Electronically Received 07/25/2024 08:11 AM

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
Perssia Razma (State Bar #351398)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
prazma@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for PLAINTIFF

FILED
Superior Court of California
County of Los Angeles
07/25/2024
David W. Slayton, Executive Officer / Clerk of Court
By: R. Lozano Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DYLAN SIERRA, an individual, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiff,

v.

CENTURY RESTAURANT LLC, a California limited liability company; and DOES 1-50, Inclusive,

Defendant.

Case No: 24STCV12748

FIRST AMENDED CLASS ACTION COMPLAINT FOR:

1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ.

DEMAND FOR A JURY TRIAL

PLAINTIFF DYLAN SIERRA ("PLAINTIFF"), an individual, on behalf of himself and all other similarly situated current and former employees, allege on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

1. DEFENDANT CENTURY RESTAURANT LLC ("DEFENDANT") is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANT owns and operates restaurants in the state of California, including the county of Los Angeles, where PLAINTIFF worked.

3. PLAINTIFF was employed by DEFENDANT in California from May 2023 to February 2024 as a non-exempt employee, paid an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

4. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all persons who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of the original Complaint and ending on the date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars ($5,000,000.00).

/ / /

5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained and continues to retain wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

6. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

7. The agents, servants and/or employees of the DEFENDANTs and each of them acting on behalf of the DEFENDANTs acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the DEFENDANTs, and personally participated in the conduct alleged herein on behalf of the DEFENDANTs with respect to the conduct alleged herein. Consequently, the acts of each DEFENDANT are legally attributable to the other DEFENDANTs and all DEFENDANTs are jointly and severally liable to PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

8. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of the PLAINTIFF'S employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

9. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

10. DEFENDANT's uniform policies and practices alleged herein were unlawful, unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

11. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and other members of the CALIFORNIA CLASS who has been economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

13. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs the CALIFORNIA CLASS across California, including in this County, and committed the wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

THE CONDUCT

14. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF and other members of the CALIFORNIA CLASS for off-the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANT's uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

A. Meal Period Violations

15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time during the CLASS PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be

PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business records.

16. From time to time during the CLASS PERIOD, as a result of their rigorous work schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which these employees are required by DEFENDANT to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed "on-duty" meal period exception. When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call. DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by DEFENDANT's business records. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

B. <u>Rest Period Violations</u>

17. From time to time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied

their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on premises, on duty and/or on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

C. Unreimbursed Business Expenses

18. DEFENDANT as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

19. In the course of their employment, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell phones as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required to use their personal cell phones in order to perform work related tasks. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for the use of their personal cell phones. As a result,

in the course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed business expenses that included, but were not limited to, costs related to the use of their personal cell phones all on behalf of and for the benefit of DEFENDANT.

D. Wage Statement Violations

20. California Labor Code Section 226 required an employer to furnish its employees and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

21. From time to time during the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show the complete requirements under California Labor Code sections 226(a)(1)-(9), including but not limited to, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods.

22. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226(a)(1)-(9).

23. As a result, DEFENDANT issued PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,

DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

E. Reporting Time Violations

24. Further, DEFENDANTS from time to time required PLAINTIFF and other AGGRIEVED EMPLOYEES to report to work, but were furnished less than half their scheduled shift's worth of work and were not paid reporting time pay as required by Cal. Code Regs., tit. 8 § 11040, subdivision(A). Specifically, Subdivision 5(A) states, "(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." In addition, when DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to engage in additional work, this sometimes resulted in a second reporting for work in a single workday. In such a circumstance of a second reporting for work in a single workday, DEFENDANT failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8 § 11040. Subdivision 5(B) states: "If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay, which shall be not less than the minimum wage." Cal. Code Regs., tit. 8 § 11040, subd. 5(B).

F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations

25. During the CLASS PERIOD, from time-to-time DEFENDANT failed and continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS for all hours worked.

26. During the CLASS PERIOD, from time-to-time DEFENDANT required PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS having to work while off-the-clock.

/ / /

27. DEFENDANT directed and directly benefited from the undercompensated off-the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

28. DEFENDANT controlled the work schedules, duties, and protocols, applications, assignments, and employment conditions of PLAINTIFF and the other members of the CALIFORNIA CLASS.

29. DEFENDANT was able to track the amount of time PLAINTIFF and the other members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for all the work they performed.

30. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt employees, subject to the requirements of the California Labor Code.

31. DEFENDANT's policies and practices deprived PLAINTIFF and the other CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime pay.

32. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

33. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and benefit for the time spent working while off-the-clock. DEFENDANT's uniform policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is evidenced by DEFENDANT's business records.

/ / /

G. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Redeemed Sick Pay

34. From time to time during the CLASS PERIOD, DEFENDANT failed and continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS Members for their overtime and double time hours worked, meal and rest period premiums, and redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members forfeited wages due to them for working overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and redeemed sick pay rates. DEFENDANT's uniform policy and practice not to pay the CALIFORNIA CLASS Members at the correct rate for all overtime and double time worked, meal and rest period premiums, and redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT's business records.

35. State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

36. The second component of PLAINTIFF's and other CALIFORNIA CLASS Members' compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly basis with bonus compensation when the employees met the various performance goals set by DEFENDANTS.

37. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked. Management and supervisors described the

incentive/bonus program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS members must be included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment of overtime and double time compensation, meal and rest period premiums, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time for non-employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

38. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company policy, practice, and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime and double time worked, meal and rest period premiums, and sick pay. This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment of the correct overtime and double time compensation, meal and rest period premiums, and sick pay as required by California law which allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

H. <u>Violations for Untimely Payment of Wages</u>

39. Pursuant to California Labor Code section 204, PLAINTIFF and the CALIFORNIA CLASS members were entitled to timely payment of wages during their employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not

receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period premium wages within permissible time period.

40. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant to Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." PLAINTIFF and the CALIFORNIA CLASS Members were, from time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

41. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely paying all wages due at time of termination for all CALIFORNIA CLASS Members whose employment ended during the CLASS PERIOD.

I. Unlawful Deductions

42. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF and CALIFORNIA CLASS Members' pay without explanations and without authorization to do so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANTS violated Labor Code § 221.

J. Timekeeping Manipulation

43. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an immutable timekeeping system to accurately record and pay PLAINTIFF and other members of the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally alter the time recorded in DEFENDANT'S timekeeping system for PLAINTIFF and other members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest breaks.

44. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from time-to-time, forfeited time worked by working without their time being accurately recorded and without compensation at the applicable pay rates.

45. The mutability of the timekeeping system also allowed DEFENDANT to alter employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT's timekeeping system so as to create the appearance that PLAINTIFF and other members of the CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees were not at all times provided an off-duty meal break. This practice is a direct result of DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise compensating them for missed meal breaks.

46. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due to them for all hours worked at DEFENDANT'S direction, control and benefit for the time the timekeeping system was inoperable. DEFENDANT'S uniform policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is evidenced by DEFENDANT'S business records.

K. Unlawful Rounding Practices

47. During the CLASS PERIOD, DEFENDANTS did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual time these employees worked each day, including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from time to time, forfeited

compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

48. Further, the mutability of DEFENDANTS' timekeeping system and unlawful rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break.

L. Sick Pay Violations

49. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From time to time, DEFENDANT failed to have a policy or practice in place that provided PLAINTIFF and other members of the CALIFORNIA CLASS with sick days and/or paid sick leave.

50. California Labor Code Section 246(i) requires an employer to furnish its employees with written wage statements setting forth the amount of paid sick leave available. From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting forth the amount of paid sick leave available.

M. Tips and Tip Pooling

51. During the CLASS PERIOD, pursuant to DEFENDANTS' company policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to forfeit gratuities left for them by customers to DEFENDANTS' agents who provided no service to the customers that resulted in the gratuity. DEFENDANTS routinely added gratuity tips and service charges to its food and beverage bills. These gratuities and service charges reasonably appear to be gratuities for the service staff. It is typical and customary in the hospitality industry that establishments impose gratuity charges on the food and beverage bill. Thus, when customers paid these charges, it is

reasonable for them to have believed they were gratuities to be paid to the service staff. Indeed, because many of these charges are depicted to customers, and the custom in the food and beverage industry that gratuities are paid for food and beverage service, customers paid these charges reasonably believing they were remitted to the service staff. However, DEFENDANTS have not remitted the total proceeds of these gratuities to the non-managerial employees who serve the food and beverages. Instead, DEFENDANTS have a policy and practice of using a portion of these gratuities to pay managers or other non-service employees. As a result, PLAINTIFF and CALIFORNIA CLASS Members have not received the total proceeds of the gratuities, to which they are entitled under California law.

52. DEFENDANTS are generally in the business of owning and operating a restaurant. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members were in the "chain of service" and earned gratuities based on their service for their customers. However, PLAINTIFF and CALIFORNIA CLASS Members were forced to forfeit portions of their gratuities, which said gratuities were kept by DEFENDANTS' employees who were not in the chain of service from which the gratuity resulted. PLAINTIFF and other CALIFORNIA CLASS Members contend that any gratuities kept by DEFENDANTS' non-service employees were illegal and in violation of California law because PLAINTIFF and other CALIFORNIA CLASS Members provided the service for to whom the gratuity should have been paid.

53. California Labor Code § 351 establishes the requirements for an employer regarding the payment of gratuities. Specifically, gratuities are the sole property of the employees. California Labor Code § 351 expressly prohibits employers and their agents from collecting, taking, or receiving any portion of a gratuity. California Labor Code § 350(e) defines the term "gratuity" as including any money that has been paid or given or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink or articles sold or served to such patron. Labor Code § 353 requires employers to keep accurate records of all gratuities they receive, directly or indirectly.

54. Although tip pooling is not expressly prohibited by the Labor Code, employees who

mandate tip pooling must only distribute pooled tips to employees in the "chain of service." By distributing tips to employees who were not in the "chain of service," DEFENDANTS have violated and continue to violate the legal requirements for handling pooled tips.

55. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF with a second off-duty meal period each workday in which he was required by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break. DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to the personal expenses incurred for the use of their personal cell phones, on behalf of and in furtherance of his employment with DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of $75,000.

CLASS ACTION ALLEGATIONS

56. PLAINTIFF bring this Class Action on behalf of himself, and a California class defined as all persons who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of the original Complaint and ending on the date as determined by the Court (the "CLASS PERIOD").

57. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to

unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

58. The members of the class are so numerous that joinder of all class members is impractical.

59. Common questions of law and fact regarding DEFENDANT's conduct, including but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of compensation for missed meal and rest period premiums, failing to provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

a. Whether DEFENDANT maintained legally compliant meal period policies and practices;

b. Whether DEFENDANT maintained legally compliant rest period policies and practices;

c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;

d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;

e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;

f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;

g. Whether DEFENDANT failed to pay reporting time pay;

h. Whether DEFENDANT engaged in unlawful tip pooling;

i. Whether DEFENDANT issued legally compliant wage statements;

j. Whether DEFENDANT committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;

k. Whether DEFENDANT committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;

l. Whether DEFENDANT committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

60. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANT's conduct and actions alleged herein.

61. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and PLAINTIFF have the same interests as the other members of the class.

62. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

63. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

64. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the interest of the other CALIFORNIA CLASS Members.

65. There is a strong community of interest among PLAINTIFF and the members of the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained.

/ / /

66. The questions of law and fact common to the CALIFORNIA CLASS Members predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

67. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and determination of declaratory, injunctive, statutory, and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

a. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

b. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

68. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT.

FIRST CAUSE OF ACTION

Unlawful Business Practices

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTs)

69. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

70. DEFENDANT is a "person" as that term is defined under Cal. Bus. And Prof. Code § 17021.

71. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

> Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code § 17203).

72. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

73. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous or substantially injurious to employees, and were without valid justification or utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California Business & Professions Code, including restitution of wages wrongfully withheld.

74. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally mandated meal and rest periods and the required amount of compensation for missed meal and rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all necessary business expenses incurred, due to a systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission

requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

75. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other members of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

76. By the conduct alleged herein, DEFENDANT's practices were also unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as required by Cal. Lab. Code §§ 226.7 and 512.

77. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

78. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was not timely provided as required by law.

79. By and through the unlawful and unfair business practices described herein, DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the other members of the CALIFORNIA CLASS, including earned wages for all time worked, and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors who comply with the law.

80. All the acts described herein as violations of, among other things, the Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and

unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq*.

81. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do, seek such relief as may be necessary to restore to them the money and property which DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair business practices, including earned but unpaid wages for all time worked.

82. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to, and do, seek a declaration that the described business practices are unlawful, unfair, and deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and unfair business practices in the future.

83. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

Failure To Pay Minimum Wages

(Cal. Lab. Code §§ 1194, 1197 and 1197.1)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL DEFENDANTs)

84. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

85. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial

Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

86. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

87. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed in unlawful.

88. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

89. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA CLASS without regard to the correct amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

90. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

91. In committing these violations of the California Labor Code, DEFENDANT inaccurately calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

92. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum wage compensation for their time worked for DEFENDANT.

/ / /

93. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a failure to pay all earned wages.

94. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them, and which will be ascertained according to proof at trial.

95. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under-compensated for their time worked. DEFENDANT systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

96. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide them with the requisite compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

97. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to the CALIFORNIA CLASS Members who have

terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

Failure To Pay Overtime Compensation

(Cal. Lab. Code §§ 204, 510, 1194 and 1198)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL DEFENDANTs)

98. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

99. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

100. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

101. Cal. Lab. Code § 510 provides that employees in California shall not be employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

102. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum and overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

/ / /

103. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were required by DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

104. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked, including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

105. In committing these violations of the California Labor Code, DEFENDANT inaccurately recorded overtime worked and consequently underpaid the overtime worked by PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

106. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct overtime compensation for their time worked for DEFENDANT.

107. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFF bring this Action on behalf of himself, and the CALIFORNIA CLASS, based on DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of California.

/ / /

108. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA CLASS were paid less for overtime worked than they were entitled to, constituting a failure to pay all earned wages.

109. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANT failed to accurately record and pay as evidenced by DEFENDANT's business records and witnessed by employees.

110. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true amount of overtime they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them, and which will be ascertained according to proof at trial.

111. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS were undercompensated for their time worked. DEFENDANT systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for their overtime worked.

112. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide them with the requisite compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal

rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

113. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS request recovery of overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein. DEFENDANT's conduct as alleged herein was willful, intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

FOURTH CAUSE OF ACTION

Failure To Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTs)

114. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

115. During the CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business

records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which DEFENDANT required these employees to work ten (10) hours of work. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

116. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

117. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTs)

118. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

119. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other

CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest periods is evidenced by DEFENDANT's business records.

120. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

121. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SIXTH CAUSE OF ACTION

Failure To Reimburse Employees for Required Expenses

(Cal. Lab. Code §§ 2802)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTs)

122. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

123. Cal. Lab. Code § 2802 provides, in relevant part, that:

> An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

124. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's

benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses which included, but were not limited to, personal expenses incurred for the use of their personal cell phones, all on behalf of and for the benefit of DEFENDANT. Specifically, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to use their personal cell phones to execute their essential job duties on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting from the use of their personal cell phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

125. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred by him and the CALIFORNIA CLASS members in the discharge of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

SEVENTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTs)

126. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

127. Cal. Labor Code § 226 provides that an employer must furnish employees with an "accurate itemized" statement in writing showing:

a. Gross wages earned,

b. (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,

c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,

d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,

e. net wages earned,

f. the inclusive dates of the period for which the employee is paid,

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

h. the name and address of the legal entity that is the employer, and

i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

128. When DEFENDANT did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show the complete requirements under California Labor Code sections 226(a)(1)-(9), including but not limited to, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods.

/ / /

129. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226(a)(1)-(9).

130. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars ($50.00) for the initial pay period in which the violation occurred, and one hundred dollars ($100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars ($4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein).

EIGHTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code § 203)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTs)

131. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

132. Cal. Lab. Code § 200 provides that:

> As used in this article:
>
> (d) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.
>
> (e) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the to be paid for is performed personally by the person demanding payment.

/ / /

133. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

134. Cal. Lab. Code § 202 provides, in relevant part, that:

> If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

135. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS Members' employment contract.

136. Cal. Lab. Code § 203 provides:

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

137. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated, and DEFENDANT has not tendered payment of wages to these employees who missed meal and rest breaks, as required by law.

138. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand up to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CLASS PERIOD and demand an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

/ / /

NINTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§2698 et seq.)

(Alleged by PLAINTIFF against all Defendants)

139. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

140. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

141. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this individual PAGA and Representative Action on behalf of the State of California with respect to himself and all persons who are or previously were employed by DEFENDANT in California and classified as non-exempt employees during the time period of May 20, 2023, until the present (the "AGGRIEVED EMPLOYEES").

142. On May 20, 2024, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to

Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

143. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANTS (a) failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES at the correct regular rate of pay, (d) failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all time worked, and (e) failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

144. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars ($100) for each AGGRIEVED EMPLOYEE, including PLAINTIFF, per pay period for the initial violation and two hundred dollars ($200) for each AGGRIEVED EMPLOYEE, including PLAINTIFF, per pay period for each subsequent violation. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

145. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES. (Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504, 519; See also Huff v. Securitas Security Services USA, Inc. (2018) 23 Cal. App. 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor

Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer."], Emphasis added, reh'g denied (June 13, 2018).).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF pray for a judgment against each DEFENDANT, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:
   a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
   b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
   c. An order requiring DEFENDANT to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
   d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.
2. On behalf of the CALIFORNIA CLASS:
   a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
   b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
   c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
   d. The greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per each member of the

CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000), and an award of costs for violation of Cal. Lab. Code § 226;

e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. On behalf of the PLAINTIFF, the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act of 2004;

4. On all claims:

a. An award of interest, including prejudgment interest at the legal rate;

b. Such other and further relief as the Court deems just and equitable; and

c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: July 25, 2024

JCL LAW FIRM, APC

By:_____
Jean-Claude Lapuyade
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: July 25, 2024

JCL LAW FIRM, APC

By:_____
Jean-Claude Lapuyade
Attorney for PLAINTIFF

EXHIBIT 1

jcl law firm apc
EMPLOYMENT LAWYERS

5440 Morehouse Drive
Suite 3600
San Diego, CA 92121
619-599-8292
Fax 619-599-8291
Toll-Free 1-888-498-6999

May 20, 2024

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

CENTURY RESTAURANT LLC
c/o Andrew Levitt
3900 West Century Boulevard
Inglewood, CA 90303
Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0361 2322 60

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff DYLAN SIERRA ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant CENTURY RESTAURANT LLC ("Defendant"). Plaintiff was employed by Defendant from May 2023 to February 2024 as a non-exempt employee, paid an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages. Plaintiff further contends that Defendant failed to advise Plaintiff and the other aggrieved employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods when working on a commission and/or commission draw basis and failed to separately compensate Plaintiff and the other aggrieved employees for the non-productive time, including for their rest periods. See *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98, 110.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined all persons who are or previously were employed by Defendant in California and classified as non-exempt

employees during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq*. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Very truly yours,
JCL LAW FIRM, APC

Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
Perssia Razma (State Bar #351398)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
prazma@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DYLAN SIERRA, an individual, on behalf of himself, and on behalf of all persons similarly situated,

PLAINTIFFs,

v.

CENTURY RESTAURANT LLC, a California limited liability company; and DOES 1-50, Inclusive,

DEFENDANTs.

Case No:

CLASS ACTION COMPLAINT FOR:

1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

PLAINTIFF DYLAN SIERRA ("PLAINTIFF"), an individual, on behalf of himself and all other similarly situated current and former employees, allege on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

1. DEFENDANT CENTURY RESTAURANT LLC ("DEFENDANT") is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANT owns and operates restaurants in the state of California, including the county of Los Angeles, where PLAINTIFF worked.

3. PLAINTIFF was employed by DEFENDANT in California from May 2023 to February 2024 as a non-exempt employee, paid an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

4. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all persons who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars ($5,000,000.00).

5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to

lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained and continues to retain wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

6. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

7. The agents, servants and/or employees of the DEFENDANTs and each of them acting on behalf of the DEFENDANTs acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the DEFENDANTs, and personally participated in the conduct alleged herein on behalf of the DEFENDANTs with respect to the conduct alleged herein. Consequently, the acts of each DEFENDANT are legally attributable to the other DEFENDANTs and all DEFENDANTs are jointly and severally liable to PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

8. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of the PLAINTIFF'S employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision

regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

9. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

10. DEFENDANT's uniform policies and practices alleged herein were unlawful, unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

11. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and other members of the CALIFORNIA CLASS who has been economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

13. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs the CALIFORNIA CLASS across California, including in this County, and committed the wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

THE CONDUCT

14. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a

matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF and other members of the CALIFORNIA CLASS for off-the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANT's uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

A. Meal Period Violations

15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time during the CLASS PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their

time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business records.

16. From time to time during the CLASS PERIOD, as a result of their rigorous work schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which these employees are required by DEFENDANT to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed "on-duty" meal period exception. When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call. DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by DEFENDANT's business records. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

B. Rest Period Violations

17. From time to time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and

third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on premises, on duty and/or on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

C. Unreimbursed Business Expenses

18. DEFENDANT as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

19. In the course of their employment, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell phones as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required to use their personal cell phones in order to perform work related tasks. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for the use of their personal cell phones. As a result, in the course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed business expenses that included, but were not limited

to, costs related to the use of their personal cell phones all on behalf of and for the benefit of DEFENDANT.

D. Wage Statement Violations

20. California Labor Code Section 226 required an employer to furnish its employees and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

21. From time to time during the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show the complete requirements under California Labor Code sections 226(a)(1)-(9), including but not limited to, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods.

22. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226(a)(1)-(9).

23. As a result, DEFENDANT issued PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

/ / /

E. Reporting Time Violations

24. Further, DEFENDANTS from time to time required PLAINTIFF and other AGGRIEVED EMPLOYEES to report to work, but were furnished less than half their scheduled shift's worth of work and were not paid reporting time pay as required by Cal. Code Regs., tit. 8 § 11040, subdivision(A). Specifically, Subdivision 5(A) states, "(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." In addition, when DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to engage in additional work, this sometimes resulted in a second reporting for work in a single workday. In such a circumstance of a second reporting for work in a single workday, DEFENDANT failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8 § 11040. Subdivision 5(B) states: "If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay, which shall be not less than the minimum wage." Cal. Code Regs., tit. 8 § 11040, subd. 5(B).

F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations

25. During the CLASS PERIOD, from time-to-time DEFENDANT failed and continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS for all hours worked.

26. During the CLASS PERIOD, from time-to-time DEFENDANT required PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS having to work while off-the-clock.

27. DEFENDANT directed and directly benefited from the undercompensated off-the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

/ / /

28. DEFENDANT controlled the work schedules, duties, and protocols, applications, assignments, and employment conditions of PLAINTIFF and the other members of the CALIFORNIA CLASS.

29. DEFENDANT was able to track the amount of time PLAINTIFF and the other members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for all the work they performed.

30. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt employees, subject to the requirements of the California Labor Code.

31. DEFENDANT's policies and practices deprived PLAINTIFF and the other CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime pay.

32. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

33. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and benefit for the time spent working while off-the-clock. DEFENDANT's uniform policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is evidenced by DEFENDANT's business records.

G. <u>Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Redeemed Sick Pay</u>

34. From time to time during the CLASS PERIOD, DEFENDANT failed and continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS Members for their overtime and double time hours worked, meal and rest period premiums, and

redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members forfeited wages due to them for working overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and redeemed sick pay rates. DEFENDANT's uniform policy and practice not to pay the CALIFORNIA CLASS Members at the correct rate for all overtime and double time worked, meal and rest period premiums, and redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT's business records.

35. State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

36. The second component of PLAINTIFF's and other CALIFORNIA CLASS Members' compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly basis with bonus compensation when the employees met the various performance goals set by DEFENDANTS.

37. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked. Management and supervisors described the incentive/bonus program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS members must be included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment of overtime and double time compensation, meal and rest period premiums, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS members by

DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time for non-employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

38. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company policy, practice, and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime and double time worked, meal and rest period premiums, and sick pay. This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment of the correct overtime and double time compensation, meal and rest period premiums, and sick pay as required by California law which allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

H. Violations for Untimely Payment of Wages

39. Pursuant to California Labor Code section 204, PLAINTIFF and the CALIFORNIA CLASS members were entitled to timely payment of wages during their employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period premium wages within permissible time period.

40. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant to Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72

hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." PLAINTIFF and the CALIFORNIA CLASS Members were, from time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

41. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely paying all wages due at time of termination for all CALIFORNIA CLASS Members whose employment ended during the CLASS PERIOD.

I. Unlawful Deductions

42. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF and CALIFORNIA CLASS Members' pay without explanations and without authorization to do so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANTS violated Labor Code § 221.

J. Timekeeping Manipulation

43. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an immutable timekeeping system to accurately record and pay PLAINTIFF and other members of the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally alter the time recorded in DEFENDANT'S timekeeping system for PLAINTIFF and other members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest breaks.

44. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from time-to-time, forfeited time worked by working without their time being accurately recorded and without compensation at the applicable pay rates.

45. The mutability of the timekeeping system also allowed DEFENDANT to alter employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT's timekeeping system so as to create the appearance that PLAINTIFF and other members of the

CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees were not at all times provided an off-duty meal break. This practice is a direct result of DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise compensating them for missed meal breaks.

46. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due to them for all hours worked at DEFENDANT'S direction, control and benefit for the time the timekeeping system was inoperable. DEFENDANT'S uniform policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is evidenced by DEFENDANT'S business records.

K. Unlawful Rounding Practices

47. During the CLASS PERIOD, DEFENDANTS did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual time these employees worked each day, including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

48. Further, the mutability of DEFENDANTS' timekeeping system and unlawful rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work

as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break.

L. Sick Pay Violations

49. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From time to time, DEFENDANT failed to have a policy or practice in place that provided PLAINTIFF and other members of the CALIFORNIA CLASS with sick days and/or paid sick leave.

50. California Labor Code Section 246(i) requires an employer to furnish its employees with written wage statements setting forth the amount of paid sick leave available. From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting forth the amount of paid sick leave available.

M. Tips and Tip Pooling

51. During the CLASS PERIOD, pursuant to DEFENDANTS' company policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to forfeit gratuities left for them by customers to DEFENDANTS' agents who provided no service to the customers that resulted in the gratuity. DEFENDANTS routinely added gratuity tips and service charges to its food and beverage bills. These gratuities and service charges reasonably appear to be gratuities for the service staff. It is typical and customary in the hospitality industry that establishments impose gratuity charges on the food and beverage bill. Thus, when customers paid these charges, it is reasonable for them to have believed they were gratuities to be paid to the service staff. Indeed, because many of these charges are depicted to customers, and the custom in the food and beverage industry that gratuities are paid for food and beverage service, customers paid these charges reasonably believing they were remitted to the service staff. However, DEFENDANTS have not remitted the total proceeds of these gratuities to the non-managerial employees who serve the food and beverages. Instead, DEFENDANTS have a policy and practice of using a portion of these

gratuities to pay managers or other non-service employees. As a result, PLAINTIFF and CALIFORNIA CLASS Members have not received the total proceeds of the gratuities, to which they are entitled under California law.

52. DEFENDANTS are generally in the business of owning and operating a restaurant. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members were in the "chain of service" and earned gratuities based on their service for their customers. However, PLAINTIFF and CALIFORNIA CLASS Members were forced to forfeit portions of their gratuities, which said gratuities were kept by DEFENDANTS' employees who were not in the chain of service from which the gratuity resulted. PLAINTIFF and other CALIFORNIA CLASS Members contend that any gratuities kept by DEFENDANTS' non-service employees were illegal and in violation of California law because PLAINTIFF and other CALIFORNIA CLASS Members provided the service for to whom the gratuity should have been paid.

53. California Labor Code § 351 establishes the requirements for an employer regarding the payment of gratuities. Specifically, gratuities are the sole property of the employees. California Labor Code § 351 expressly prohibits employers and their agents from collecting, taking, or receiving any portion of a gratuity. California Labor Code § 350(e) defines the term "gratuity" as including any money that has been paid or given or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink or articles sold or served to such patron. Labor Code § 353 requires employers to keep accurate records of all gratuities they receive, directly or indirectly.

54. Although tip pooling is not expressly prohibited by the Labor Code, employees who mandate tip pooling must only distribute pooled tips to employees in the "chain of service." By distributing tips to employees who were not in the "chain of service," DEFENDANTS have violated and continue to violate the legal requirements for handling pooled tips.

55. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)

hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF with a second off-duty meal period each workday in which he was required by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break. DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to the personal expenses incurred for the use of their personal cell phones, on behalf of and in furtherance of his employment with DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of $75,000.

CLASS ACTION ALLEGATIONS

56. PLAINTIFF bring this Class Action on behalf of himself, and a California class defined as all persons who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CLASS PERIOD").

57. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

58. The members of the class are so numerous that joinder of all class members is impractical.

59. Common questions of law and fact regarding DEFENDANT's conduct, including but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of compensation for missed meal and rest period premiums, failing to provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

a. Whether DEFENDANT maintained legally compliant meal period policies and practices;

b. Whether DEFENDANT maintained legally compliant rest period policies and practices;

c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;

d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;

e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;

f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;

g. Whether DEFENDANT failed to pay reporting time pay;

h. Whether DEFENDANT engaged in unlawful tip pooling;

i. Whether DEFENDANT issued legally compliant wage statements;

j. Whether DEFENDANT committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;

/ / /

k. Whether DEFENDANT committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;

l. Whether DEFENDANT committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

60. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANT's conduct and actions alleged herein.

61. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and PLAINTIFF have the same interests as the other members of the class.

62. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

63. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

64. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the interest of the other CALIFORNIA CLASS Members.

65. There is a strong community of interest among PLAINTIFF and the members of the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained.

66. The questions of law and fact common to the CALIFORNIA CLASS Members predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

67. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the

expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and determination of declaratory, injunctive, statutory, and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

a. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

b. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

68. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT.

FIRST CAUSE OF ACTION

Unlawful Business Practices

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTs)

69. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

70. DEFENDANT is a "person" as that term is defined under Cal. Bus. And Prof. Code § 17021.

71. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

> Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code § 17203).

72. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

73. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous or substantially injurious to employees, and were without valid justification or utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California Business & Professions Code, including restitution of wages wrongfully withheld.

74. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally mandated meal and rest periods and the required amount of compensation for missed meal and rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all necessary business expenses incurred, due to a systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

75. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the

other members of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

76. By the conduct alleged herein, DEFENDANT's practices were also unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as required by Cal. Lab. Code §§ 226.7 and 512.

77. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

78. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was not timely provided as required by law.

79. By and through the unlawful and unfair business practices described herein, DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the other members of the CALIFORNIA CLASS, including earned wages for all time worked, and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors who comply with the law.

80. All the acts described herein as violations of, among other things, the Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

81. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do, seek such relief as may be necessary to restore to them the money and property which DEFENDANT has acquired, or of which PLAINTIFF and the other members of the

CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair business practices, including earned but unpaid wages for all time worked.

82. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to, and do, seek a declaration that the described business practices are unlawful, unfair, and deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and unfair business practices in the future.

83. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

Failure To Pay Minimum Wages

(Cal. Lab. Code §§ 1194, 1197 and 1197.1)

Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL DEFENDANTs)

84. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

85. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

86. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

/ / /

87. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed in unlawful.

88. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

89. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA CLASS without regard to the correct amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

90. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

91. In committing these violations of the California Labor Code, DEFENDANT inaccurately calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

92. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum wage compensation for their time worked for DEFENDANT.

93. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a failure to pay all earned wages.

94. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true

time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them, and which will be ascertained according to proof at trial.

95. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under-compensated for their time worked. DEFENDANT systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

96. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide them with the requisite compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

97. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good

faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

Failure To Pay Overtime Compensation

(Cal. Lab. Code §§ 204, 510, 1194 and 1198)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL DEFENDANTs)

98. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

99. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

100. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

101. Cal. Lab. Code § 510 provides that employees in California shall not be employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

102. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum and overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

103. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were required by DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

104. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of

implementing a uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked, including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

105. In committing these violations of the California Labor Code, DEFENDANT inaccurately recorded overtime worked and consequently underpaid the overtime worked by PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

106. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct overtime compensation for their time worked for DEFENDANT.

107. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFF bring this Action on behalf of himself, and the CALIFORNIA CLASS, based on DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of California.

108. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA CLASS were paid less for overtime worked than they were entitled to, constituting a failure to pay all earned wages.

109. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even

though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANT failed to accurately record and pay as evidenced by DEFENDANT's business records and witnessed by employees.

110. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true amount of overtime they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them, and which will be ascertained according to proof at trial.

111. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS were undercompensated for their time worked. DEFENDANT systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for their overtime worked.

112. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide them with the requisite compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

113. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS request recovery of overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent overtime compensation is

determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein. DEFENDANT's conduct as alleged herein was willful, intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

FOURTH CAUSE OF ACTION

Failure To Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTs)

114. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

115. During the CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which DEFENDANT required these employees to work ten (10) hours of work. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

/ / /

116. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

117. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTs)

118. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

119. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide

PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest periods is evidenced by DEFENDANT's business records.

120. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

121. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SIXTH CAUSE OF ACTION

Failure To Reimburse Employees for Required Expenses

(Cal. Lab. Code §§ 2802)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTs)

122. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

123. Cal. Lab. Code § 2802 provides, in relevant part, that:

> An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

124. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses which included, but were not limited to, personal expenses incurred for the use of their personal cell phones, all on behalf of and for the benefit of DEFENDANT. Specifically, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to use their

personal cell phones to execute their essential job duties on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting from the use of their personal cell phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

125. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred by him and the CALIFORNIA CLASS members in the discharge of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

SEVENTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTs)

126. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

127. Cal. Labor Code § 226 provides that an employer must furnish employees with an "accurate itemized" statement in writing showing:

a. Gross wages earned,

b. (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,

c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,

d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,

e. net wages earned,

f. the inclusive dates of the period for which the employee is paid,

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

h. the name and address of the legal entity that is the employer, and

i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

128. When DEFENDANT did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show the complete requirements under California Labor Code sections 226(a)(1)-(9), including but not limited to, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods.

129. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226(a)(1)-(9).

130. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct

wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars ($50.00) for the initial pay period in which the violation occurred, and one hundred dollars ($100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars ($4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein).

EIGHTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code § 203)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTs)

131. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

132. Cal. Lab. Code § 200 provides that:

> As used in this article:
>
> (d) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.
>
> (e) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the to be paid for is performed personally by the person demanding payment.

133. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

134. Cal. Lab. Code § 202 provides, in relevant part, that:

> If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and

designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

135. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS Members' employment contract.

136. Cal. Lab. Code § 203 provides:

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

137. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated, and DEFENDANT has not tendered payment of wages to these employees who missed meal and rest breaks, as required by law.

138. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand up to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CLASS PERIOD and demand an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF pray for a judgment against each DEFENDANT, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:
   a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
   b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
   c. An order requiring DEFENDANT to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
   d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund

for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

   a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

   b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;

   c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

   d. The greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000), and an award of costs for violation of Cal. Lab. Code § 226;

   e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

   f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. On all claims:

   a. An award of interest, including prejudgment interest at the legal rate;

   b. Such other and further relief as the Court deems just and equitable; and

/ / /

c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: May 20, 2024

JCL LAW FIRM, APC

By:_____
Jean-Claude Lapuyade
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: May 20, 2024

JCL LAW FIRM, APC

By:_____
Jean-Claude Lapuyade
Attorney for PLAINTIFF