

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
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
shani@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

JOSE RAMON DE LA CRUZ, an individual,
on behalf of himself, and on behalf of all
persons similarly situated,

Plaintiff,

v.

GALPAO GAUCHO TWO, LLC, a Texas
limited liability company; GALPAO GAUCHO
THREE, LLC, a California limited liability
company; GALPAO GAUCHO FOUR LLC, a
California limited liability company; GALPAO
GAUCHO FIVE LLC, a California limited
liability company; GALPAO GAUCHO
EIGHT LLC, a California limited liability
company; GALPAO GAUCHO NINE LLC, a
California limited liability company; and DOES
1-50, Inclusive,

Defendants.

Case No: C23-01770

**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;

- 1 6) FAILURE TO PROVIDE ACCURATE
2 ITEMIZED STATEMENTS IN
3 VIOLATION OF CAL. LAB. CODE § 226;
4 7) FAILURE TO PROVIDE WAGES WHEN
5 DUE IN VIOLATION OF CAL. LAB.
6 CODE §§ 201, 202 AND 203;
7 8) FAILURE TO REIMBURSE EMPLOYEES
8 FOR REQUIRED EXPENSES IN
9 VIOLATION OF CAL. LAB. CODE § 2802;
10 9) FAILURE TO PROVIDE GRATUITIES IN
11 VIOLATION OF CAL. LAB. CODE § 351;
12 10) VIOLATION OF THE PRIVATE
13 ATTORNEYS GENERAL ACT [LABOR
14 CODE §§ 2698 ET SEQ.

15 **DEMAND FOR A JURY TRIAL**

16 PLAINTIFF JOSE RAMON DE LA CRUZ (“PLAINTIFF”), an individual, on behalf of
17 himself and all other similarly situated current and former employees, alleges on information and
18 belief, except for his own acts and knowledge which are based on personal knowledge, the
19 following:

20 **PRELIMINARY ALLEGATIONS**

21 1. Defendant GALPAO GAUCHO TWO, LLC (“Defendant Galpao Gaucho Two”) is a Texas limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

22 2. Defendant GALPAO GAUCHO THREE, LLC (“Defendant Galpao Gaucho Three”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

23 3. Defendant GALPAO GAUCHO FOUR LLC (“Defendant Galpao Gaucho Four”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

24 4. Defendant GALPAO GAUCHO FIVE LLC (“Defendant Galpao Gaucho Five”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

25 ///

1 5. Defendant GALPAO GAUCHO EIGHT LLC (“Defendant Galpao Gaucho
2 Eight”) is a California limited liability company that at all relevant times mentioned herein
3 conducted and continues to conduct substantial and regular business throughout California.

4 6. Defendant GALPAO GAUCHO NINE LLC (“Defendant Galpao Gaucho Nine”)
5 is a California limited liability company that at all relevant times mentioned herein conducted and
6 continues to conduct substantial and regular business throughout California.

7 7. PLAINTIFF alleges there has existed a unity of interest and ownership between
8 Defendants such that any individuality and separateness between the entities has ceased and all
9 Defendants are referred to herein as “DEFENDANT” and/or “DEFENDANT.”

10 8. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers
11 of DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest
12 and ownership between Defendant Galpao Gaucho Two, Defendant Galpao Gaucho Three,
13 Defendant Galpao Gaucho Four, Defendant Galpao Gaucho Five, Defendant Galpao Gaucho
14 Eight, and Defendant Galpao Gaucho Nine such that any individuality and separateness between
15 the entities has ceased. Defendant Galpao Gaucho Two, Defendant Galpao Gaucho Three,
16 Defendant Galpao Gaucho Four, Defendant Galpao Gaucho Five, Defendant Galpao Gaucho
17 Eight, and Defendant Galpao Gaucho Nine are therefore alter egos of each other. Adherence to
18 the fiction of the separate existence of DEFENDANT would permit an abuse of the corporate
19 privilege, and would promote injustice by protecting DEFENDANT from liability for the
20 wrongful acts committed by them.

21 9. PLAINTIFF further alleges that DEFENDANT are the alter egos of each other for
22 the following reasons:

- 23 a. On the California Secretary of State’s website (<https://businesssearch.sos.ca.gov/>)
24 Defendant Galpao Gaucho Two, Defendant Galpao Gaucho Three, Defendant
25 Galpao Gaucho Four, Defendant Galpao Gaucho Five, Defendant Galpao Gaucho
26 Eight, and Defendant Galpao Gaucho Nine have the same entity address and/or
27 mailing address and/or Agent for Service of Process;
- 28 b. On information and belief Defendant Galpao Gaucho Two, Defendant Galpao
Gaucho Three, Defendant Galpao Gaucho Four, Defendant Galpao Gaucho Five,

1 Defendant Galpao Gaucho Eight, and Defendant Galpao Gaucho Nine utilize the
2 same standardized employment forms and issue the same employment policies and
3 same pay stubs;

- 4 c. On information and belief Defendant Galpao Gaucho Two, Defendant Galpao
5 Gaucho Three, Defendant Galpao Gaucho Four, Defendant Galpao Gaucho Five,
6 Defendant Galpao Gaucho Eight, and Defendant Galpao Gaucho Nine have an
7 executive team which supervise and manage the operations of all of
8 DEFENDANT's restaurants, supervised and managed the finances of all of
9 DEFENDANT's restaurants, supervised and managed the marketing of all of
10 DEFENDANT's restaurants, supervised and managed the human resources of all
11 of DEFENDANT's restaurants, and supervised and managed the food and
12 beverage offerings at all of DEFENDANT's restaurants.

13 10. PLAINTIFF alleges that DEFENDANT's various separate corporate entities are
14 used by an individual or individuals, or by another corporation, to accomplish inequitable
15 purposes, including to limit liability for the unlawful acts of DEFENDANT.

16 11. PLAINTIFF alleges that there is such a unity of interest and ownership between
17 DEFENDANT's various corporate entities that own DEFENDANT's restaurants and the
18 individual or individuals, or organization controlling those corporate entities that their separate
19 personalities no longer exist.

20 12. PLAINTIFF further alleges that the failure to disregard the various corporate
21 entities would promote injustice.

22 13. Alternatively, on information and belief, Defendant Galpao Gaucho Two,
23 Defendant Galpao Gaucho Three, Defendant Galpao Gaucho Four, Defendant Galpao Gaucho
24 Five, Defendant Galpao Gaucho Eight, and Defendant Galpao Gaucho Nine were the joint
25 employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the
26 company PLAINTIFF performed work for respectively. Defendant Galpao Gaucho Two,
27 Defendant Galpao Gaucho Three, Defendant Galpao Gaucho Four, Defendant Galpao Gaucho
28 Five, Defendant Galpao Gaucho Eight, and Defendant Galpao Gaucho Nine each exerted control
over the hours, wages and/or working conditions of PLAINTIFF and the other members of the
CALIFORNIA CLASS. Therefore, Defendant Galpao Gaucho Two, Defendant Galpao Gaucho

1 Three, Defendant Galpao Gaucho Four, Defendant Galpao Gaucho Five, Defendant Galpao
2 Gaucho Eight, and Defendant Galpao Gaucho Nine are jointly responsible as employers for the
3 conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

4 14. DEFENDANTS own, operate, and/or manage Brazilian steakhouse restaurants
5 throughout the state of California, including in the county of Contra Costa, where PLAINTIFF
6 worked.

7 15. PLAINTIFF was employed by DEFENDANTS in California from September of
8 2020 to October of 2021 as a non-exempt employee, paid on an hourly basis, and entitled to the
9 legally required meal and rest periods and payment of minimum and overtime wages due for all
10 time worked.

11 16. PLAINTIFF brings this Class Action on behalf of himself and a California class,
12 defined as all persons who are or previously were employed by Defendant Galpao Gaucho Two
13 and/or Defendant Galpao Gaucho Three and/or Defendant Galpao Gaucho Four and/or Defendant
14 Galpao Gaucho Five and/or Defendant Galpao Gaucho Eight and/or Defendant Galpao Gaucho
15 Nine in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any
16 time during the period beginning four (4) years prior to the filing of the original Complaint and
17 ending on the date as determined by the Court (the “CLASS PERIOD”). The amount in
18 controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million
19 dollars (\$5,000,000.00).

20 17. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
21 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
22 the CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice which failed to
23 lawfully compensate these employees. DEFENDANTS’ uniform policy and practice alleged
24 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANTS retained
25 and continue to retain wages due PLAINTIFF and the other members of the CALIFORNIA
26 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
27 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and
28 the other members of the CALIFORNIA CLASS who have been economically injured by

1 DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable
2 relief.

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

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

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

26 21. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
27 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
28 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any

1 employee a wage less than the minimum fixed by California state law, and as such, are subject to
2 civil penalties for each underpaid employee.

3 22. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
4 unfair, and deceptive business practices whereby DEFENDANTS retained and continue to retain
5 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

6 23. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
7 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and
8 other members of the CALIFORNIA CLASS who has been economically injured by
9 DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable
10 relief.

11 **JURISDICTION AND VENUE**

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

16 25. Venue is proper in this Court pursuant to California Code of Civil Procedure,
17 Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employ
18 the CALIFORNIA CLASS across California, including in this County, and committed the
19 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

20 **THE CONDUCT**

21 26. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
23 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
24 failed to provide legally compliant meal and rest periods, failed to accurately compensate
25 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
26 periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all
27 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
28 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,

1 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal and rest
2 premiums at the regular rate of pay, failed to pay PLAINTIFF and other CALIFORNIA CLASS
3 Members redeemed sick pay at the regular rate of pay, failed to reimburse PLAINTIFF and other
4 CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and
5 the members of the CALIFORNIA CLASS with accurate itemized wage statements showing,
6 among other things, all applicable hourly rates in effect during the pay periods and the
7 corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and
8 practices are intended to purposefully avoid the accurate and full payment for all time worked as
9 required by California law which allows DEFENDANTS to illegally profit and gain an unfair
10 advantage over competitors who comply with the law. To the extent equitable tolling operates to
11 toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should
12 be adjusted accordingly.

13 **A. Meal Period Violations**

14 27. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
15 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
16 meaning the time during which an employee is subject to the control of an employer, including
17 all the time the employee is suffered or permitted to work. From time to time during the CLASS
18 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
19 without paying them for all the time they were under DEFENDANTS' control. Specifically,
20 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
21 be PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not
22 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
23 Members forfeited minimum wage and overtime compensation by regularly working without their
24 time being accurately recorded and without compensation at the applicable minimum wage and
25 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
26 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
27 records.

28 ///

28. From time to time during the CLASS PERIOD, as a result of their rigorous work schedules and DEFENDANTS' 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 DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which these employees are required by DEFENDANTS 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 premises, on duty and on call. DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by DEFENDANTS' business records. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

B. Rest Period Violations

29. 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 DEFENDANTS' 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

1 CLASS Members were, from time to time, required to remain on premises, on duty and/or on call.
2 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
3 wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS'
4 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
5 time denied their proper rest periods by DEFENDANT and DEFENDANTS' managers.

6 **C. Unreimbursed Business Expenses**

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

18 31. In the course of their employment, DEFENDANTS required PLAINTIFF and
19 other CALIFORNIA CLASS Members to incur personal expenses for the purchase and
20 maintenance of work uniforms as a result of and in furtherance of their job duties. Specifically,
21 PLAINTIFF and other CALIFORNIA CLASS Members were required to purchase and maintain
22 their work uniforms in order to perform work and work-related tasks for DEFENDANTS.
23 However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA
24 CLASS Members for the use of their purchase and maintenance of work uniforms. As a result,
25 in the course of their employment with DEFENDANTS, the PLAINTIFF and other
26 CALIFORNIA CLASS Members incurred unreimbursed business expenses that included, but
27 were not limited to, costs related to the purchase and maintenance of work uniforms, all on behalf
28 of and for the benefit of DEFENDANT.

1 **D. Wage Statement Violations**

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

10 33. From time to time during the CLASS PERIOD, when PLAINTIFF and other
11 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
12 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS
13 also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
14 accurate wage statements which failed to show, among other things, all deductions, the total hours
15 worked and all applicable hourly rates in effect during the pay period and the corresponding
16 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
17 meal and rest periods.

18 34. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
19 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
20 Cal. Lab. Code § 226.

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

25 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

26 36. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
27 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
28 for all hours worked.

1 37. During the CLASS PERIOD, from time-to-time DEFENDANTS required
2 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
3 work, including but not limited to, time spent counting out employee tips. This resulted in
4 PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-
5 clock.

6 38. DEFENDANTS directed and directly benefited from the undercompensated off-
7 the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

8 39. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
9 assignments, and employment conditions of PLAINTIFF and the other members of the
10 CALIFORNIA CLASS.

11 40. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
12 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
13 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
14 wages earned and owed for all the work they performed.

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

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

23 43. DEFENDANTS knew or should have known that PLAINTIFF and the other
24 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

25 44. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
26 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and
27 benefit for the time spent working while off-the-clock. DEFENDANTS' uniform policy and
28 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all

1 hours worked in accordance with applicable law is evidenced by DEFENDANTS’ business
2 records.

3 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
4 **and Redeemed Sick Pay**

5 45. From time to time during the CLASS PERIOD, DEFENDANTS failed and
6 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
7 Members for their overtime and double time hours worked, meal and rest period premiums, and
8 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
9 forfeited wages due to them for working overtime without compensation at the correct overtime
10 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
11 DEFENDANTS’ uniform policy and practice not to pay the CALIFORNIA CLASS Members at
12 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick
13 pay in accordance with applicable law is evidenced by DEFENDANTS’ business records.

14 46. State law provides that employees must be paid overtime at one-and-one-half times
15 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were
16 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
17 employee’s performance.

18 47. The second component of PLAINTIFF’S and other CALIFORNIA CLASS
19 Members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid
20 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
21 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
22 paid on an hourly basis with bonus compensation when the employees met the various
23 performance goals set by DEFENDANTS.

24 48. However, from time to time, when calculating the regular rate of pay in those pay
25 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
26 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
27 discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus
28 compensation as part of the employee’s “regular rate of pay” and/or calculated all hours worked

1 rather than just all non-overtime hours worked. Management and supervisors described the
2 incentive/bonus program to potential and new employees as part of the compensation package.
3 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
4 CLASS Members must be included in the “regular rate of pay.” The failure to do so has resulted
5 in a systematic underpayment of overtime and double time compensation, meal and rest period
6 premium payments, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS
7 Members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that
8 paid sick time for non-exempt employees shall be calculated in the same manner as the regular
9 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or
10 not the employee actually works overtime in that workweek. DEFENDANTS’ conduct, as
11 articulated herein, by failing to include the incentive compensation as part of the “regular rate of
12 pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the
13 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

14 49. In violation of the applicable sections of the California Labor Code and the
15 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a
16 matter of company policy, practice, and procedure, intentionally and knowingly failed to
17 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
18 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
19 sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain
20 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
21 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANTS, the
22 CLASS PERIOD should be adjusted accordingly.

23 **G. Tip Pooling**

24 50. During the CALIFORNIA CLASS period, pursuant to DEFENDANTS’ company
25 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to
26 forfeit gratuities left for them by customers to DEFENDANTS’ agents who provided no service
27 to the customers that resulted in the gratuity. DEFENDANTS routinely added gratuity tips and
28 service charges to its food and beverage bills. These gratuities and service charges reasonably

1 appear to be gratuities for the service staff. It is typical and customary in the hospitality industry
2 that establishments impose gratuity charges on the food and beverage bill. Thus, when customers
3 paid these charges, it is reasonable for them to have believed they were gratuities to be paid to the
4 service staff. Indeed, because many of these charges are depicted to customers, and the custom in
5 the food and beverage industry that gratuities are paid for food and beverage service, customers
6 paid these charges reasonably believing they were remitted to the service staff. However,
7 DEFENDANTS have not remitted the total proceeds of these gratuities to the non-managerial
8 employees who serve the food and beverages. Instead, DEFENDANTS have a policy and practice
9 of using a portion of these gratuities to pay managers or other non-service employees. As a result,
10 PLAINTIFF and CALIFORNIA CLASS Members have not received the total proceeds of the
11 gratuities, to which they are entitled to under California law.

12 51. DEFENDANTS are generally in the business of owning and operating a restaurant.
13 During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS
14 Members were in the “chain of service” and earned gratuities based on their service for their
15 customers. However, PLAINTIFF and CALIFORNIA CLASS Members were forced to forfeit
16 portions of their gratuities, which said gratuities were kept by DEFENDANTS’ employees who
17 were not in the chain of service from which the gratuity resulted. PLAINTIFF and other
18 CALIFORNIA CLASS Members contend that any gratuities kept by DEFENDANTS’ non-
19 service employees were illegal and in violation of California law because PLAINTIFF and other
20 CALIFORNIA CLASS Members provided the service for to whom the gratuity should have been
21 paid.

22 52. California Labor Code § 351 establishes the requirements for an employer
23 regarding the payment of gratuities. Specifically, gratuities are the sole property of the employees.
24 California Labor Code § 351 expressly prohibits employers and their agents from collecting,
25 taking, or receiving any portion of a gratuity. California Labor Code § 350(e) defines the term
26 “gratuity” as including any money that has been paid or given or left for an employee by a patron
27 of a business over and above the actual amount due the business for services rendered or for
28 goods, food, drink or articles sold or served to such patron. Labor Code § 353 requires employers

1 to keep accurate records of all gratuities they receive, directly or indirectly.

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

6 **H. Sick Pay Violations**

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

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

19 **I. Unlawful Deductions**

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

24 **J. Timekeeping Manipulation**

25 57. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
26 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
27 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
28 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal

1 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
2 unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and
3 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
4 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
5 missed rest breaks.

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

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

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

22 **K. Unlawful Rounding Practices**

23 61. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
24 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
25 CALIFORNIA CLASS Members for the actual time these employees worked each day,
26 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
27 policy and practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being
28 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did

1 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
2 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying
3 these employees for all their time worked, including the applicable overtime compensation for
4 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
5 time to time, forfeited compensation for their time worked by working without their time being
6 accurately recorded and without compensation at the applicable overtime rates.

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

13 **L. Violations for Untimely Payment of Wages**

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

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

27
28 ///

65. 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.

66. 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 premises, on-duty and on-call for the rest break. DEFENDANTS policy caused PLAINTIFF to remain on premises, 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 use of his purchase and maintenance of work uniforms, 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

67. 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 Galpao Gaucho Two and/or Defendant Galpao Gaucho Three and/or Defendant Galpao Gaucho Four and/or Defendant Galpao Gaucho Five and/or Defendant Galpao Gaucho Eight and/or Defendant Galpao Gaucho Nine in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any

1 time during the period beginning four (4) years prior to the filing of the original Complaint and
2 ending on the date as determined by the Court (the “CLASS PERIOD”).

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

9 69. The members of the class are so numerous that joinder of all class members is
10 impractical.

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

- 20 a. Whether DEFENDANT maintained legally compliant meal period policies and
21 practices;
- 22 b. Whether DEFENDANT maintained legally compliant rest period policies and
23 practices;
- 24 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
25 Members accurate premium payments for missed meal and rest periods;
- 26 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
27 Members accurate overtime wages;

28 ///

- 1 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
2 Members at least minimum wage for all hours worked;
- 3 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
4 CLASS Members for required business expenses;
- 5 g. Whether DEFENDANT issued legally compliant wage statements;
- 6 h. Whether DEFENDANT committed an act of unfair competition by systematically
7 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
8 CLASS for all time worked;
- 9 i. Whether DEFENDANT committed an act of unfair competition by systematically
10 failing to record all meal and rest breaks missed by PLAINTIFF and other
11 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
12 of this work, required employees to perform this work and permits or suffers to
13 permit this work;
- 14 j. Whether DEFENDANT committed an act of unfair competition in violation of the
15 UCL, by failing to provide the PLAINTIFF and the other members of the
16 CALIFORNIA CLASS with the legally required meal and rest periods.

17 71. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
18 a result of DEFENDANTS' conduct and actions alleged herein.

19 72. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
20 PLAINTIFF has the same interests as the other members of the class.

21 73. PLAINTIFF will fairly and adequately represent and protect the interests of the
22 CALIFORNIA CLASS Members.

23 74. PLAINTIFF retained able class counsel with extensive experience in class action
24 litigation.

25 75. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
26 interest of the other CALIFORNIA CLASS Members.

27 76. There is a strong community of interest among PLAINTIFF and the members of
28 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are

1 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
2 sustained.

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

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

- 14 a. Inconsistent or varying adjudications with respect to individual members of the
15 CALIFORNIA CLASS which would establish incompatible standards of conduct
16 for the parties opposing the CALIFORNIA CLASS; and/or,
17 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
18 which would as a practical matter be dispositive of the interests of the other
19 members not party to the adjudication or substantially impair or impeded their
20 ability to protect their interests.

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

24
25
26
27
28 ///

1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

4 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

8 81. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

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

21 83. By the conduct alleged herein, DEFENDANTS have engaged and continue to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
25 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
26 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
27 constitute unfair competition, including restitution of wages wrongfully withheld.

28 84. By the conduct alleged herein, DEFENDANTS’ 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

1 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

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

12 86. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
13 unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
14 other members of the CALIFORNIA CLASS to be underpaid during their employment with
15 DEFENDANTS.

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

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

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

28 ///

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

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

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

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

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

28 ///

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

2

3

4

5
6
7

8
9
10
11

12
1314
15
1617
18

19
20
21
22
23

24
25
26
27

28

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

7 102. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
9 minimum wage compensation for their time worked for DEFENDANTS.

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

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

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

25 106. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
27 and provide them with the requisite compensation, DEFENDANTS acted and continues to act
28 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the

1 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
2 consequences to them, and with the despicable intent of depriving them of their property and legal
3 rights, and otherwise causing them injury in order to increase company profits at the expense of
4 these employees.

5 107. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
6 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
7 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
8 California Labor Code and/or other applicable statutes. To the extent minimum wage
9 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
10 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
11 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
12 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
13 Members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good
14 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
15 recover statutory costs.

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

19 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

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

28 ///

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

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

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

10 113. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
11 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
12 they worked, including overtime work.

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

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

26 116. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
27 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
28 overtime compensation for their time worked for DEFENDANTS.

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

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

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

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

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

1 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for
2 their overtime worked.

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

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

21 **FOURTH CAUSE OF ACTION**

22 **Failure To Provide Required Meal Periods**

23 **(Cal. Lab. Code §§ 226.7 & 512)**

24 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

28 ///

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

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

20 127. As a proximate result of the aforementioned violations, PLAINTIFF and
21 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
22 and seek all wages earned and due, interest, penalties, expenses and costs of suit.
23
24
25
26
27
28

///

1 **FIFTH CAUSE OF ACTION**

2 **Failure To Provide Required Rest Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

4 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

8 129. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
9 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
10 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
11 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
12 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
13 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
14 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
15 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other
16 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
17 DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to
18 compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as
19 required by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to
20 provide PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid
21 rest periods is evidenced by DEFENDANTS' business records.

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

27
28 ///

131. 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 Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

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

132. 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.

133. 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.

134. When DEFENDANTS did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANTS violated Cal. Lab. Code § 226 in that DEFENDANTS failed to provide PLAINTIFFS and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, 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, and correct rates of pay for penalty payments or missed meal and rest periods.

135. 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.

136. DEFENDANTS 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).

///

1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code § 203)**

4 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

8 138. Cal. Lab. Code § 200 provides that:

9 As used in this article:

- 10 (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,
11 task, piece, Commission basis, or other method of calculation.
12 (e) "Labor" includes labor, work, or service whether rendered or performed under
contract, subcontract, partnership, station plan, or other agreement if the to be
13 paid for is performed personally by the person demanding payment.

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

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

18 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
19 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.
20 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
21 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
22 quitting.

23 141. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS
24 Members' employment contract.

25 142. Cal. Lab. Code § 203 provides:

26 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
27 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
28 continue for more than 30 days.

///
36

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

144. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands 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.

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees for Required Expenses

(Cal. Lab. Code §§ 2802)

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

145. 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.

146. 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.

147. From time to time during the CLASS PERIOD, DEFENDANTS 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 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses which included, but were not limited to, personal expenses incurred for the purchase and maintenance of work uniforms, all on behalf of and for the benefit of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting from the purchase and maintenance of work uniforms, within the course and scope of their employment for

1 DEFENDANTS. These expenses were necessary to complete their principal job duties.
2 DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of this
3 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
4 CALIFORNIA CLASS members, DEFENDANTS failed to indemnify and reimburse
5 PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is
6 required to do under the laws and regulations of California.

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

11 **NINTH CAUSE OF ACTION**

12 **FAILURE TO PAY STATUTORY GRATUITIES**

13 **(Cal. Lab. Code § 351 et seq.)**

14 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all Defendants)**

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

18 150. DEFENDANT's conduct, as set forth above, in failing to remit to non-managerial
19 employees the total proceeds of gratuities added to customers' bills constitutes a violation of
20 California Labor Code Section 351. This violation is enforceable pursuant to the California Unfair
21 Competition Law, Cal. Bus. And Prof. Code 17200 et seq. DEFENDANT's conduct constitutes
22 unlawful, unfair, and/or fraudulent business acts or practices, in that DEFENDANT has violated
23 California Labor Code Section 351 in not remitting to the non-managerial service employees the
24 total gratuities that were charged to customers.

25 151. As a proximate result of the aforementioned violations, PLAINTIFF and
26 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
27 including the loss of gratuities to which they were entitled. and seek all wages earned and due,
28 interest, penalties, expenses and costs of suit.

1 **TENTH CAUSE OF ACTION**

2 **Violation of the Private Attorneys General Act**

3 **(Cal. Lab. Code §§2698 et seq.)**

4 **(Alleged by PLAINTIFF against all Defendants)**

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

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

16 154. PLAINTIFF, and such persons that may be added from time to time who satisfy
17 the requirements and exhaust the administrative procedures under the Private Attorney General
18 Act, bring this individual PAGA and Representative Action on behalf of the State of California
19 with respect to himself and all persons who are or previously were employed by DEFENDANT
20 in California and classified as non-exempt employees during the time period of July 1, 2023, until
21 the present (the "AGGRIEVED EMPLOYEES").

22 155. On July 1, 2024, PLAINTIFF gave written notice by certified mail to the Labor
23 and Workforce Development Agency (the "Agency") and the employer of the specific provisions
24 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1,
25 attached hereto and incorporated by this reference herein. The statutory waiting period for
26 Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section
27 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to
28

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

3 156. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANTS (a) failed to pay PLAINTIFF and AGGRIEVED
5 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and
6 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to pay PLAINTIFF
7 and AGGRIEVED EMPLOYEES at the correct regular rate of pay, (d) failed to pay PLAINTIFF
8 and AGGRIEVED EMPLOYEES for all time worked, (e) failed to timely pay wages, (f) failed
9 to provide accurate itemized wage statements, and (g) failed to reimburse employees for required
10 expenses, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
11 including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221,
12 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1,
13 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare
14 Commission Wage Order(s), and thereby gives rise to statutory penalties as a result of such
15 conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code
16 Private Attorney General Act of 2004 as the representative of the State of California for the illegal
17 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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

25 **PRAYER FOR RELIEF**

26 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and
27 severally, as follows:

28 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 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
 - c. An order requiring DEFENDANTS 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 DEFENDANTS' ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS' 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, Eighth, and Ninth 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.

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

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

6 4. On all claims:

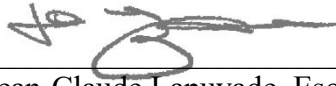
7 a. An award of interest, including prejudgment interest at the legal rate;

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

9 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
10 including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 246 and/or
11 § 1194

12
13 DATED: September 3, 2024

JCL LAW FIRM, APC

14 By: 
15 Jean-Claude Lapuyade, Esq.
16 Attorney for PLAINTIFF
17
18
19
20
21
22
23
24
25
26
27
28

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

DEMAND FOR A JURY TRIAL

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

DATED: September 3, 2024

JCL LAW FIRM, APC

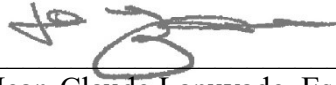
By: 
Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

EXHIBIT 1

July 1, 2024

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

**GALPAO GAUCHO TWO, LLC
GALPAO GAUCHO THREE, LLC
GALPAO GAUCHO FOUR LLC
GALPAO GAUCHO FIVE LLC
GALPAO GAUCHO EIGHT LLC
GALPAO GAUCHO NINE LLC**

c/o Farella Braun + Martell LLP

Holly Sutton, Esq.

Chandra Andrade, Esq.

Corina Gallardo, Esq.

hsutton@fbm.com

candrade@fbm.com

cgallardo@fbm.com

Via Electronic Mail

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 JOSE RAMON DE LA CRUZ ("Plaintiff"), and other aggrieved employees in a lawsuit against Defendant GALPAO GAUCHO TWO, LLC ("Defendant Galpao Gaucho Two"), Defendant GALPAO GAUCHO THREE, LLC ("Defendant Galpao Gaucho Three"), Defendant GALPAO GAUCHO FOUR LLC ("Defendant Galpao Gaucho Four"), Defendant GALPAO GAUCHO FIVE LLC ("Defendant Galpao Gaucho Five"), Defendant GALPAO GAUCHO EIGHT LLC ("Defendant Galpao Gaucho Eight"), and Defendant GALPAO GAUCHO NINE LLC ("Defendant Galpao Gaucho Nine") (hereinafter collectively "Defendants"). Plaintiff was employed by Defendants as a non-exempt employee, paid on 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. Defendants, 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, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants 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 as all persons who are or previously were employed by Defendant Galpao Gaucho Two and/or Defendant Galpao Gaucho Three and/or Defendant Galpao Gaucho Four and/or Defendant Galpao Gaucho Five and/or Defendant Galpao Gaucho Eight and/or Defendant Galpao Gaucho Nine in California and classified as non-exempt employees during the relevant claim period.

A true and correct copy of the Complaint by Plaintiff against Defendants, 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 Defendants, 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, Defendants are 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 Defendants 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.

Sincerely yours,
JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.
Attorney at Law

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
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
mdelatorre@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

SUMMONS ISSUED

Per local Rule, This case is assigned to
Judge Treat, Charles S, for all purposes.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

JOSE RAMON DE LA CRUZ, an individual,
on behalf of himself, and on behalf of all
persons similarly situated,

Plaintiff,

v.

GALPAO GAUCHO TWO, LLC, a Texas
limited liability company; GALPAO GAUCHO
THREE, LLC, a California limited liability
company; GALPAO GAUCHO FOUR LLC, a
California limited liability company; GALPAO
GAUCHO FIVE LLC, a California limited
liability company; GALPAO GAUCHO
EIGHT LLC, a California limited liability
company; GALPAO GAUCHO NINE LLC, a
California limited liability company; and DOES
1-50, Inclusive,

Defendants.

Case No: C23-01770

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 PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 9) FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351.

DEMAND FOR A JURY TRIAL

PLAINTIFF JOSE RAMON DE LA CRUZ (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees, alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

1. Defendant GALPAO GAUCHO TWO, LLC (“Defendant Galpao Gaucho Two”) is a Texas limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant GALPAO GAUCHO THREE, LLC (“Defendant Galpao Gaucho Three”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant GALPAO GAUCHO FOUR LLC (“Defendant Galpao Gaucho Four”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

4. Defendant GALPAO GAUCHO FIVE LLC (“Defendant Galpao Gaucho Five”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

5. Defendant GALPAO GAUCHO EIGHT LLC (“Defendant Galpao Gaucho Eight”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

1 6. Defendant GALPAO GAUCHO NINE LLC (“Defendant Galpao Gaucho Nine”)
2 is a California limited liability company that at all relevant times mentioned herein conducted and
3 continues to conduct substantial and regular business throughout California.

4 7. PLAINTIFF alleges there has existed a unity of interest and ownership between
5 Defendants such that any individuality and separateness between the entities has ceased and all
6 Defendants are referred to herein as “DEFENDANT” and/or “DEFENDANT.”

7 8. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers
8 of DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest
9 and ownership between Defendant Galpao Gaucho Two, Defendant Galpao Gaucho Three,
10 Defendant Galpao Gaucho Four, Defendant Galpao Gaucho Five, Defendant Galpao Gaucho
11 Eight, and Defendant Galpao Gaucho Nine such that any individuality and separateness between
12 the entities has ceased. Defendant Galpao Gaucho Two, Defendant Galpao Gaucho Three,
13 Defendant Galpao Gaucho Four, Defendant Galpao Gaucho Five, Defendant Galpao Gaucho
14 Eight, and Defendant Galpao Gaucho Nine are therefore alter egos of each other. Adherence to
15 the fiction of the separate existence of DEFENDANT would permit an abuse of the corporate
16 privilege, and would promote injustice by protecting DEFENDANT from liability for the
17 wrongful acts committed by them.

18 9. PLAINTIFF further alleges that DEFENDANT are the alter egos of each other for
19 the following reasons:

- 20 a. On the California Secretary of State’s website (<https://businesssearch.sos.ca.gov/>)
21 Defendant Galpao Gaucho Two, Defendant Galpao Gaucho Three, Defendant
22 Galpao Gaucho Four, Defendant Galpao Gaucho Five, Defendant Galpao Gaucho
23 Eight, and Defendant Galpao Gaucho Nine have the same entity address and/or
24 mailing address and/or Agent for Service of Process;
- 25 b. On information and belief Defendant Galpao Gaucho Two, Defendant Galpao
26 Gaucho Three, Defendant Galpao Gaucho Four, Defendant Galpao Gaucho Five,
27 Defendant Galpao Gaucho Eight, and Defendant Galpao Gaucho Nine utilize the
28 same standardized employment forms and issue the same employment policies and
same pay stubs;

///
///

1 c. On information and belief Defendant Galpao Gaucho Two, Defendant Galpao
2 Gaucho Three, Defendant Galpao Gaucho Four, Defendant Galpao Gaucho Five,
3 Defendant Galpao Gaucho Eight, and Defendant Galpao Gaucho Nine have an
4 executive team which supervise and manage the operations of all of
5 DEFENDANT's restaurants, supervised and managed the finances of all of
6 DEFENDANT's restaurants, supervised and managed the marketing of all of
7 DEFENDANT's restaurants, supervised and managed the human resources of all
8 of DEFENDANT's restaurants, and supervised and managed the food and
9 beverage offerings at all of DEFENDANT's restaurants.

10 10. PLAINTIFF alleges that DEFENDANT's various separate corporate entities are
11 used by an individual or individuals, or by another corporation, to accomplish inequitable
12 purposes, including to limit liability for the unlawful acts of DEFENDANT.

13 11. PLAINTIFF alleges that there is such a unity of interest and ownership between
14 DEFENDANT's various corporate entities that own DEFENDANT's restaurants and the
15 individual or individuals, or organization controlling those corporate entities that their separate
16 personalities no longer exist.

17 12. PLAINTIFF further alleges that the failure to disregard the various corporate
18 entities would promote injustice.

19 13. Alternatively, on information and belief, Defendant Galpao Gaucho Two,
20 Defendant Galpao Gaucho Three, Defendant Galpao Gaucho Four, Defendant Galpao Gaucho
21 Five, Defendant Galpao Gaucho Eight, and Defendant Galpao Gaucho Nine were the joint
22 employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the
23 company PLAINTIFF performed work for respectively. Defendant Galpao Gaucho Two,
24 Defendant Galpao Gaucho Three, Defendant Galpao Gaucho Four, Defendant Galpao Gaucho
25 Five, Defendant Galpao Gaucho Eight, and Defendant Galpao Gaucho Nine each exerted control
26 over the hours, wages and/or working conditions of PLAINTIFF and the other members of the
27 CALIFORNIA CLASS. Therefore, Defendant Galpao Gaucho Two, Defendant Galpao Gaucho
28 Three, Defendant Galpao Gaucho Four, Defendant Galpao Gaucho Five, Defendant Galpao
Gaucho Eight, and Defendant Galpao Gaucho Nine are jointly responsible as employers for the
conduct alleged herein as "DEFENDANTS" and/or "DEFENDANT."

1 14. DEFENDANTS own, operate, and/or manage Brazilian steakhouse restaurants
2 throughout the state of California, including in the county of Contra Costa, where PLAINTIFF
3 worked.

4 15. PLAINTIFF was employed by DEFENDANTS in California from September of
5 2020 to October of 2021 as a non-exempt employee, paid on an hourly basis, and entitled to the
6 legally required meal and rest periods and payment of minimum and overtime wages due for all
7 time worked.

8 16. PLAINTIFF brings this Class Action on behalf of himself and a California class,
9 defined as all persons who are or previously were employed by Defendant Galpao Gaucho Two
10 and/or Defendant Galpao Gaucho Three and/or Defendant Galpao Gaucho Four and/or Defendant
11 Galpao Gaucho Five and/or Defendant Galpao Gaucho Eight and/or Defendant Galpao Gaucho
12 Nine in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any
13 time during the period beginning four (4) years prior to the filing of this Complaint and ending on
14 the date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
15 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
16 (\$5,000,000.00).

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

28 ///

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

10 19. The agents, servants and/or employees of the Defendants and each of them acting
11 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
12 agent, servant and/or employee of the Defendants, and personally participated in the conduct
13 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
14 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
15 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
16 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
17 Defendants' agents, servants and/or employees.

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

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

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

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

JURISDICTION AND VENUE

24. 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.

25. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employ 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

26. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS 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 PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF 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 and rest premiums at the regular rate of pay, failed to pay PLAINTIFF and other CALIFORNIA CLASS

1 Members redeemed sick pay at the regular rate of pay, failed to reimburse PLAINTIFF and other
2 CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and
3 the members of the CALIFORNIA CLASS with accurate itemized wage statements showing,
4 among other things, all applicable hourly rates in effect during the pay periods and the
5 corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and
6 practices are intended to purposefully avoid the accurate and full payment for all time worked as
7 required by California law which allows DEFENDANTS to illegally profit and gain an unfair
8 advantage over competitors who comply with the law. To the extent equitable tolling operates to
9 toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should
10 be adjusted accordingly.

11 **A. Meal Period Violations**

12 27. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
13 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
14 meaning the time during which an employee is subject to the control of an employer, including
15 all the time the employee is suffered or permitted to work. From time to time during the CLASS
16 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
17 without paying them for all the time they were under DEFENDANTS' control. Specifically,
18 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
19 be PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not
20 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
21 Members forfeited minimum wage and overtime compensation by regularly working without their
22 time being accurately recorded and without compensation at the applicable minimum wage and
23 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
24 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
25 records.

26 28. From time to time during the CLASS PERIOD, as a result of their rigorous work
27 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
28 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty

1 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
2 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANTS for
3 more than five (5) hours during some shifts without receiving a meal break. Further,
4 DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
5 second off-duty meal period for some workdays in which these employees are required by
6 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by
7 PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and
8 narrowly construed “on-duty” meal period exception. When they were provided with meal
9 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
10 required to remain on premises, on duty and on call. DEFENDANTS’ failure to provide
11 PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is
12 evidenced by DEFENDANTS’ business records. As a result of their rigorous work schedules and
13 DEFENDANTS’ inadequate staffing, PLAINTIFF and other members of the CALIFORNIA
14 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
15 DEFENDANTS’ strict corporate policy and practice.

16 **B. Rest Period Violations**

17 29. From time to time during the CLASS PERIOD, PLAINTIFF and other
18 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
19 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
20 DEFENDANTS’ inadequate staffing. Further, for the same reasons, these employees were denied
21 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
22 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
23 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
24 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
25 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
26 CLASS Members were, from time to time, required to remain on premises, on duty and/or on call.
27 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
28 wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS’

1 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
2 time denied their proper rest periods by DEFENDANT and DEFENDANTS' managers.

3 **C. Unreimbursed Business Expenses**

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

15 31. In the course of their employment, DEFENDANTS required PLAINTIFF and
16 other CALIFORNIA CLASS Members to incur personal expenses for the purchase and
17 maintenance of work uniforms as a result of and in furtherance of their job duties. Specifically,
18 PLAINTIFF and other CALIFORNIA CLASS Members were required to purchase and maintain
19 their work uniforms in order to perform work and work-related tasks for DEFENDANTS.
20 However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA
21 CLASS Members for the use of their purchase and maintenance of work uniforms. As a result,
22 in the course of their employment with DEFENDANTS, the PLAINTIFF and other
23 CALIFORNIA CLASS Members incurred unreimbursed business expenses that included, but
24 were not limited to, costs related to the purchase and maintenance of work uniforms, all on behalf
25 of and for the benefit of DEFENDANT.

26 **D. Wage Statement Violations**

27 32. California Labor Code Section 226 required an employer to furnish its employees
28 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours

1 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
2 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
3 name of the employee and only the last four digits of the employee's social security number or an
4 employee identification number other than a social security number, (8) the name and address of
5 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
6 period and the corresponding number of hours worked at each hourly rate by the employee.

7 33. From time to time during the CLASS PERIOD, when PLAINTIFF and other
8 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
9 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS
10 also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
11 accurate wage statements which failed to show, among other things, all deductions, the total hours
12 worked and all applicable hourly rates in effect during the pay period and the corresponding
13 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
14 meal and rest periods.

15 34. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
16 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
17 Cal. Lab. Code § 226.

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

22 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

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

26 37. During the CLASS PERIOD, from time-to-time DEFENDANTS required
27 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
28 work, including but not limited to, time spent counting out employee tips. This resulted in

1 PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-
2 clock.

3 38. DEFENDANTS directed and directly benefited from the undercompensated off-
4 the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

5 39. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
6 assignments, and employment conditions of PLAINTIFF and the other members of the
7 CALIFORNIA CLASS.

8 40. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
9 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
10 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
11 wages earned and owed for all the work they performed.

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

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

20 43. DEFENDANTS knew or should have known that PLAINTIFF and the other
21 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

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

28 ///

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

45. From time to time during the CLASS PERIOD, DEFENDANTS 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. DEFENDANTS' 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 sick pay in accordance with applicable law is evidenced by DEFENDANTS' business records.

46. 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.

47. The second component of PLAINTIFF'S and other CALIFORNIA CLASS Members' compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and other CALIFORNIA 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.

48. 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 bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as part of the employee's "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.

1 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
2 CLASS Members must be included in the “regular rate of pay.” The failure to do so has resulted
3 in a systematic underpayment of overtime and double time compensation, meal and rest period
4 premium payments, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS
5 Members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that
6 paid sick time for non-exempt employees shall be calculated in the same manner as the regular
7 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or
8 not the employee actually works overtime in that workweek. DEFENDANTS’ conduct, as
9 articulated herein, by failing to include the incentive compensation as part of the “regular rate of
10 pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the
11 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

12 49. In violation of the applicable sections of the California Labor Code and the
13 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a
14 matter of company policy, practice, and procedure, intentionally and knowingly failed to
15 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
16 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
17 sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain
18 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
19 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANTS, the
20 CLASS PERIOD should be adjusted accordingly.

21 **G. Tip Pooling**

22 50. During the CALIFORNIA CLASS period, pursuant to DEFENDANTS’ company
23 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to
24 forfeit gratuities left for them by customers to DEFENDANTS’ agents who provided no service
25 to the customers that resulted in the gratuity. DEFENDANTS routinely added gratuity tips and
26 service charges to its food and beverage bills. These gratuities and service charges reasonably
27 appear to be gratuities for the service staff. It is typical and customary in the hospitality industry
28 that establishments impose gratuity charges on the food and beverage bill. Thus, when customers

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

10 51. DEFENDANTS are generally in the business of owning and operating a restaurant.
11 During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS
12 Members were in the “chain of service” and earned gratuities based on their service for their
13 customers. However, PLAINTIFF and CALIFORNIA CLASS Members were forced to forfeit
14 portions of their gratuities, which said gratuities were kept by DEFENDANTS’ employees who
15 were not in the chain of service from which the gratuity resulted. PLAINTIFF and other
16 CALIFORNIA CLASS Members contend that any gratuities kept by DEFENDANTS’ non-
17 service employees were illegal and in violation of California law because PLAINTIFF and other
18 CALIFORNIA CLASS Members provided the service for to whom the gratuity should have been
19 paid.

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

28 ///

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

5 **H. Sick Pay Violations**

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

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

18 **I. Unlawful Deductions**

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

23 **J. Timekeeping Manipulation**

24 57. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
25 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
26 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
27 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
28 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and

1 unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and
2 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
3 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
4 missed rest breaks.

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

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

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

21 **K. Unlawful Rounding Practices**

22 61. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
23 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
24 CALIFORNIA CLASS Members for the actual time these employees worked each day,
25 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
26 policy and practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being
27 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
28 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping

1 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying
2 these employees for all their time worked, including the applicable overtime compensation for
3 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
4 time to time, forfeited compensation for their time worked by working without their time being
5 accurately recorded and without compensation at the applicable overtime rates.

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

12 **L. Violations for Untimely Payment of Wages**

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

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

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

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

19 **CLASS ACTION ALLEGATIONS**

20 67. PLAINTIFF brings this Class Action on behalf of himself, and a California class
21 defined as all persons who are or previously were employed by Defendant Galpao Gaucho Two
22 and/or Defendant Galpao Gaucho Three and/or Defendant Galpao Gaucho Four and/or Defendant
23 Galpao Gaucho Five and/or Defendant Galpao Gaucho Eight and/or Defendant Galpao Gaucho
24 Nine in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any
25 time during the period beginning four (4) years prior to the filing of this Complaint and ending
26 on the date as determined by the Court (the "CLASS PERIOD").

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

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

5 69. The members of the class are so numerous that joinder of all class members is
6 impractical.

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

- 16 a. Whether DEFENDANT maintained legally compliant meal period policies and
17 practices;
- 18 b. Whether DEFENDANT maintained legally compliant rest period policies and
19 practices;
- 20 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
21 Members accurate premium payments for missed meal and rest periods;
- 22 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
23 Members accurate overtime wages;
- 24 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
25 Members at least minimum wage for all hours worked;
- 26 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
27 CLASS Members for required business expenses;
- 28 g. Whether DEFENDANT issued legally compliant wage statements;

- 1 h. Whether DEFENDANT committed an act of unfair competition by systematically
2 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
3 CLASS for all time worked;
- 4 i. Whether DEFENDANT committed an act of unfair competition by systematically
5 failing to record all meal and rest breaks missed by PLAINTIFF and other
6 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
7 of this work, required employees to perform this work and permits or suffers to
8 permit this work;
- 9 j. Whether DEFENDANT committed an act of unfair competition in violation of the
10 UCL, by failing to provide the PLAINTIFF and the other members of the
11 CALIFORNIA CLASS with the legally required meal and rest periods.

12 71. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
13 a result of DEFENDANTS' conduct and actions alleged herein.

14 72. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
15 PLAINTIFF has the same interests as the other members of the class.

16 73. PLAINTIFF will fairly and adequately represent and protect the interests of the
17 CALIFORNIA CLASS Members.

18 74. PLAINTIFF retained able class counsel with extensive experience in class action
19 litigation.

20 75. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
21 interest of the other CALIFORNIA CLASS Members.

22 76. There is a strong community of interest among PLAINTIFF and the members of
23 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
24 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
25 sustained.

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

78. 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:

79. 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.

Unlawful Business Practices

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

81. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof. Code § 17021.

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

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

12 83. By the conduct alleged herein, DEFENDANTS have engaged and continue to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
15 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
16 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
17 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
18 constitute unfair competition, including restitution of wages wrongfully withheld.

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

25 85. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and
26 fraudulent in that DEFENDANTS’ uniform policy and practice failed to provide the legally
27 mandated meal and rest periods and the required amount of compensation for missed meal and
28 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

1 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
2 restitution of wages wrongfully withheld.

3 86. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
4 unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
5 other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANTS.

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

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

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

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

25 91. All the acts described herein as violations of, among other things, the Industrial
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
27 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
28

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

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

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

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

19 **SECOND CAUSE OF ACTION**

20 **Failure To Pay Minimum Wages**

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

22 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

26 95. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
27 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
28

1 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate
2 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

10 99. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
11 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
12 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
13 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
14 the CALIFORNIA CLASS.

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

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

25 102. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
26 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
27 minimum wage compensation for their time worked for DEFENDANTS.

28 ///

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

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

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

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

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

1 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
2 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
3 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
4 Members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good
5 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
6 recover statutory costs.

7 **THIRD CAUSE OF ACTION**

8 **Failure To Pay Overtime Compensation**

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

10 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

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

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

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

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

28 ///

1 113. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
2 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
3 they worked, including overtime work.

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

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

17 116. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
18 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
19 overtime compensation for their time worked for DEFENDANTS.

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

28 ///

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

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

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

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

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

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

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

13 **FOURTH CAUSE OF ACTION**

14 **Failure To Provide Required Meal Periods**

15 **(Cal. Lab. Code §§ 226.7 & 512)**

16 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

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

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

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

14 **FIFTH CAUSE OF ACTION**

15 **Failure To Provide Required Rest Periods**

16 **(Cal. Lab. Code §§ 226.7 & 512)**

17 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

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

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

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

15 **SIXTH CAUSE OF ACTION**

16 **Failure To Provide Accurate Itemized Statements**

17 **(Cal. Lab. Code § 226)**

18 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

- 24 a. Gross wages earned,
- 25 b. (2) total hours worked by the employee, except for any employee whose
26 compensation is solely based on a salary and who is exempt from payment of
27 overtime under subdivision (a) of Section 515 or any applicable order of the
28 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.

134. When DEFENDANTS did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANTS violated Cal. Lab. Code § 226 in that DEFENDANTS failed to provide PLAINTIFFS and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, 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, and correct rates of pay for penalty payments or missed meal and rest periods.

135. 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.

136. DEFENDANTS 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

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

9 **SEVENTH CAUSE OF ACTION**

10 **Failure To Pay Wages When Due**

11 **(Cal. Lab. Code § 203)**

12 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

16 138. Cal. Lab. Code § 200 provides that:

17 As used in this article:

- 18 (d) "Wages" includes all amounts for labor performed by employees of every
19 description, whether the amount is fixed or ascertained by the standard of time,
20 task, piece, Commission basis, or other method of calculation.
21 (e) "Labor" includes labor, work, or service whether rendered or performed under
22 contract, subcontract, partnership, station plan, or other agreement if the to be
23 paid for is performed personally by the person demanding payment.

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

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

28 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.

141. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS Members' employment contract.

142. 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.

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

144. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands 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.

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees for Required Expenses

(Cal. Lab. Code §§ 2802)

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

145. 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.

146. 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.

147. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS

1 members for required expenses incurred in the discharge of their job duties for DEFENDANTS'
2 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
3 members for expenses which included, but were not limited to, personal expenses incurred for
4 the purchase and maintenance of work uniforms, all on behalf of and for the benefit of
5 DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse
6 PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting from the purchase
7 and maintenance of work uniforms, within the course and scope of their employment for
8 DEFENDANTS. These expenses were necessary to complete their principal job duties.
9 DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of this
10 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
11 CALIFORNIA CLASS members, DEFENDANTS failed to indemnify and reimburse
12 PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is
13 required to do under the laws and regulations of California.

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

18 **NINTH CAUSE OF ACTION**

19 **FAILURE TO PAY STATUTORY GRATUITIES**

20 **(Cal. Lab. Code § 351 et seq.)**

21 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all**

22 **Defendants)**

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

26 150. DEFENDANT's conduct, as set forth above, in failing to remit to non-managerial
27 employees the total proceeds of gratuities added to customers' bills constitutes a violation of
28 California Labor Code Section 351. This violation is enforceable pursuant to the California Unfair

1 Competition Law, Cal. Bus. And Prof. Code 17200 et seq. DEFENDANT's conduct constitutes
2 unlawful, unfair, and/or fraudulent business acts or practices, in that DEFENDANT has violated
3 California Labor Code Section 351 in not remitting to the non-managerial service employees the
4 total gratuities that were charged to customers.

5 151. As a proximate result of the aforementioned violations, PLAINTIFF and
6 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
7 including the loss of gratuities to which they were entitled. and seek all wages earned and due,
8 interest, penalties, expenses and costs of suit.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and
11 severally, as follows:

12 1. On behalf of the CALIFORNIA CLASS:

- 13 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
14 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
15 b. An order temporarily, preliminarily and permanently enjoining and restraining
16 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
17 c. An order requiring DEFENDANTS to pay all overtime wages and all sums
18 unlawfully withheld from compensation due to PLAINTIFF and the other members
19 of the CALIFORNIA CLASS; and
20 d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund
21 for restitution of the sums incidental to DEFENDANTS' violations due to
22 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

23 2. On behalf of the CALIFORNIA CLASS:

- 24 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and
25 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action
26 pursuant to Cal. Code of Civ. Proc. § 382;
27 b. Compensatory damages, according to proof at trial, including compensatory
28 damages for overtime compensation due to PLAINTIFF and the other members of

1 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
2 thereon at the statutory rate;

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

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

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

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

15 3. On all claims:

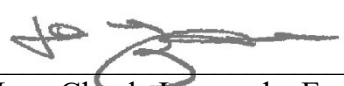
16 a. An award of interest, including prejudgment interest at the legal rate;

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

18 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
19 including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 246 and/or
20 § 1194

21
22 DATED: July 20, 2023

JCL LAW FIRM, APC

23 By: 

24 Jean-Claude Lapuyade, Esq.
25 Attorney for PLAINTIFF
26
27
28

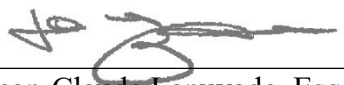
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

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

DATED: July 20, 2023

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

EXHIBIT