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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

HALEY HALKIAS, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

RIVETS AMERICAN GRILL, INC., a
California Corporation d/b/a Rivets
American Grill, 4R CLOVER, INC., a
California Corporation d/b/a P. Wexford's
Pub, TRIPLE R WAGNER, INC., a
California Corporation d/b/a The Board
Room, R WAGNER ENTERPRISES,
INC., a California Corporation d/b/a
Nino's Place, ROMAN T. WAGNER, an
individual, and DOES 1 through 25,
inclusive,

Defendants.

Case No. CV-24-009764

COMPLEX CASE (CLASS ACTION)

FIRST AMENDED COMPLAINT FOR:

- 1. FAILURE TO PAY OVERTIME PREMIUMS, LAB. CODE § 510 *et seq.*;**
- 2. FAILURE TO PAY COMPENSATION FOR SPLIT SHIFTS, LAB. CODE § 1194;**
- 3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS, LAB. CODE § 226.7;**
- 4. FAILURE TO PROVIDE MEAL PERIODS, LAB. CODE §§ 226.7, 512;**
- 5. FAILURE TO FURNISH ACCURATE WAGE STATEMENTS, LAB. CODE § 226;**
- 6. FAILURE TO PROVIDE WAGES WHEN DUE, LAB. CODE §§ 201, 202, 203; and**
- 7. UNFAIR COMPETITION, BUSINESS & PROFESSIONS CODE §§ 17200-09.**

JURY TRIAL DEMANDED

1 Plaintiff Haley Halkias (the “Plaintiff”), on behalf of herself and all others similarly situated,
2 alleges as follows:

3 **I. INTRODUCTION**

4 1. Pursuant to California Code of Civil Procedure § 382, Plaintiff brings this class action
5 for violations of California law on behalf of herself and all other non-exempt workers employed by
6 defendants Rivets American Grill, Inc., 4R Clover, Inc., Triple R Wagner, Inc., R Wagner Enterprises,
7 Inc., Roman T. Wagner, and DOES 1 through 25 inclusive (collectively, “Defendants”).

8 2. During the time period relevant to this Complaint, Defendants have owned and
9 operated several bars and restaurants in Stanislaus County and San Joaquin County, including: Rivets
10 American Grill (located in Modesto); P. Wexford’s Pub (located in Modesto); The Taco Shop (located
11 in Modesto); The Boardroom (located in Modesto); Nino’s Place (located in Modesto); Bleachers
12 Grill (located in Modesto); The Creamery (located in Stockton); and Valley Inn (located in Escalon)
13 (altogether, the “Wagner Restaurants”).

14 3. During relevant time periods commencing at least four (4) years prior to the filing of
15 this action and continuing on through the present (the “Class Period”), for their work at the Wagner
16 Restaurants, Defendants willfully and intentionally failed to pay to Plaintiff and the putative class
17 members (collectively, the “Plaintiffs”) overtime premiums for hours worked in excess of eight (8)
18 in a day and forty (40) in a week, failed to pay split shift compensation, failed to provide uninterrupted
19 meal periods, failed to authorize and permit rest periods, failed to provide accurate itemized wage
20 statements, and failed to provide wages when due, all of which failures violated California law.

21 4. This class action asserts violations of California’s Labor Code, Industrial Welfare
22 Commission (“IWC”) Wage Order, and Business and Professions Code, arising from Defendants’
23 unlawful conduct in operating the Wagner Restaurants. For these violations, Plaintiffs, on behalf of
24 themselves and all others similarly situated, seek back wages, waiting time and other civil penalties,
25 restitution, interest, injunctive and declaratory relief, and attorneys’ fees and costs.

26 **II. JURISDICTION AND VENUE**

27 5. This Court has jurisdiction over the claims alleged herein pursuant to Lab. Code §
28 1194 and the California Constitution, Article VI, § 10. Jurisdiction is further proper in this Court

1 because Plaintiff's claims all arise under the laws of the State of California, and all parties to this
2 action are California residents.

3 6. Venue is proper in the County of Stanislaus, pursuant to California Code of Civil
4 Procedure § 395.5. Plaintiff was employed by and performed work for Defendants in Stanislaus
5 County, California, during the time period relevant to this Complaint. Defendants transact business
6 and are otherwise within this Court's jurisdiction for purposes of service of process.

7 **III. PARTIES**

8 **A. Plaintiff**

9 7. Plaintiff Haley Halkias ("Halkias"), at all times relevant to this Complaint, was an
10 adult individual residing in Stanislaus County, California.

11 8. Halkias was employed by Defendants as an hourly paid, non-exempt restaurant and
12 bar employee from approximately 2018 through approximately April 22, 2022.

13 9. During her employment period with Defendants, Halkias worked in various non-
14 exempt positions, including, host, food runner, server, bartender, and assistant manager.

15 10. Halkias was employed by Defendants at several of their bars and restaurants,
16 including: "Rivets American Grill," located at 2307 Oakdale Road, Modesto, CA 95355; "P.
17 Wexford's Pub," located at 3313 McHenry Avenue, Modesto, CA 95350; "The Board Room," located
18 at 1528 J Street, Modesto, CA 95354; and "Nino's Place," located at 5219 McHenry Avenue,
19 Modesto, CA 95356.

20 11. Halkias typically worked shifts in multiple of Defendants' restaurants and bars in a
21 single workweek.

22 12. Throughout Halkias' employment with Defendants, Halkias was paid on an hourly
23 basis, at approximately minimum wage. Specifically, during the time period relevant to this action,
24 Halkias was paid approximately \$13.00 per hour in 2020 and approximately \$14.00 per hour in 2021.

25 13. Upon her separation from Defendants in April 2021, Halkias was not paid and has still
26 not been paid all unpaid overtime premiums, split shift premiums, and missed rest and meal break
27 premiums owed to her.

1 14. At all times relevant to this Complaint, Plaintiff and members of the proposed class
2 were each an “employee” as defined by the California Labor Code and the applicable IWC Wage
3 Orders.

4 **B. Defendants**

5 15. Defendant Rivets American Grill, Inc. is a corporation organized and existing under
6 the laws of the State of California, with a principal office located at 4213 Papillon Drive, Modesto,
7 CA 95356.

8 16. Plaintiff is informed and believes and thereon alleges that, at all times relevant to this
9 Complaint, Rivets American Grill, Inc. has operated the bar and restaurant “Rivets American Grill”
10 located at 2307 Oakdale Road, Modesto, CA 95355.

11 17. Rivets American Grill, Inc. was incorporated with the California Secretary of State on
12 January 1, 2013.

13 18. Defendant 4R Clover, Inc. is a corporation organized and existing under the laws of
14 the State of California, with a principal office located at 4213 Papillon Drive, Modesto, CA 95356.

15 19. Plaintiff is informed and believes and thereon alleges that, at all times relevant to this
16 Complaint, 4R Clover, Inc. has operated the bar and restaurant “P. Wexford’s Pub” located at 3313
17 McHenry Avenue, Modesto, CA 95350.

18 20. 4R Clover, Inc. was incorporated with the California Secretary of State on March 9,
19 2009.

20 21. Defendant Triple R Wagner, Inc. is a corporation organized and existing under the
21 laws of the State of California, with a principal office located at 4213 Papillon Drive, Modesto, CA
22 95356.

23 22. Plaintiff is informed and believes and thereon alleges that, at all times relevant to this
24 Complaint, Triple R Wagner, Inc. has operated the bar/lounge “The Board Room” located at 1528 J
25 Street, Modesto, CA 95356.

26 23. Triple R Wagner, Inc. was incorporated with the California Secretary of State on April
27 20, 2004.

28

1 24. Defendant R Wagner Enterprises, Inc. is a corporation organized and existing under
2 the laws of the State of California, with a principal office located at 4213 Papillon Drive, Modesto,
3 CA 95356.

4 25. Plaintiff is informed and believes and thereon alleges that, at all times relevant to this
5 Complaint, R Wagner Enterprises, Inc. has operated the bar/restaurant “Nino’s Place” located at 5219
6 McHenry Avenue, Modesto, CA 95356.

7 26. R Wagner Enterprises, Inc. was incorporated with the California Secretary of State on
8 June 24, 2015.

9 27. Rivets American Grill, Inc., 4R Clover, Inc., Triple R Wagner, Inc., and R Wagner
10 Enterprises, Inc. are referred to collectively as the “Corporate Defendants.”

11 28. Defendant Roman T. Wagner (“Wagner”), an individual, is an owner, director, officer,
12 and/or managing agent of the Corporate Defendants, as well as each of the entities through which he
13 operates the Wagner Restaurants.

14 29. Plaintiff is informed and believes and thereon alleges that, at all times relevant to this
15 Complaint, Defendant Wagner is and has been the Chief Executive Officer, Chief Financial Officer,
16 and Secretary of the Corporate Defendants.

17 30. Plaintiff is informed and believes and thereon alleges that, at all times relevant to this
18 Complaint, Wagner has resided at 4213 Papillon Drive, Modesto, CA 95356, which is the principal
19 office of each of the corporate entities which operate the Wagner Restaurants, including the Corporate
20 Defendants named herein.

21 31. Plaintiff is informed and believes and thereon alleges that, at all times relevant to this
22 Complaint, Wagner is the agent for service of process for each of the Corporate Defendants.

23 32. Plaintiff is informed and believes and thereon alleges that, at all times relevant to this
24 Complaint, Defendant Wagner controls and is intimately involved in the day-to-day operations of the
25 Wagner Restaurants and the corporate entities through which he operates the Wagner Restaurants,
26 including the Corporate Defendants named herein. In that capacity, Wagner has both determined and
27 instituted the unlawful wage and hour practices alleged herein. As such, Wagner is personally liable
28 for the Labor Code and Wage Order violations described herein. Plaintiffs are informed and believe

1 and thereon allege that, at all times relevant to this Complaint, Wagner is a joint employer, working
2 as a joint enterprise with and the alter ego of the corporate entities through which he operates the
3 Wagner Restaurants, including the Corporate Defendants named herein.

4 33. Defendants DOES 1 through 25 inclusive (“DOES” and, together with the Corporate
5 Defendants and Wagner, the “Defendants”) are persons or entities whose true names and capacities
6 are presently unknown to Plaintiff, who therefore sues them by such fictitious names. Plaintiff is
7 informed and believes and thereon alleges that, at all times relevant to this Complaint, that each of
8 the fictitiously-named Defendants perpetrated some or all of the wrongful acts alleged herein, is
9 responsible in some manner for the matters alleged herein, and is jointly and severally liable to
10 Plaintiffs. Plaintiff will amend this Complaint to allege the true names and capacities of the DOES
11 when ascertained. Plaintiff is informed and believes and thereon alleges that, at all times relevant to
12 this Complaint, DOES are joint employers, working as a joint enterprise with, and are the alter egos
13 of Wagner.

14 34. Defendants are, and at all times relevant to this Complaint were, each an employer
15 covered by the California Labor Code and the IWC Wage Orders.

16 **IV. CLASS ACTION ALLEGATIONS**

17 35. Pursuant to § 382 of the Code of Civil Procedure, Plaintiff brings this action on behalf
18 of herself and the following class:

19 All current and former hourly-paid and/or non-exempt employees who
20 worked for Defendants in the State of California at any time within the
21 four (4) years prior to the filing of the original complaint in this action
22 through the date of the final disposition of this action (“Class Period”)
23 (the “Class” or “Class Members”).

24 36. Plaintiff’s claims are brought and may properly be maintained as a class action because
25 there is a well-defined community of interest among the Class with respect to the claims asserted and
26 the Class are easily ascertainable.

27 37. The Class Members are readily ascertainable. The number and identity of the Class
28 Members are determinable from the records of Defendants. For purposes of notice and other purposes

1 related to this action, their names and addresses are readily available from Defendants. Notice can be
2 provided by any means permissible under the rules of civil procedure and local rules.

3 38. The Class Members are so numerous that joinder of all members is impracticable.
4 While the precise number of Class Members has not been determined at this time, Plaintiff is informed
5 and believes that Defendants collectively have employed in excess of 100 non-exempt employees in
6 their restaurants and bars during the Class Period. Joinder of all members of the Class is not
7 practicable.

8 39. Common questions of law and fact exist as to all Class Members that are answerable
9 on a common basis and such questions predominate over any questions solely affecting individual
10 Class Members. Such common questions will generate common answers and will determine
11 Defendants' liability to all (or nearly all) Class Members. The common questions include, without
12 limitation:

- 13 a. Whether Defendants employed Plaintiff and Class Members within the meaning
14 of the California Labor Code and Wage Order No. 5;
- 15 b. Whether Defendants violated the California Labor Code and Wage Order No. 5
16 by failing to afford Plaintiff and Class Members proper off-duty meal periods for
17 every five (5) hours worked;
- 18 c. Whether Defendants violated the California Labor Code and Wage Order No. 5
19 by failing to afford Plaintiff and Class Members proper off-duty rest breaks for
20 every four (4) hours or major fraction thereof worked;
- 21 d. Whether Defendants violated the California Labor Code and Wage Order No. 5
22 by failing to pay Plaintiff and Class Members on additional hour of pay at their
23 regular rate of compensation for each work day that they were not provided with
24 a proper off-duty meal period;
- 25 e. Whether Defendants violated the California Labor Code and Wage Order No. 5
26 by failing to pay Plaintiff and Class Members on additional hour of pay at their
27 regular rate of compensation for each work day that they were not provided with
28 a proper off-duty rest break;

- 1 f. Whether Defendants violated the California Labor Code and Wage Order No. 5
2 by requiring Plaintiffs and Class Members to take an unpaid break longer than
3 one hour in the middle of their work day and return to work later that same day,
4 without paying Plaintiff and Class Members the required one hour of premium
5 pay at the minimum wage;
- 6 g. Whether Defendants violated the California Labor Code and Wage Order No. 5
7 by failing to pay Plaintiff and Class Members overtime premiums for all hours
8 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek
9 and double-time compensation for all hours worked in excess of twelve (12) hours
10 in a day;
- 11 h. Whether Defendants violated the California Labor Code and Wage Order No. 5
12 by failing to pay Plaintiff and Class Members all wages due and owing upon
13 termination or within 72 hours of resignation;
- 14 i. Whether Defendants violated the California Labor Code and Wage Order No. 5
15 by failing to provide Plaintiff and Class Members accurate wage statements; and
16 j. Whether Plaintiffs and Class Members have lost money or property as a result of
17 Defendants' violations of Business and Professions Code §§ 17200 *et seq.*

18 40. Plaintiff's claims are typical of the Class Members' claims. Plaintiff, like all Class
19 Members, is or was employed by Defendants as hourly-paid and/or non-exempt restaurant/bar
20 employee who worked for Defendants in their restaurants and bars pursuant to their corporate policies
21 and practices. Plaintiff, like all Class Members, was, *inter alia*, not paid overtime premiums for work
22 over eight (8) hours in a day and/or forty (40) hours in a workweek and/or first eight (8) hours worked
23 on the seventh consecutive day in a workweek, was not permitted off-duty 10-minute rest breaks, was
24 not permitted an off-duty 30-minute meal breaks, was not paid split shift premiums when working a
25 split shift in a single workday with an unpaid break of more than an hour between shifts, was not paid
26 premiums for missed rest breaks or meal breaks, and was not paid all wages owed to them upon their
27 separation from Defendants. If Defendants are liable to Plaintiff for the claims enumerated in this
28 Complaint, they are also liable to all Class Members.

1 41. Plaintiff and her Counsel will fairly and adequately represent the Class Members.
2 There are no conflicts between Plaintiff and the Class Members, and Plaintiff brings this lawsuit out
3 of a desire to help all Class Members, not merely out of a desire to recover their own damages.

4 42. Plaintiff's counsel are experienced class action litigators who are well-prepared to
5 represent the interests of the Class Members.

6 43. A class action is superior to other available methods for the fair and efficient
7 adjudication of this litigation. Requiring each Class Member to pursue her or his claims individually
8 would entail needless duplication, might result in inconsistent judgments, and would waste the
9 resources of both the parties and the judiciary. Moreover, the financial burden of proving that
10 Defendants violated the law as alleged herein also would make the prosecution of individual actions
11 virtually impossible for most, if not all members of the classes.

12 **V. ADDITIONAL FACTUAL ALLEGATIONS**

13 **Defendants' Unlawful Policies and Practices**

14 44. During the Class Period, Defendants have violated and continue to violate California
15 wage and hour laws by having a policy and practice of: (1) failing to pay Plaintiff and Class Members
16 the required overtime premiums for all hours worked over eight (8) hours in a day and/or forty (40)
17 hours in a workweek, as well as the first eight (8) hours worked on the seventh consecutive day of
18 work in a workweek; and (2) failing to pay Plaintiff and Class Members the required double-time
19 premium pay for all hours worked beyond twelve (12) hours in a workday and/or beyond the first
20 eight (8) hours worked on the seventh consecutive day or work in a workweek.

21 45. During the Class Period, Defendants have had a policy and practice of requiring
22 Plaintiff and Class Members to regularly work split shifts, by scheduling Plaintiff and Class Members
23 to work morning and evening shifts separated by a non-paid, non-working period of longer than one
24 hour. However, Defendants have had a policy and practice of failing to compensate Plaintiff and Class
25 Members one hour of premium pay "at the minimum wage ... in addition to the minimum wage for
26 that workday," as required for split shifts under California law. Wage Order 5 § 4(c).

27 46. During the Class Period, Defendants have had a policy and practice of not providing
28 Plaintiff and Class Members with the off-duty and uninterrupted 30-minute meal periods required by

1 California law for every five (5) hours worked. Defendants have failed to even inform Plaintiff and
2 Class Members about their right to these off-duty and uninterrupted 30-minute meal breaks.

3 47. During the Class Period, Defendants have had a policy and practice of not authorizing
4 or permitting Plaintiff and Class Members to take an off-duty, 10-minute rest period as required by
5 California law for every four (4) hours or major fraction thereof worked. Defendants have failed to
6 even inform Plaintiff and Class Members about their right to 10-minute off-duty rest breaks.

7 48. During the Class Period, Defendants have had a policy and practice of not paying
8 Plaintiff and Class Members the premium required for any day in which Plaintiff and Class Members
9 were not authorized and permitted to take their 10-minute off-duty rest break and/or not provided
10 their off-duty and uninterrupted 30-minute meal period.

11 49. During the Class Period, Defendants have had a policy and practice of not
12 compensating Plaintiff and Class Members upon termination or resignation for all earned wages. Such
13 failure to compensate Plaintiff and Class Members was willful because there is no good faith excuse
14 for Defendants' failure to pay the basic wages and premiums required by California law, including
15 for overtime, split shifts, and missed rest and meal breaks.

16 50. During the Class Period, Defendants have had a policy and practice of manipulating
17 the time records of Plaintiff and Class Members to reduce the overtime hours worked in order to avoid
18 paying premiums for such hours.

19 51. During the Class Period, Defendants have had a policy and practice of failing to furnish
20 Plaintiff and Class Members with accurate wage statements, as their wage statements do not
21 accurately reflect their overtime hours worked or the premium wages earned.

22 52. During the Class Period, Defendants have had a policy and practice of not keeping
23 basic required payroll and time records for Plaintiff and Class Members, showing, among other
24 required details, the meal periods and split shift intervals.

25 **Defendants Operated An Integrated Enterprise**

26 53. Plaintiff is informed and believes, and thereon alleges, that at all times during the Class
27 Period, Defendants operated as a single integrated business enterprise. Though such Defendants had
28 multiple corporate, entity, and individual personalities, there was but one enterprise and this enterprise

1 was so handled that it should respond as a whole for the acts committed by Defendants during this
2 time period, as alleged herein.

3 54. During the Class Period, Defendants have shared and continue to share employer
4 policies and practices, including but not limited to the unlawful policies and practices set forth herein.
5 Defendants have shared and continue to share management, supervisors, employees, payroll
6 responsibilities, and employee handbooks. In addition, the Corporate Defendants and Wagner share
7 4213 Papillon Drive, Modesto, CA 95356, as an address.

8 55. Plaintiff is informed and believes, and thereon allege, that at all times herein
9 mentioned, and continuing to the present, each corporation and entity has been and is merely an
10 instrument and conduit for the others in the prosecution of a single business venture. If the acts of
11 each Defendant are treated as those of that one Defendant alone, an inequitable result will follow: that
12 Defendant may have insufficient assets to respond to the ultimate award of damages, attorneys' fees,
13 and costs incurred in this case.

14 56. Plaintiff alleges that all of the acts and failures to act alleged herein were duly
15 performed by and attributable to all Defendants, each acting as an agent, indirect employer, joint
16 employer, integrated enterprise and/or under the direction and control of others. Said acts and failures
17 to act were within the scope of such agency and/or employment, and each Defendant participated in,
18 approved and/or ratified the unlawful acts and omissions by the other Defendants complained of
19 herein. Whenever and wherever reference is made in this Complaint to any act by a Defendant or
20 Defendants, such allegations and reference shall also be deemed to mean the acts and failures to act
21 of each Defendant acting individually, jointly, and/or severally.

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1 **VI. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PAY OVERTIME WAGES**

4 **IN VIOLATION OF LABOR CODE §§ 510, 558.1, 1194; Wage Order 5.**

5 **(Brought On Behalf of Plaintiff and Class Members Against All Defendants)**

6 57. Plaintiff, on behalf of herself and the Class Members, repeats and realleges each and
7 every allegation of the preceding paragraphs hereof with the same force and effect as though fully set
8 forth herein.

9 58. Labor Code § 510 and Wage Order 5 § 3(A) require employers to pay employees one
10 and one-half (1.5) times the regular hourly rate for all hours worked in excess of eight (8) hours in
11 one workday and in excess of forty (40) hours in one workweek, and for the first eight (8) hours
12 worked on the seventh day of work in any one workweek.

13 59. Labor Code § 510 and Wage Order 5 § 3(A) further require employers to pay
14 employees two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per
15 day and, on the seventh consecutive workday, any work in excess of eight (8) hours.

16 60. Labor Code § 1194 entitles an employee receiving less than the legal overtime
17 compensation to recover in a civil action the unpaid balance of the full amount of all overtime wages
18 owed, including interest thereon, reasonable attorney's fees, and costs of suit.

19 61. Labor Code § 558.1(a) provides for liability for an "other person acting on behalf of
20 an employer[]" who violates, or causes to be violated, any provision regulating minimum wages or
21 hours and days of work in any order of the Industrial Welfare Commission . . . or [Labor Code]
22 Section[...] 1194." Labor Code § 558.1(b) provides that an "other person" is "a natural person who
23 is an owner, director, officer, or managing agent" of an employer.

24 62. During the Class Period, Plaintiff and Class Members regularly worked in excess of
25 eight (8) hours in a day and forty (40) hours in a week. Plaintiff and Class Members also sometimes
26 worked in excess of twelve (12) hours on a single workday and over eight (8) hours on a seventh
27 consecutive workday.

1 63. During the Class Period, Defendants have had a policy and practice of willfully and
2 intentionally failing to pay the required overtime rates to Plaintiff and Class Members for overtime
3 hours worked.

4 64. As a result of Defendants' conduct, Plaintiff and the Class have been and continue to
5 be deprived of overtime compensation in an amount to be determined at trial, and are entitled to
6 recovery of such amounts from all Defendants, including interest thereon, reasonable attorney's fees,
7 and costs of suit, pursuant to Labor Code § 1194.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY COMPENSATION FOR SPLIT SHIFTS**

10 **IN VIOLATION OF LABOR CODE §§ 558.1, 1194; WAGE ORDER 5**

11 **(Brought On Behalf of Plaintiff and Class Members Against All Defendants)**

12 65. Plaintiff, on behalf of herself and the Class Members, repeats and realleges each and
13 every allegation of the preceding paragraphs hereof with the same force and effect as though fully set
14 forth herein.

15 66. Wage Order § 4(C) mandates that employers provide one additional hour's pay at the
16 minimum wage, in addition to the minimum wage for that workday, for each day that an employee
17 works a split shift and is not paid at least the minimum wage for all hours worked that day, plus one
18 additional hour at minimum wage.

19 67. Labor Code § 558.1(a) provides for liability for an "other person acting on behalf of
20 an employer[] who violates, or causes to be violated, any provision regulating minimum wages or
21 hours and days of work in any order of the Industrial Welfare Commission or [Labor Code]
22 Section[...] 1194." Labor Code § 558.1(b) provides that an "other person" is "a natural person who
23 is an owner, director, officer, or managing agent" of an employer.

24 68. During the Class Period, Defendants regularly scheduled Plaintiff and Class Members
25 to work two nonconsecutive shifts in the same day, interrupted by non-paid, non-working periods.
26 These periods were not bona fide rest or meal periods.

27 69. Defendants failed to pay Plaintiff and Class Members the required additional one
28 hour's pay at minimum wage on days when Defendants required them to work a split shift and did

1 not pay at least the minimum wage for all hours worked that day, plus one additional hour at minimum
2 wage.

3 70. Plaintiff and the Class seek all appropriate damages, civil penalties, and attorneys' fees
4 for Defendants' violations of Wage Order 5 § 4(C).

5 **THIRD CAUSE OF ACTION**

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

7 **IN VIOLATION OF LABOR CODE §§ 226.7, 558.1; WAGE ORDER 5**

8 **(Brought On Behalf of Plaintiff and Class Members Against All Defendants)**

9 71. Plaintiff, on behalf of herself and the Class Members, repeats and realleges each and
10 every allegation of the preceding paragraphs hereof with the same force and effect as though fully set
11 forth herein.

12 72. Pursuant to Wage Order 5 § 12, "[e]very employer shall authorize and permit all
13 employees to take rest periods . . . based on the total hours worked daily at the rate of ten (10) minutes
14 net rest time per four (4) hours or major fraction thereof." In other words, "[e]mployees are entitled
15 to 10 minutes rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of
16 more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and
17 so on." *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1029 (citing Wage
18 Order).

19 73. Labor Code § 226.7(b) states: "If an employer fails to provide an employee a meal
20 period or rest period in accordance with an applicable order of the Industrial Welfare Commission,
21 the employer shall pay the employee one additional hours or pay at the employee's regular rate of
22 compensation for each work day that the meal or rest period is not provided."

23 74. Labor Code § 558.1(a) provides for liability for an "other person acting on behalf of
24 an employer[] who violates, or causes to be violated, any provision regulating minimum wages or
25 hours and days of work in any order of the Industrial Welfare Commission." Labor Code § 558.1(b)
26 provides that an "other person" is "a natural person who is an owner, director, officer, or managing
27 agent" of an employer.
28

1 75. During the Class Period, Defendants have had a policy and practice of failing to permit
2 and authorize required rest periods and not pay the related premium of one hour of additional pay at
3 the regular rate of compensation for each workday that the compliant rest periods were not permitted
4 or authorized.

5 76. Defendants knew or should have known that Plaintiff and Class Members were not
6 authorized and permitted to take, and in fact did not take, rest periods throughout the relevant time
7 period, based on their lack of communicated policy to Plaintiff and Class Members to authorize them
8 to take a rest break during their shifts.

9 77. As a result of Defendants' failure to permit and authorize Plaintiff and Class Members
10 to take required rest periods, they are all liable to Plaintiff and other member of the Class for one hour
11 of additional pay at the regular rate of compensation for each workday that the required rest periods
12 were not provided, attorneys' fees, penalties, and interest, pursuant to Labor Code §§ 218.5, 226.7,
13 and 1194, and Wage Order 5.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE MEAL PERIODS**

16 **IN VIOLATION OF LABOR CODE §§ 226.7, 512, 558.1; WAGE ORDER 5**

17 **(Brought On Behalf of Plaintiff and Class Members Against All Defendants)**

18 78. Plaintiff, on behalf of herself and the Class Members, repeat and reallege each and
19 every allegation of the preceding paragraphs hereof with the same force and effect as though fully set
20 forth herein.

21 79. Labor Code § 512 and Wage Order 5 § 10(A) require that an employer provide a meal
22 period of at least 30 minutes in which each employee is relieved of all duty for every five (5) hours
23 worked. Wage Order 5 § 10(B) requires that an employer must provide a second meal period of no
24 fewer than 30 minutes for all workdays on which an employee works more than ten (10) hours

25 80. Labor Code §§ 226.7(b) and 512 and Wage Order 5 §10(F) provide that an employee
26 shall receive a premium of one hour of pay for each day worked in which his or her employer did not
27 provide the meal period(s) required by Labor Code § 512 and Wage Order 5 § 10(A), (B).

81. Labor Code § 558.1(a) provides for liability for an “other person acting on behalf of an employer[] who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission.” Labor Code § 558.1(b) provides that an “other person” is “a natural person who is an owner, director, officer, or managing agent” of an employer.

82. During the Class Period, Defendants have had a policy and practice of failing to provide required meal periods and not pay the related premium of one hour of additional pay at the regular rate of compensation for each workday that the compliant meal periods were not provided.

83. Defendants knew or should have known that Plaintiff and Class Members were not authorized and permitted to take, and in fact did not take, uninterrupted 30-minute meal periods throughout the relevant time period, based on their lack of communicated policy to Plaintiff and Class Members to provide them with off-duty meal periods during their shift(s).

84. As a result of Defendants' failure to provide Plaintiff and Class Members required uninterrupted 30-minute meal periods, they are all liable to Plaintiff and other member of the Class for one hour of additional pay at the regular rate of compensation for each workday that the required meal periods were not provided, attorneys' fees, penalties, and interest, pursuant to Labor Code §§ 218.5, 226.7, 512, and 1194, and Wage Order 5.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE UPON SEPARATION

IN VIOLATION OF LABOR CODE §§ 201, 202, 203 and 558.1

(Brought On Behalf of Plaintiff and Class Members [upon separation] Against All Defendants)

85. Plaintiff, on behalf of herself and the Class Members, repeats and realleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

86. Labor Code §§ 201 and 202 require employers to pay their employees all wages due immediately at the time of discharge, layoff, or resignation made with at least 72 hours' notice, or within 72 hours of resignation made without 72 hours' notice.

87. Labor Code § 203 provides that if an employer willfully fails to pay compensations promptly upon separation, as required by §§ 201 or 202, then the employer is liable for waiting time penalties in the form of one day of wages for up to 30 days.

88. Labor Code § 558.1(a) provides for liability for an “other person acting on behalf of an employer[] who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission or [Labor Code] Section[...] 203.” Labor Code § 558.1(b) provides that an “other person” is “a natural person who is an owner, director, officer, or managing agent” of an employer.

89. Throughout the relevant time period, as a result of Defendants' willful wage and hour violations set forth above, Defendants have failed to pay all earned wages to Plaintiff and Class Members who have separated from Defendants during the four (4) years prior to the filing of the Complaint and continuing through the present.

90. As a result of Defendants' willful failure to pay all wages due to Plaintiff and Class Members following separation from employment with Defendants, Defendant is liable to Plaintiff and Class Members who have separated from their employment with Defendants an additional sum equal to a day's wages for thirty (30) days, plus interest, in amounts to be proven at trial, attorneys' fees, and costs, pursuant to Labor Code § 203.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

IN VIOLATION OF LABOR CODE §§ 226, 226.3, and 558.1

(Brought On Behalf of Plaintiff and Class Members Against All Defendants)

91. Plaintiff, on behalf of herself and the Class Members, repeats and realleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

92. Labor Code § 226(a) requires employers, at the time of each payment of wages, to provide each employee with an accurate wage statement, itemizing, among other things, the total hours worked by the employee, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate.

1 93. As a result of the violations set forth in detail above (failure to pay overtime premiums,
2 failure to pay split shift premiums, rest break violations and meal break violations), Defendants
3 intentionally and willfully failed to provide Plaintiff and Class Members with complete and accurate
4 wage statements. The deficiencies include, among other things, the failure to state the actual gross
5 wages earned, the failure to include meal and rest break premiums, and the failure to include overtime
6 hours and rates of pay. Accordingly, Defendants violated Labor Code § 226.

7 94. Labor Code § 558.1(a) provides for liability for an “other person acting on behalf of
8 an employer[] who violates, or causes to be violated, any provision regulating minimum wages or
9 hours and days of work in any order of the Industrial Welfare Commission or [Labor Code]
10 Section[...] 226.” Labor Code § 558.1(b) provides that an “other person” is “a natural person who is
11 an owner, director, officer, or managing agent” of an employer.

12 95. As a result of Defendants’ failures, Plaintiff and Class Members were unable to
13 “promptly and easily” determine whether Defendants did in fact pay them all wages owed, including
14 at the correct rates and for all hours worked. Plaintiff and the Class have therefore suffered injury
15 pursuant to Labor Code § 226(e)(2)(B) as a result of Defendants’ knowing and intentional failure to
16 provide accurate itemized wage statements that comply with the requirements of Labor Code § 226(a).

17 96. As a result of Defendants’ acts and omissions in violation of Labor Code § 226, all
18 Defendants are liable to Plaintiff and Class Members for \$50 for each initial pay period when a
19 violation occurred and \$100 for each subsequent violation up to \$4,000, and reasonable attorneys’
20 fees and costs of this suit, pursuant to Labor Code § 226(e).

21 **SEVENTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION AND BUSINESS PRACTICES**

23 **IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 et seq.**

24 **(Brought On Behalf of Plaintiff and Class Members Against All Defendants)**

25 97. Plaintiff, on behalf of herself and the Class Members, repeats and realleges each and
26 every allegation of the preceding paragraphs hereof with the same force and effect as though fully set
27 forth herein.

1 98. Throughout the relevant time period, through Defendants' acts and omissions alleged
2 herein, Defendants committed and continues to commit unlawful acts that violated and continue to
3 violate Business and Professions Code §§ 17200 *et seq.*

4 99. Defendants' unlawful acts include violating the California Labor Code, as alleged
5 herein.

6 100. Defendants' violations of this statute and wage and hour law constitute a business
7 practice because Defendants' aforementioned acts and omissions were done repeatedly over a
8 significant period of time, and in a systemic manner, to the detriment of Plaintiff and Class Members.

9 101. As a result of Defendants' unfair and unlawful business practices, Defendants have
10 reaped unfair and illegal profits during the Class Period at the expense of Plaintiffs, Class Members,
11 and members of the public. Defendants should be made to disgorge their ill-gotten gains to restore
12 them to Plaintiff and Class Members.

13 102. As a result of the aforementioned acts, Plaintiff and the Class have lost and continue
14 to lose money or property, and have suffered and continue to suffer injury in fact. Defendants continue
15 to hold unpaid wages and other funds legally belonging to Plaintiff and the Class.

16 103. Plaintiff and the Class are entitled to restitution pursuant to Business and Professions
17 Code §§ 17203 and 17208 for, among other things, all unpaid wages and premiums, and interest since
18 four (4) years prior to the filing of the Complaint.

19 104. Pursuant to Business and Professions Code § 17203, Plaintiff and similarly situated
20 employees and entitled to and seek injunctive relief against Defendants' continuation of the unlawful
21 and unfair business practices described herein.

22 105. Plaintiff and the Class are entitled to restitution in the amounts unlawfully withheld by
23 Defendants, with interest, injunctive relief, and an award of attorneys' fees and costs. *See Cortez v.*
24 *Purolator Air Filtration Products Co.*, (2000) 23 Cal.4th 163, 177 (UCL authorizes, as restitution,
25 order for payment of unlawfully withheld wages).

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

- 3 A. Certification of this action as a class action pursuant to § 382 of the Code of Civil
4 Procedure on behalf of the proposed Class, appointing Plaintiff and her Counsel to
5 represent the Class Members;
- 6 B. An award of unpaid overtime premium compensation, rest and meal period
7 premiums, and split shift premiums owed to Plaintiff and the Class Members, in
8 an amount to be determined at trial;
- 9 C. An award of waiting time penalties and other penalties for failure to provide
10 accurate itemized pay statements to Plaintiff and the Class Members, in an amount
11 to be determined at trial;
- 12 D. An award of restitution of all monies due to Plaintiff and Class Members, as well
13 as disgorged profits from the unfair and unlawful business practices of Defendants;
- 14 E. Pre-judgment interest;
- 15 F. Declaratory relief;
- 16 G. Reasonable attorneys' fees and costs; and
- 17 H. For such further relief that the Court may deem just and proper.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a jury trial with respect to all issues triable of right to a jury.
20

21 DATED: April 4, 2025

Respectfully submitted,

22 **PELTON GRAHAM LLP**

23
24 By: /s/ Taylor B. Graham
Taylor B. Graham
25 Brent E. Pelton

26 *Attorneys for Plaintiff and the Proposed Class*
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