the class members, upon each payment of wages, itemized statements required by Labor Code section 226;
- v. Whether Defendants violated California law by their policies, programs, practices, procedures and protocols regarding furnishing to the class members, upon each payment of wages, itemized statements required by Labor Code section 226;
- vi. Whether Defendants violated Business & Professions Code sections 17200 *et seq.* by their policies, programs, practices, procedures and conduct referred to in this cause of action;
- vii. Whether Defendants obtained voluntarily waivers with consent and full disclosure, and whether a written signed waiver is effective as to all future meal and rest periods;
- viii. The proper measure of damages sustained and the proper measure of restitution recoverable by members of the California class; and,

ix. Additional common questions of law and fact may develop as the litigation progresses.

C. **Typicality**: Plaintiff's claims are typical of the claims of the class. Plaintiff and other class members sustained losses, injuries and damages arising out of the Defendants' common policies, programs, practices, procedures, and course of conduct referred to in each cause of action and throughout this Complaint, which were applied uniformly to class members as well as Plaintiff. Plaintiff seeks recoveries for the same types of losses, injuries, and damages as were suffered by the other class members as well as Plaintiff.

D. **Adequacy**: Plaintiff and counsel will fairly and adequately protect the interests of the class. Plaintiff has no interest that is adverse to the interests of the other class members.

E. **Superiority**: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all class members is impractical. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions engender. Also, because the losses, injuries and damages suffered by each of the individual class members are small in the sense pertinent to class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual class members to redress the wrongs done to them. On the other hand, important public interests will be served by addressing the matter as a class action. The cost to the court system and the public of adjudication of individual litigation and claims would be substantial, and substantially more than if the claims are treated as class action. Individual litigation and claims would also present the potential for inconsistent or contradictory results.

F. **Public Policy Considerations:** Defendants and other employers throughout the state violate wage and hour laws. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are often fearful of bringing claims because doing so can harm their employment and future employment and future efforts to secure employment. Class actions provide class members who are not named in the complaint a degree of anonymity that allows for vindication of their rights while eliminating these risks, or at least enormously reducing them.

VI.

CAUSES OF ACTION

First Cause of Action

Failure to Pay Minimum Wage
(Labor Code §§ 1182.12, 1194, 1197 and 1197.1, IWC Wage Orders)

52. Plaintiff incorporate all previous paragraphs of this Complaint as though fully set forth herein.

53. At all relevant times, the Industrial Welfare Commission Wage Orders contained in Title 8 of the Code of Regulations (Wage Orders) applied to Plaintiff and other class members in their capacity as employees of Defendants. The Wage Orders and California law provided, among other things, that employees must receive minimum wage earnings for all hours worked.

54. During the liability period, Defendants have routinely failed to pay Plaintiff the minimum wage required under California law.

55. Plaintiff pay stubs did not list her actual regular and overtime hours worked.

56. Plaintiff worked unpaid hours for Defendants as a part of systematic pattern of Defendants' failing to pay employees for all hours worked.

1 57. Labor Code Section 1194 provides in pertinent part: “any employee receiving less
2 than the legal minimum wage or the legal overtime compensation applicable to the employee is
3 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
4 or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of
5 suit.”
6

7 58. Labor Code Section 1197 provides that the “minimum wage for employees fixed
8 by the commission or by any applicable state or local law, is the minimum wage to be paid to
9 employees, and the payment of a lower wage than the minimum so fixed is unlawful.”
10

11 59. Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1
12 and the applicable Wage Order, Wage Order No. 4, by willfully failing to pay all minimum wages
13 due to Plaintiff and the class members.

14 60. Plaintiff and the class members seek all actual, consequential and incidental losses
15 and damages, including, unpaid minimum wages, interest thereon, attorneys’ fees, and costs.

16 61. In addition to the above-amounts, Plaintiff and the class she seeks to represent
17 will seek to recover one hundred dollars (\$100) for each underpaid employee for each pay period
18 for which the employee is underpaid for any initial violation that is intentionally committed, and
19 two hundred fifty dollars (\$250) for each subsequent violation for the same specific offense, for
20 each underpaid employee for each pay period for which the employee is underpaid regardless of
21 whether the initial violation is intentionally committed.
22

23 62. WHEREFORE, Plaintiff and the class she seeks to represent request relief as
24 described herein and below.
25

26 ///

27 ///
28

Failure to Pay Wages at California Overtime Rate (Lab. Code § 1194, IWC Wage Orders, and Related Violations)

64. Plaintiff alleges Defendants failed to provide overtime wages earned for all hours worked by Plaintiff and class members in excess of eight (8) hours per day and/or forty (40) hours per week. Where overtime compensation was received at all, it was for fewer than all overtime hours worked and was paid at less than the amount required by California law.

66. Defendants were actually aware that Plaintiff and other class members were regularly working overtime virtually during the liability period, but Defendants failed and refused to pay Plaintiff and class members for their overtime hours. Throughout the period applicable to this cause of action, Defendants did not pay Plaintiff and class members at the required overtime rates.

68. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff has sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendants in an amount to be established at trial, prejudgment interest, and attorneys' fees and costs, pursuant to statute and other applicable law.

69. WHEREFORE, Plaintiff and the class she seeks to represent request relief as described herein and below.

Third Cause of Action

Failure to Provide Meal Periods (Labor Code §§ 226.7 and 512)

70. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set forth herein.

71. Throughout the period applicable to this cause of action, California law, as set forth in relevant part by the Industrial Welfare Commission Wage Order No. 4 at section (11), provided as follows:

- i. No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes . . .
- ii. If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

72. Labor Code Section 512 states that an “employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes” if and when such employees work more than 5 hours in any given workday. Labor Code Section 512 further requires two 30 -minute duty-free meal periods when an employee works more than 10 hours in any given workday.

73. Labor Code section 226.7 requires payment of one (1) hour of pay in lieu of each meal periods not provided by the employer.

74. Throughout the period applicable to this cause of action, Defendants failed to consistently allow and provide one or more duty-free 30-minute meal periods in violation of Labor Code section 510 and Wage Order No. 4, as required by California law.

75. By virtue of this unlawful conduct, Plaintiff and the class members are entitled to compensation as stated above, plus interest, attorneys' fees, costs and other applicable relief.

76. Throughout the period applicable to this cause of action, Defendants required Plaintiff and the class members to work during meal periods mandated by the applicable orders of the Industrial Welfare Commission. Therefore, Plaintiff and the class members are entitled to be paid as stated in Labor Code section 226.7, plus interest, attorneys' fees, costs and other applicable relief.

77. On information and belief, Plaintiff alleges that the class members did not voluntarily or willfully waive rest and/or meal periods and were regularly required to work through meal periods. Defendants failed to meet the requirements for lawful on-duty meal periods and/or instituted a course of conduct that created a working environment in which non-exempt employees were incapable of taking rest and/or meal periods. As such, non-exempt employees were intimidated or coerced into waiving meal periods, and any written waivers were obtained without full disclosure and are thus involuntarily and without consent.

78. WHEREFORE, Plaintiff and the class she seeks to represent request relief as described herein and below.

Fourth Cause of Action

Failure to Provide Rest Breaks (Labor Code §§ 226.7 and 512)

79. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set forth herein.

1 80. Plaintiff alleges Defendants also failed to provide Plaintiff and class members
2 with all the required rest breaks. Additionally, Defendants failed to pay Plaintiff and class
3 members a one-hour premium wage in lieu thereof.

4 81. Wage Order No. 4, Section 12, requires each employer to provide each of its
5 employees with at least one rest period of 10-minutes rest time for each 4 hours, or major fraction
6 thereof, that each such employee works during each workday.

7 82. Labor Code Section 226.7 provides that if an employer fails to provide an
8 employee with a rest period in accordance with Wage Order No. 4, the employer must pay such
9 employee(s) one additional hour of pay at the employee's regular rate of pay for each day that
10 such a rest period was not provided.

11 83. By their failure to provide rest periods for every four (4) hours or major fraction
12 thereof worked per workday by non-exempt employees, and failing to provide one (1) hour's pay
13 in lieu thereof, as alleged above and herein, Defendants willfully violated the provisions of Labor
14 Code sections 226.7 and IWC Wage Orders at section (12).

15 84. By failing to keep adequate time records required by sections 226 and 1174(d) of
16 the Labor Code and IWC Wage Order at section (7), Defendants have injured Plaintiff and class
17 members, and made it difficult to calculate the unpaid rest and meal period compensation due
18 Plaintiff and members of the Plaintiff class. On information and belief, Plaintiff alleges that
19 Defendants' failure to maintain accurate records was willful.

20 85. As a result of the unlawful acts of Defendants, Plaintiff and the class members
21 she seeks to represent have been deprived of premium wages in amounts to be determined at trial,
22 and are entitled to an accounting and recovery of such amounts, plus interest and penalties
23 thereon, attorneys' fees, and costs, under the Labor Code and the applicable IWC Wage Orders.
24
25
26
27
28

1 86. WHEREFORE, Plaintiff and the class she seeks to represent request relief as
2 described herein and below.

3 **Fifth Cause of Action**

4 **Failure to Reimburse Business Expenses**
5 **(Labor Code § 2802)**

6 87. Plaintiff incorporate all previous paragraphs of this Complaint as though fully set
7 forth herein.

8 88. Labor Code section 2802(a) provides: “An employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct consequence
10 of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

11 89. Throughout the class period, class members incurred expenditures in direct
12 consequence of their duties as Defendants’ employees and/or their obedience to Defendants’
13 directions, for which they received no reimbursement.

14 90. Labor Code section 2802(b) provides for interest on all awards made by a court
15 from the date upon which the employee incurred the necessary expenditure or loss.

16 91. Labor Code section 2802(c) provides that “necessary expenditures or losses”
17 includes all reasonable costs including attorney’s fees incurred by the employee to enforce the
18 rights afforded under this provision.

19 92. Defendants failed to reimburse employees for expenses they paid that should have
20 been borne by their employer, which constitutes a violation of California Labor Code Section
21 2802.

22 93. By failing to reimburse for expenses paid, Defendants acted maliciously with the
23 wrongful intention of causing injury and hardship to class members by reaping economic gain at
24

1 the class members' expense, in willful and conscious disregard of class members' statutory and
2 regulatory rights.

3 94. Plaintiff and the class members are entitled to recover an award from Defendants
4 of the full amount of all unreimbursed necessary expenditures, plus interest and reasonable
5 attorneys' fees.
6

7 95. WHEREFORE, Plaintiff and the class she seeks to represent request relief as
8 described herein and below.

9 **Sixth Cause of Action**

10 **Failure to Pay All Wages at Termination**
11 **(Labor Code §§ 201- 203)**

12 96. Plaintiff incorporates all previous paragraphs of this Complaint as though fully
13 set forth herein.

14 97. Plaintiff alleges that Defendants has systematically failed pay class members all
15 wages owed at termination.
16

17 98. Defendants failed to pay said employees, without abatement, all wages (as defined
18 by applicable California law) within the time required by applicable California law. Defendants'
19 failure to pay said wages within the required time was willful within the meaning of Labor Code
20 section 203.
21

22 99. As of the filing of the Complaint, Defendants failed to timely pay all wages due,
23 and class members are owed penalties pursuant to Labor Code sections 201, 202, 203.

24 100. Therefore, each of these employees is entitled to one day's wages for each day he
25 or she was not timely paid all said wages due, up to a maximum of thirty days' wages for each
26 employee. Because employees were never paid the wages to which they were entitled, each
27 employee is entitled to thirty days' wages.
28

101. WHEREFORE, Plaintiff and the class she seeks to represent request relief as described herein and below.

Seventh Cause of Action

Failure to Provide Accurate Wage Statements (Labor Code §§ 226(b), 1174, 1175)

102. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set forth herein.

103. Labor Code section 1174(d) requires that every employee maintain “payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate aid to, employees employed” in California.

104. Wage Order No. 4, Section 7 requires every employer in California to “keep accurate information with respect to each employee including,” . . . “[t]ime records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.”

105. Plaintiff is informed and believes and upon that basis alleges, that Defendants have failed to maintain accurate records in compliance with Labor Code section 1174 and/or Wage Order No. 4 for Plaintiff and the class. Pursuant to Labor Code Section 1174.5, Plaintiff and the class are entitled to each collect a civil penalty from Defendants in the amount of \$500.

106. Labor Code section 226 requires each employer to furnish accurate itemized wage statements at the time of payment reflecting (1) the gross wages earned, (2) the total hours worked, except for those whose compensation is based solely on a salary and who is exempt, (3) the number of piece-rate units earned and any applicable piece-rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the dates of the period for which the employee is paid, (7) the name of the employee and last four digits of the employee's social

1 security number or identification number, (8) the name and address of the legal entity that is the
2 employer , and (9) all applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee beginning July 1,
4 2013.

5
6 107. Throughout the period applicable to this cause of action, Defendants intentionally
7 failed to furnish to Plaintiff and the class members, upon each payment of wages, itemized
8 statements accurately showing, among other matters: total hours worked, the applicable hourly
9 rates in effect during the pay period, and the corresponding number of hours worked at each
10 hourly rate.

11
12 108. Plaintiff and the class members were damaged by these failures because, among
13 other things, the failures led them to believe that they were not entitled to be paid, even though
14 they were so entitled, and because the failures hindered them from determining the amounts of
15 wages owed to them.

16
17 109. Plaintiff and the class members are entitled to the amounts provided for in Labor
18 Code section 226(e), which provides for each employee to recover from Defendants fifty dollars
19 (\$50) for the initial pay period in which a violation occurred, and one-hundred dollars (\$100) per
20 class member for each violation in a subsequent pay period, not to exceed an aggregate penalty
21 of \$4,000 per class member.

22 110. Plaintiff and the class members are entitled to an award of attorney fees plus costs.

23 111. WHEREFORE, Plaintiff and the class she seeks to represent request relief as
24 described herein and below.

25 ///

26 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

112. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set forth herein.

114. Defendants should have paid and failed to pay Plaintiff and other class members for four hours pay in violation of IWC Wage Order 4-2001, section 5(A), and failed to pay class members for at least two hours for all second shifts in violation of IWC Wage Order 4-2001, section 5(B).

Ninth Cause of Action

116. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set forth herein.

118. Labor Code section 200 provides that “wages” include all amounts for labor
 119. earned by employees of every description, whether the amount is fixed or ascertained by the
 120. method of time, task, pieces, commission basis, or other method of calculation. Labor Code
 121. section 204 states that all wages earned by any person in any employment are payable twice

1 during the calendar month and must be paid not more than seven days following the close of the
2 period when the wages were earned. Labor Code section 210, subdivision (a), makes employers
3 who violate Labor Code section 204 subject to a penalty of \$100 for any initial failure to timely
4 pay each employee's full wages and \$200 for each subsequent violation, plus 25% of the amount
5 unlawfully withheld.
6

7 119. Labor Code section 216 establishes that it is a misdemeanor for any person, with
8 regards to wages due, to "falsely deny the amount or validity thereof, or that the same is due,
9 with intent to secure himself, his employer or other person, any discount upon such indebtedness,
10 or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such
11 indebtedness is due."
12

13 120. Defendants as a matter of established company policy and procedure in the State
14 of California, scheduled, required, suffered, and/or permitted Plaintiffs and the other Class
15 Members, to work without full compensation, to work without legally-compliant off-duty meal
16 periods, to work without legally-compliant off-duty rest periods, and thereby failed to fully pay
17 Plaintiffs and the other Class Members within seven days of the close of payroll, as required by
18 law.
19

20 121. Defendants, as a matter of established company policy and procedure in the State
21 of California, falsely deny they owe Plaintiffs and the other Class Members these wages, with
22 the intent of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress,
23 hinder, delay, and/or defraud Plaintiffs and the other Class Members.
24

25 122. Defendants' pattern, practice, and uniform administration of its corporate policy
26 of illegally denying employees compensation, as described herein, is unlawful and entitles
27 Plaintiffs and the other Class Members to recover, pursuant to Labor Code section 218, the
28

1 unpaid balance of the compensation owed to them in a civil action and any applicable penalties,
2 attorney fees, and interest owed to them pursuant to Labor Code sections 210 and 218.5.

3 123. WHEREFORE, Plaintiff and the class she seeks to represent request relief as
4 described herein and below.

5
6 **Tenth Cause of Action**

7 **Violation of Unfair Competition Law**
8 **(Bus. and Prof. Code § 17200 *et seq.*)**

9 124. Plaintiff incorporates all previous paragraphs of this Complaint as though fully
10 set forth herein.

11 125. Plaintiff brings this action on behalf of herself and each and all members of the
12 general public, including the class, pursuant to Business and Professions Code sections 17200 *et*
13 *seq.* Defendants' conduct alleged above constitutes unlawful business acts and practices in
14 violation of Business & Professions Code sections 17200 *et seq.* Defendants engaged in unfair
15 competition in violation of the UCL by violating, *inter alia*, each of the following laws, Labor
16 Code sections 201, 202, 203, 226, 226.7, 226.8, 510, 512, 1174, 1175, 1182.12, 1194, 1197,
17 1197.1, 1198, 1199, and 2802, and applicable Wage Orders, including Wage Order No. 4.

18 126. Defendants' course of conduct, acts, and practices in violation of the California
19 laws mentioned in the above paragraph constitute a separate and independent violation of the
20 UCL. Defendants' conduct described herein violates the policy or spirit of such laws or otherwise
21 significantly threatens or harms competition. The harm to Plaintiff and the class members in
22 being wrongfully denied lawfully earned wages outweighs the utility, if any, of Defendants'
23 policies or practices and, therefore, Defendants' actions described herein constitute an unfair
24 business practice or act within the meaning of the UCL.
25
26
27
28

1 127. The unlawful and unfair business practices and acts of Defendants, and each of
2 them, described above, have injured the class members in that they were wrongfully denied the
3 payment of earned wages.

4 128. Plaintiff, on behalf of herself and the class, seeks restitution in the amount of the
5 respective unpaid wages earned and due at a rate not less than one and one-half times the regular
6 rate of pay for work performed in excess of forty hours in a work week, or eight hours in a day,
7 and double the regular rate of pay for work performed in excess of twelve hours per day and such
8 other legal and equitable relief from Defendants' unlawful and willful conduct as the Court deems
9 just and proper.
10

11 129. Pursuant to Business and Professions Code sections 17200 *et seq.*, for the statute
12 of limitations period covered by this cause of action, Plaintiff and the class members are entitled
13 to restitution for at least the following: the unpaid withheld and retained by Defendants referred
14 to above.
15

16 130. Plaintiff, the class members, and the general public are also entitled to permanent
17 injunctive and declaratory relief prohibiting Defendants from engaging in the violations and other
18 misconduct referred to above.
19

20 131. Defendants are also liable to pay attorneys' fees pursuant to California Code of
21 Civil Procedure section 1021.5 and other applicable law, and costs. The Plaintiff, on behalf of
22 herself and all class members, also seek recovery of attorneys' fees and costs of this action to be
23 paid by Defendant, as provided by the UCL and California Labor Code §§ 218, 218.5, and 1194.
24

25 132. WHEREFORE, Plaintiff and the class she seeks to represent request relief as
26 described herein and below.
27
28

1 **Eleventh Cause of Action**

2 **Violation of Labor Code Section 2699**
3 **(California Private Attorney General Act)**

4 133. Plaintiff, on behalf of herself and other aggrieved employees, incorporates all
5 previous paragraphs of this Complaint as though fully set forth herein.

6 134. Plaintiff filed a Private Attorney General Act (PAGA) complaint online with the
7 California's Labor and Workforce Development Agency (LWDA) on November 9, 2024, and
8 served Defendant by certified mail as prescribed by the Labor Code.
9

10 135. California IWC Wage Order 4-2001 requires an employer to pay each employee,
11 on the established payday for the period involved, not less than the applicable minimum wage
12 for all hours worked in the payroll period, whether the remuneration is measured by time, piece,
13 commission, or otherwise.

14 136. Defendants failed to pay Plaintiff and other aggrieve employees at least minimum
15 wage for all hours worked in violation of Labor Code sections 1194 and 1197.
16

17 137. During the liability period, Defendants have routinely failed to pay Plaintiff the
18 minimum wage required under California law.

19 138. Plaintiff, by virtue of her employment with Defendants is an aggrieved employee
20 with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve
21 as a representative of the general public to enforce California's labor laws, including, without
22 limitation, the penalty provisions identified in Labor Code section 2699.5.
23

24 139. Since the LWDA took no steps within the time period required to intervene and
25 because Defendants took no corrective action to remedy the allegations set forth above, Plaintiff
26 as a representative of the people of the State of California, seeks any and all penalties otherwise
27 capable of being collected by the Labor Commission and/or the Department of Labor Standards
28

1 Enforcement (DLSE). This includes each of the following, as set forth in Labor Code Section
2 2699.5, which provides that Section 2699.3(a) applies to any alleged violation of the following
3 provisions: Sections 558, 1194, 1197, 1197.1, and 1199.

4 140. Labor Code section 2699 provides for civil penalties of \$100 per employee per
5 pay period for the initial violation and \$200 per employee per pay period for each subsequent
6 violation.

7 141. Plaintiff, as a representative of the general public, seeks to recover any and all
8 penalties for each and every violation shown to exist or to have occurred during the one-year
9 period before Plaintiff filed Notice with the LWDA of her intent to bring this action, in an amount
10 according to proof, as to those penalties that are otherwise only available to public agency
11 enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at
12 least 75% of the penalties recovered being reimbursed to the State of California and the LWDA.
13

14 142. As a result of the acts alleged above, Plaintiff and the class she seeks to represent
15 seek penalties under Labor Code §§ 201-203, 212, 226, 226.7, 510, 1182.12, 1194, 1197, and
16 1197.1.
17

18 143. Plaintiff, as a representative of the general public, seeks to recover reasonable
19 attorney's fees and costs under the PAGA, Labor Code section 2699(g)(1).
20

21 144. WHEREFORE, Plaintiff and the class she seeks to represent request relief as
22 described herein and below.

23 **VII.**

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff on behalf of herself and all members of the class, pray for relief
26 as follows:
27
28

- 1 1. That the Court determine that this action may be maintained as a class action;
- 2 2. That Plaintiff be appointed the representative of the proposed class;
- 3 3. That the attorneys of record for Plaintiff whose names appear in this Complaint
- 4 be appointed class counsel;
- 5 4. For civil penalties pursuant to Labor Code Sections 226(e), 226.8(b), 226.8(c),
- 6 1174.5, and 1197.1;
- 7 5. For compensatory damages representing the amount of unpaid wages owed to
- 8 Plaintiff and the class members;
- 9 6. For compensatory damages pursuant to Labor Code Section 226.7 for missed
- 10 meal and rest breaks;
- 11 7. For compensatory damages pursuant to Labor Code Section 2802;
- 12 8. For reasonable attorneys' fees and costs pursuant to Labor Code Sections 226(e),
- 13 1194, and 2802(c);
- 14 9. For such general and special damages as may be appropriate;
- 15 10. For liquidated damages as authorized pursuant to Labor Code Sections 1194.2;
- 16 11. For waiting time penalties and civil penalties for all class members no longer in
- 17 Defendants' employ at the time of Judgment;
- 18 12. For pre-judgment interest;
- 19 13. For restitution as described in the cause of action under Business & Professions
- 20 Code §§ 17200 *et seq.* above;
- 21 14. For permanent injunctive and declaratory relief described in the cause of action
- 22 under Business & Professions Code §§ 17200 *et seq.* above;
- 23
- 24
- 25
- 26
- 27
- 28

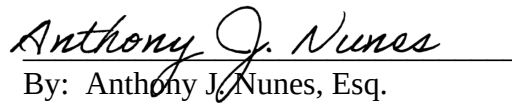
1 15. A declaratory judgment that the practices complained of herein are unlawful under
2 California state law;

3 16. Attorney's fees and costs of suit, including expert fees pursuant to California
4 Labor Code §§218.5, 1194, and Code Civ. Proc. §1021.5; and
5

6 17. Such other injunctive and equitable relief as the Court may deem proper.

7 **DATED:** February 13, 2025

NUNES LAW GROUP, APC

8 
9

10 By: Anthony J. Nunes, Esq.
11 Attorneys for Plaintiff, LUZ GABRIELA
12 ZAPIAIN, on behalf of herself and all others
13 similarly situated
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28