

SOLOMON E. GRESEN [SBN: 164783]
RGLAWYERS, LLP
15910 VENTURA BOULEVARD, SUITE 1610
ENCINO, CALIFORNIA 91436
TELEPHONE: (818) 815-2727
FACSIMILE: (818) 815-2737

FILED
Superior Court of California
County of Los Angeles
03/27/2023
David W. Slayton, Executive Officer / Clerk of Court
By: C. Vargas Deputy

Attorneys for Plaintiff Sheldon Monroe, on behalf of himself,
and all others similarly situated

Additional Counsel Listed on Next Page

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SHELDON MONROE, JAVIER
ESCALANTE, and MANUEL
CASTILLO-GUERRERO on behalf of
themselves and all others similarly
situated,

Plaintiff,

vs.

SUN GIR INCORPORATED, a
California corporation; and DOES 1
through 100, inclusive.

Defendants.

CASE NO.: BC690757
Complaint Filed: January 18, 2018
Assigned to: Hon. Stuart Rice
Dept: 1

PROPOSED CLASS ACTION

**SECOND AMENDED COMPLAINT
FOR:**

1. Failure to Pay Wages Due and Owing (IWC Wage Order No. 5; Cal. Lab. Code §§ 201, 202, 203, 204, 210, 223, 226.7, 558, 1194, 1197, 1197.1 and 1198);
2. Failure to Pay Overtime Wages (IWC Wage Order No. 5; Cal. Lab. Code §§ 223, 510, 558, 1194 and 1198);
3. Failure to Provide Accurate Itemized Statements (IWC Wage Order No. 5; Cal. Lab. Code § 226);
4. Failure to Reimburse Necessary Expenditures or Losses (Lab. Code § 2802);
5. Unfair Business Practices (Cal. Bus. & Prof. Code § 17200, et seq.
6. Failure to Pay Minimum Wages and for all hours worked;
7. Meal Period Liability (Lab. Code § 226.7);

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

-) 8. Rest-Break Liability (Lab. Code § 226.7);
-)
-) 9. Failure to Pay Final Wages (Lab. Code § 203);
-)
-) 10. Failure to Pay Timely Wages (Lab. Code § 204);
-)
-) 11. Failure to Pay COVID-19 Supplemental Sick Leave;
-)
-) 12. Failure to Provide a Safe and Healthful Place of Employment;
-)
-) 13. Failure to Provide Suitable Seating;
-)
-) 14. Failure to Provide Potable Water;
-)
-) 15. Failure to Provide Safe Working Conditions;
-)
-) 16. Penalties under PAGA, Labor Code § 2698
-)
-) 17. Failure to Pay Wages Under the FLSA, 29 USC § 201 *et seq.*;
-)

DEMAND FOR JURY TRIAL

1 DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
2 david@yeremianlaw.com
Alvin B. Lindsay (SBN 220236)
3 alvin@yeremianlaw.com
2540 Foothill Blvd., Suite 201
4 La Crescenta, California 91214
Telephone: (818) 230-8380
5 Facsimile: (818) 230-0308

6 Attorneys for Plaintiff JAVIER ESCALANTE
on behalf of himself and all others similarly situated
7

8 Nazo Koulloukian, SBN 263809
nazo@koullaw.com
9 KOUL LAW FIRM
A Professional Law Corporation
10 3435 Wilshire Blvd., Suite 1710
Los Angeles, CA 90010
11 Telephone: (213) 761-5484
12 Facsimile: (818) 561-3938

13 Attorneys for Plaintiff MANUEL CASTILLO-GUERRERO
on behalf of himself and all others similarly situated
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COMES NOW Plaintiffs, Sheldon Monroe (“Monroe”), Javier Escalante (“Escalante”), and Manuel Castillo-Guerrero (“Castillo-Guerrero”) (collectively, “Plaintiffs”) on behalf of themselves and all others similarly situated, who complain and pleads on information and belief as follows:

JURISDICTION

1. This is a civil action seeking recovery of damages including, without limitation, unpaid wages, unpaid overtime, waiting time penalties, civil penalties and damages, plus interest, attorney’s fees and costs under California Labor Code sections 201, 202, 203, 204, 210, 223, 226, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 2698 and 2802, 29 USC § 201 *et seq.*, among other provisions of law. Plaintiffs, on their own behalf, and for all other Class Members alleged herein also brings an action for Defendants’ violations of California Business and Professions Code section 17200, *et seq.*, among other provisions of law, seeking full restitution and/or disgorgement of all compensation retained by Defendants as a result of their unlawful, fraudulent and unfair business practices.

VENUE

2. Venue as to each Defendant is proper in this judicial district pursuant to Code of Civil Procedure sections 395(a) and 395.5, as at least some of the acts complained of herein occurred in the County of Los Angeles. Each Defendant was either a resident of, or owns, maintains offices, transacts business, has an agent or agents within the County of Los Angeles or otherwise is found within the County of Los Angeles, and each Defendant is within the jurisdiction of this Court for the purpose of service of process.

PLAINTIFF CLASS

3. The acts complained of herein occurred within the last four years preceding the filing of the initial Complaint in this action. During the relevant period, Plaintiffs worked in California as nonexempt employees for Defendants Sun Gir, Inc, (“Sun Gir”), and DOES 1 through 100, inclusive, (“Defendants”). At all times herein mentioned, Plaintiffs and the entirety of the proposed Class identified herein were or are current or former employees of Defendants who were deprived of wages earned, minimum wages and overtime pay, whose

1 overtime was not properly paid, whose payroll records did not reflect all items required by
2 law, whose necessary business expenditures were not reimbursed, who did not receive timely
3 wages, who did not receive COVID-19 supplemental sick leave, who did not have access to
4 suitable seating, who did not have access to potable water, who were subject to unsafe
5 working conditions, and who were not provided uninterrupted meal and rest breaks, among
6 other things.

7 **DEFENDANTS**

8 4. Plaintiffs are informed, believe, and thereon allege that Defendants Sun Gir
9 was and is a California corporation, and at all relevant times mentioned herein, was
10 authorized to and doing business in the State of California, County of Los Angeles.

11 5. At all times herein mentioned, Defendants operated Carl's Jr. restaurants, and
12 were the employers, or other persons acting on behalf of the employer, of Plaintiffs and the
13 proposed Class. Thus, Defendants are and were subject to California law including, without
14 limitation, Labor Code, and the California Business and Professions Code section 17200, et
15 seq. ("Unfair Competition Law").

16 **DOE DEFENDANTS**

17 6. The true names and capacities, whether individual, corporate, associate or
18 otherwise, of defendants named herein as DOES 1 through 100, and each of them, are
19 unknown to Plaintiffs, who therefore sues said Defendants by said fictitious names. Plaintiffs
20 are informed, believe, and thereon allege that each of said DOES 1 through 100, and each of
21 them, is negligently or otherwise responsible in some manner for the events and happenings
22 herein referred to, and negligently or otherwise were the proximate cause of injuries and
23 damages to Plaintiffs and the proposed Class. Plaintiffs pray leave to amend this complaint to
24 substitute the specific names of said DOES 1 through 100, and each of them, and to specify
25 their said negligent or otherwise wrongful acts as they become known.

26 **CO-CONSPIRATORS, AIDERS AND ABETTERS**

27 7. Defendants, along with various persons, individuals, partnerships, corporations
28 and associations not named in this Complaint, have participated as co-conspirators and/or

1 have aided and abetted in the violations alleged in this Complaint, and have performed acts
2 and made statements in furtherance thereof.

3 **AGENCY, JOINT VENTURE, ALTER EGO**

4 8. Plaintiffs are informed, believe, and thereon allege that at all times mentioned
5 herein, Defendants Sun Gir, and DOES 1 through 100, inclusive, and each of them, were the
6 officers, directors, brokers, agents, contractors, advisors, servants, partners, joint venturers,
7 managers, owners, parents, subsidiaries, and/or employees of their Co-Defendants, and were
8 acting within the scope of their authority as such agents, contractors, advisors, servants,
9 partners, joint venturers, managers, owners, parents, subsidiaries, and employees with the
10 permission and consent of their Co-Defendants. Each Defendant, as aforesaid, was acting as a
11 principal, and was involved in the selection, consultation, and/or hiring of each and every
12 other participant in the events relevant herein.

13 9. Plaintiffs are informed, believe and thereon allege that there existed and exists
14 such a unity of interest and ownership between Defendants and their equitable owners, DOES
15 1 through 100, and each of them, that the separate personalities of the corporation and the
16 shareholders do not in reality exist. Accordingly, Plaintiffs are informed, believe and thereon
17 allege that DOES 1 through 100, and each of them, are the “alter-egos” of Defendant Sun Gir.

18 **CLASS ACTION ALLEGATIONS**

19 10. Plaintiffs bring this action on behalf of themselves and all others similarly
20 situated, as a Class Action pursuant to Code of Civil Procedure section 382.

21 11. Plaintiffs are informed and believe, and thereon allege that during the class
22 period, in excess of 50 Class Members have been employed by Defendants, and were subject
23 to Defendants’ policy by which Defendants unlawfully withheld the wages of Plaintiffs and
24 the Class, in the State of California.

25 12. Because Defendants employed so many persons in positions subject to their
26 unlawful policies and/or practices, the Class Members are so numerous that joinder of all
27 Class Members is impossible and/or impracticable.

28 ///

1 13. The “Class” and “Sub-Class” which Plaintiffs seek to represent are composed
2 of and defined as follows:

3 **Class**

4 All former and current non-exempt employees of Defendants in
5 the State of California at any time from January 18, 2014 through
6 December 21, 2022.

7 **Sub-Class**

8 All Class Members whose employment with Defendants has
9 ended or will end prior to the time at which judgment is entered
10 in this matter.

11 Plaintiffs reserve the right under California Rules of Court, Rule 3.765(b), to amend or
12 modify the Class descriptions with greater specificity or further division into subclasses or
13 limitation to particular issues.

14 14. The Class Members are so numerous that joinder of all Class Members would
15 be unfeasible and impracticable. The membership of each entire Class is unknown to
16 Plaintiffs at this time; however, the Class is estimated to be in excess of 50 individuals, and
17 the identity of such membership may be readily ascertained via inspection of Defendants’
18 business records.

19 15. The Class Action is superior to other available methods for the fair and
20 efficient adjudication of this controversy. Plaintiffs will fairly and adequately protect the
21 interests of the Class Members and has retained counsel competent and experienced in both
22 Class action and employment litigation.

23 16. Common questions of law and fact exist as to all Class Members and
24 predominate over any questions affecting solely individual Class Members. Among the
25 questions of law and fact, those questions which are relevant to adjudication of Class
26 Members’ claims are as follows:

- 27 a. Whether Defendants failed to pay wages earned for all hours worked, and
28 premium pay for all hours worked, in violation of Industrial Welfare
 Commission (“IWC”) Wage Order No. 5 and Labor Code sections 200, 201,

202, 203, 204, 210, 223, 1194, 1197, 1198, and 29 USC §§ 201, et seq., or any other provision of law;

b. Whether Defendants failed to pay overtime in violation of IWC Wage Order No. 5 and Labor Code sections 200, 223, 510, 511, 1194, 1197 and 1198 or any other provision of law;

c. Whether Defendants' payroll records failed to include all necessary items in violation of IWC Wage Orders No. 5 and Labor Code sections 226, or any other provision of law;

d. Whether Defendants, and each of them, engaged in unfair business practices in violation of the Unfair Competition Law (Business & Professions Code § 17200 et seq.);

e. Whether Defendants failed to reimburse for necessary business expenses in violation of Labor Code section 2802;

e. Whether Defendants violated sections 201, 202, 203 and 204 of the Labor Code by failing to pay improperly deducted wages due and owing at the time that any Class Member's employment with Defendants terminated;

f. Whether Defendants violated section 226.8 of the Labor Code and IWC Wage Order No. 5 by failing to provide meal and rest periods for Class Members;

g. Whether Defendants failed to pay for supplemental COVID-19 sick leave for Class Members;

h. Whether Defendants failed to provide suitable seating, potable water, and safe working conditions for Class Members;

i. Whether DOES 1 through 100, and each of them, were co-conspirators or the alter egos of Defendants;

j. The effect upon and the extent of the injuries suffered by Plaintiffs and other Class Members and the appropriate amount of reimbursement, restitution, damages or other compensation.

///

1 17. The nature of this action, and the nature of laws available to the Plaintiffs and
2 Class Members identified herein, makes the use of the Class action format a particularly
3 efficient and appropriate procedure to afford relief to the Plaintiffs and the Class for the
4 wrongs alleged herein. Further, this case involves a large corporate employer and a large
5 number of individual employees (Plaintiffs and the Class), with many relatively small claims
6 that have common issues of law and fact. If each employee were required to file an individual
7 lawsuit, the corporate defendants would necessarily gain an unconscionable advantage since
8 they would be able to exploit and overwhelm the limited resources of each individual Plaintiff
9 with their vastly superior financial and legal resources. Requiring each member of the Class
10 to pursue an individual remedy would also discourage the assertion of lawful claims by
11 employees who would be disinclined to pursue an action against the employer due to an
12 appreciable and justifiable fear of retaliation and permanent damage to their careers at their
13 present or subsequent employment. Proof of a common business practice, policy, or factual
14 pattern, which the representative Plaintiffs experienced, are representative of the Class
15 mentioned herein and will establish the right of Class Members to recover on the causes of
16 action of alleged herein.

17 18. The prosecution of separate actions by the individual Class Members, even if
18 possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
19 with respect to the individual Class Members against Defendants herein, and would establish
20 potentially incompatible standards of conduct for Defendants and/or legal determinations with
21 respect to individual Class Members, which would, as a practical matter, be dispositive of the
22 interest of the other Class Members not parties to the adjudications or which would
23 substantially impair or impede the ability of the Class Members to protect their interests.
24 Further, the claims of the individual Class Members are not sufficiently large to warrant
25 vigorous individual prosecution considering all of the concomitant costs and expenses
26 attendant thereto.

27 19. Plaintiffs and the Class Members are entitled to the monies unlawfully
28 withheld. Further, the public is entitled to restitution and disgorgement of those funds being

1 unlawfully withheld by Defendants. This action is brought as a representative action under the
2 Unfair Competition Law for the benefit of the Public.

3 **FIRST CAUSE OF ACTION**
4 **FAILURE TO PAY WAGES DUE AND OWING**
(Against Defendants Sun Gir, and Does 1 through 100, inclusive)

5 20. Plaintiffs repeat and reallege by this reference each and every allegation
6 contained in paragraphs 1 through 19, and incorporates the same as though fully set forth
7 herein.

8 21. Labor Code section 204 provides in part that “all wages ... earned by any
9 person in any employment are due and payable twice during each calendar month, on days
10 designated in advance by the employer as the regular paydays.”

11 22. Labor Code section 201(a) provides in part that “If an employer discharges an
12 employee, the wages earned and unpaid at the time of discharge are due and payable
13 immediately.”

14 23. Plaintiffs are informed and believe and thereon allege that Plaintiffs and Class
15 Members were not paid all wages due on regularly established paydays in violation of IWC
16 Wage Order No. 5 and Labor Code section 204.

17 24. Pursuant to Labor Code section 1194, “[n]otwithstanding any agreement to
18 work for a lesser wage, any employee receiving less than the legal minimum or the legal
19 overtime compensation applicable to the employee is entitled to recover in a civil action the
20 unpaid balance of the full amount of this minimum wage or overtime compensation, including
21 interest thereon, reasonable attorney’s fees, and costs of suit.”

22 25. Plaintiffs are informed and believe and thereon allege that Plaintiffs and the
23 Class were not paid all wages earned and unpaid at the time of discharge, in violation of
24 Labor Code section 201(a), and were not paid all wages earned and unpaid within 72 hours of
25 resignation, in violation of Labor Code section 202(a).

26 26. In addition to the wages due and owing, Plaintiffs and the Class are entitled to
27 waiting time penalties as provided in Labor Code section 203.

28 ///

1 27. Plaintiffs are informed, believe, and thereon allege that Defendants, and each of
2 them, knowingly and willingly conspired and agreed among themselves to fail to the above-
3 referenced wages, to Plaintiffs and the Class for time spent as described above, and to deprive
4 Plaintiffs and all Class Members of the benefit of their wages for Defendants' own personal
5 profit.

6 28. As a proximate result of the aforementioned violations of Labor Code sections
7 200, 203, 204, 223, 1194 and 1197, and the facts herein alleged, Plaintiffs are informed,
8 believe and thereon allege that he has been damaged in excess of the minimum jurisdictional
9 limits of this Court.

10 29. Plaintiffs have retained the services of legal counsel in order to enforce their
11 rights, and are entitled to an award of attorney's fees and costs pursuant to Labor Code
12 section 218.5 and/or 1194(a).

13 **SECOND CAUSE OF ACTION**
14 **FAILURE TO PAY OVERTIME WAGES**
 (Against Defendants Sun Gir, and Does 1 through 100, inclusive)

15 30. Plaintiffs repeat and reallege by this reference each and every allegation
16 contained in paragraphs 1 through 19, 21 through 29, and incorporates the same as though
17 fully set forth herein.

18 31. Pursuant to IWC Wage Order No. 5 and Labor Code sections 200, 226, 510,
19 1194, and 1198, Defendants were required to compensate Plaintiffs and the Class for all
20 overtime, which is calculated at one and one-half (1½) times the regular rate of pay for hours
21 worked in excess of eight (8) hours per day, and for the first eight (8) hours on the seventh
22 consecutive work day; with double time after eight (8) hours on the seventh day of any work
23 week, or after 12 hours in any work day.

24 32. Plaintiffs and the Class are non-exempt employees entitled to the protections of
25 IWC Wage Order No. 5 and Labor Code sections 200,226, 510, 1194, and 1198.

26 33. Under the aforementioned wage orders, statutes, and regulations, Plaintiffs and
27 the Class are entitled to one and one-half (1½) times and/or double their regular rate of pay
28 for overtime work performed, based on appropriate calculations, including bonus pay,

1 premium pay, and commissions, of the “total remuneration” for each workweek.

2 34. In violation of the Labor Code and other provisions of law, throughout the
3 terms of employment of Plaintiffs and the Class Members, Defendants improperly failed to
4 pay all overtime wages due to Plaintiffs and Class Members for time spent working for
5 Defendants.

6 35. Plaintiffs are informed, believe, and thereon allege that Defendants, and each of
7 them, knowingly and willingly conspired and agreed among themselves to fail to pay all
8 overtime wages due to Plaintiffs and the Class, and to deprive Plaintiffs and all persons
9 similarly situated of the benefit of their wages for Defendants’ own personal profit.

10 36. As a proximate result of the aforementioned violations of the IWC Wage Order
11 No. 5 and Labor Code sections 200, 226, 1194 and 1198, and the facts herein alleged,
12 Plaintiffs are informed, believe, and thereon allege that they, and the Class, have been
13 damaged in excess of the minimum jurisdictional limits of this Court.

14 37. At all times relevant herein, Labor Code section 1194(a) has provided that an
15 employee who has not been paid the legal overtime compensation can recover the unpaid
16 balance of the full amount of overtime wages due for all hours worked, including interest
17 thereon, together with reasonable attorney’s fees and costs of suit.

18 38. Plaintiffs have retained the services of legal counsel in order to enforce their
19 rights, and are entitled to an award of attorney’s fees and costs pursuant to Labor Code section
20 218.5.

21 **THIRD CAUSE OF ACTION**
22 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
(Against Defendants Sun Gir, and Does 1 through 100, inclusive)

23 39. Plaintiffs repeat and reallege by this reference each and every allegation contained
24 in paragraphs 1 through 19, 21 through 29, 31 through 38, and incorporates the same as though
25 fully set forth herein.

26 40. Labor Code section 226 provides that an employer must furnish employees with an
27 “accurate itemized” statement in writing showing:

28 (1) gross wages earned,

- (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,
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) 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 may be shown on the itemized statement,
- (8) the name and address of the legal entity that is the employer, and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

41. At all times relevant herein, Defendants violated Labor Code section 226 in that Defendants failed to provide an accurate wage statement in writing in accordance with the requirements of section 266.

42. Plaintiffs are informed, believe, and thereon allege that Defendants, and each of them, knowingly and willingly conspired and agreed among themselves to fail to provide accurate wage statements, to Plaintiffs and the Class for time spent as described above, and to deprive Plaintiffs and all persons similarly situated of the benefit of their wages for Defendants' own personal profit.

43. As a proximate result of the aforementioned violations of the Labor Code section 226, and the facts herein alleged, Plaintiffs are informed, believe, and thereon allege that they have been damaged in excess of the minimum jurisdictional limits of this Court. These damages include, but are not limited to, costs expended in calculating the correct number of hours worked and the correct amount of wages due for all hours worked, including overtime hours.

44. Plaintiffs have retained the services of legal counsel in order to enforce their rights, and are entitled to an award of attorney's fees and costs pursuant to Labor Code section 226.

1 **FOURTH CAUSE OF ACTION**
2 **FAILURE TO REIMBURSE**

3 *(Against Defendants Sun Gir, and Does 1 through 100, inclusive)*

4 45. Plaintiffs repeat and reallege by this reference each and every allegation
5 contained in paragraphs 1 through 19, 21 through 29, 31 through 38, 40 through 44, and
6 incorporates the same as though fully set forth herein.

7 46. Labor Code section 2802(a) provides that “An employer shall indemnify his or
8 her employee for all necessary expenditures or losses incurred by the employee in direct
9 consequence of the discharge of his or her duties, or of his or her obedience to the directions
10 of the employer, even though unlawful, unless the employee, at the time of obeying the
11 directions, believed them to be unlawful.”

12 47. Plaintiffs were required by Defendants to use their own funds for expenses
13 associated with, but not limited to, the purchase of uniforms, for and on behalf of Defendants.

14 48. Defendants have not reimbursed Plaintiffs and other Class Members for their
15 expenditures and losses incurred in the discharge of their duties. Plaintiffs are entitled to be
16 paid damages in accordance with California Labor Code section 2802.

17 49. Pursuant to Labor Code section 2802(c), “the term ‘necessary expenditures or
18 losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred
19 by the employee enforcing the rights granted by this section.”

20 **FIFTH CAUSE OF ACTION**
21 **UNFAIR BUSINESS PRACTICES**

22 *(Against Defendants Sun Gir, and Does 1 through 100, inclusive)*

23 50. Plaintiffs repeat and reallege by this reference each and every allegation
24 contained in paragraphs 1 through 19, 21 through 29, 31 through 38, 40 through 44, 46
25 through 49, and incorporates the same as though fully set forth herein.

26 51. Defendants have engaged in unfair business practices in California, and thereby
27 violated California Business and Professions Code section 17200, by engaging in the
28 deceptive practices outlined above including, without limitation, by maintaining an unlawful
policy of progressive deductions from employees’ commissions as follows, by failing to pay
wages due and owing, failing to pay overtime wages, failing to properly recalculate overtime

1 following the payment of nondiscretionary bonuses, and by failing to provide accurate
2 itemized statements to Plaintiffs and Class Members. Defendants' use of such practices
3 constitutes an unfair business practice, an unfair competition and provides an unfair
4 advantage over Defendants' competitors.

5 52. It is the public policy of this State to enforce minimum labor standards to
6 ensure that employees are not required or permitted to work under substandard and unlawful
7 conditions, for substandard and unlawful wages, and to protect those employers who comply
8 with the law from losing competitive advantage to other employers who fail to comply with
9 labor standards and requirements.

10 53. On behalf of the general public, Plaintiffs seek full restitution and disgorgement
11 of said monies from Defendants, as necessary and according to proof, to restore any and all
12 monies acquired in any way by Defendants by means of the unfair practices complained of
13 herein. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total
14 monetary relief sought from Defendants. The acts complained of herein occurred, at least in
15 part, within the last 4 years preceding the filing of the within Complaint.

16 54. Plaintiffs are informed, believe and thereon allege that at all times herein
17 mentioned, Defendants have engaged in unlawful, deceptive and unfair business practices
18 prohibited by California Business and Professions Code section 17200, thereby depriving
19 Plaintiffs individually and as representatives of other members of the general public of the
20 minimum working condition standards and conditions due to them under Labor Code sections
21 201,202,203, and 204, as well as other provisions of the Labor Code and IWC Wage Order
22 No. 5, as previously described herein.

23 55. Plaintiffs are also entitled to an injunction and other equitable relief against
24 such unlawful practices in order to prevent future damage, for which there is no adequate
25 remedy at law, and to avoid a multiplicity of lawsuits.

26 56. The illegal conduct alleged herein is continuing, and there is no indication that
27 Defendants will discontinue such activity in the future. Plaintiffs allege that if Defendants are
28 not enjoined from the conduct set forth in this Complaint, they will continue to fail to pay

1 wages due and owing, including overtime wages as set forth above, to its employees.
2 Plaintiffs, therefore, request that this Court issue a preliminary and permanent injunction
3 prohibiting Defendants from depriving its employees of wages for all hours worked,
4 including overtime wages, and from failing to provide the appropriate meal and rest periods,
5 or from any other unlawful policy.

6 57. Plaintiffs success in this action will result in the enforcement of important
7 rights affecting the public and will confer a significant benefit upon the general public.
8 Private enforcement of the rights enumerated in this Complaint is necessary, as public
9 agencies have only sought limited enforcement of those rights, if any. Plaintiffs individually,
10 and by and through counsel, are incurring a financial burden in pursuing this action on behalf
11 of the general public. Therefore, Plaintiffs seek an award of attorney's fees and costs of suit
12 on this Cause of Action pursuant to Code of Civil Procedure section 1021.5 and other
13 applicable laws.

14 **SIXTH CAUSE OF ACTION**
15 **FAILURE TO PAY MINIMUM WAGES**
(Against Defendants Sun Gir, and Does 1 through 100, inclusive)

16 58. Plaintiffs repeat and reallege by this reference each and every allegation
17 contained in paragraphs 1 through 19, 21 through 29, 31 through 38, 40 through 44, 46
18 through 49, 51 through 57, and incorporates the same as though fully set forth herein.

19 59. Defendants failed to pay Employees minimum wages they were owed, including by
20 their consistent policy of failing to pay Employees for all hours worked. Employees would work
21 hours and not receive wages, including as alleged above in connection with off the clock work,
22 including all the time required to remain on duty and under Defendants' control and during breaks
23 and due to the work demands placed upon them by Defendants' management. Defendants also
24 required time shaving, rounding and under-reporting of hours worked, and imposed difficult to
25 attain job and shift scheduling requirements and understaffing on Plaintiffs and the Class
26 members, which resulted in off the clock work and underpayment of all wages owed to Employees
27 over a period of time, while benefiting Defendants. During the relevant Class Period, Defendants
28 thus regularly failed to pay minimum wages to Plaintiffs and the Class members, including by

1 requiring systematic off the clock work. Defendants' uniform pattern of unlawful wage and hour
2 practices manifested, without limitation, applicable to the Class as a whole, as a result of
3 implementing a uniform policy and practice that denied accurate compensation to Plaintiffs and
4 the other Class Members as to minimum wage pay.

5 60. In California, employees must be paid at least the then applicable state minimum
6 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and
7 paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the
8 applicable IWC Wage Orders defines "Hours Worked" as "the time during which an employee is
9 subject to the control of an employer, and includes all the time the employee is suffered or
10 permitted to work, whether or not required to do so." Additionally, pursuant to Labor Code § 204,
11 other applicable laws and regulations, and public policy, an employer must timely pay its
12 employees for all hours worked. Defendants failed to do so.

13 61. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:
14 "The minimum wage for employees fixed by the commission is the minimum wage to be paid to
15 employees, and the payment of a less wage than the minimum so fixed is unlawful."

16 62. The applicable minimum wage rate fixed by the commission for work during the
17 relevant period is found in the Wage Orders.

18 63. The minimum wage provisions of California Labor Code are enforceable by private
19 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to
20 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
21 overtime compensation applicable to the employee is entitled to recover in a civil action the
22 unpaid balance of the full amount of this minimum wage or overtime compensation, including
23 interest thereon, reasonable attorney's fees and costs of suit."

24 64. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
25 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
26 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
27 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
28 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in

1 the absence of a contractually agreed upon one. The underpayment of wages to Plaintiffs and the
2 Class members is and has been a direct consequence of Defendants' unlawful compensation
3 policies and practices, which applied uniformly to the Class members working at facilities
4 throughout California.

5 65. In committing the above-described violations of the California Labor Code,
6 Defendants inaccurately recorded, or required Plaintiffs and the Class members to input times that
7 did not reflect their actual hours worked, or calculated the correct time worked and consequently
8 underpaid the actual time worked by Plaintiffs and other Class Members, including by requiring
9 off the clock work and refusing to pay overtime, as addressed in detail above. Defendants acted in
10 an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
11 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws
12 and regulations. As a result of these violations, Defendants also failed to timely pay all wages
13 earned in accordance with California Labor Code § 1194.

14 66. California Labor Code § 1194.2 also provides for the following remedies: "In any
15 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
16 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
17 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

18 67. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
19 1197.1, Plaintiffs and Class members are entitled to recover a penalty of \$100.00 for the initial
20 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
21 pay each employee minimum wages.

22 68. Pursuant to California Labor Code § 1194.2, Plaintiffs and Class members are
23 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
24 interest thereon.

25 69. Defendants have the ability to pay minimum wages for all time worked and have
26 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
27 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

28 ///

1 70. Wherefore, Plaintiffs and the Employee Class members are entitled to recover the
2 unpaid minimum wages (including double minimum wages), liquidated damages in an amount
3 equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees
4 and costs of suit pursuant to California Labor Code § 1194(a). Plaintiffs and the other Class
5 Members further request recovery of all unpaid wages, according to proof, interest, statutory costs,
6 as well as the assessment of any statutory and/or civil penalties against Defendants, in a sum as
7 provided by the California Labor Code, including § 558, and/or other applicable statutes. To the
8 extent minimum wage compensation is determined to be owed to the Class members who have
9 terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202,
10 and therefore these individuals are also be entitled to waiting time penalties under California
11 Labor Code § 203, which penalties are sought herein on behalf of these Class members.
12 Defendants' failure to timely pay all wages owed also violated Labor Code § 204 for failure to pay
13 all wages owed twice monthly, and resulted in violations of Labor Code § 226 because they
14 resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was
15 willful, intentional and not in good faith. Further, Plaintiffs and other Class members are entitled
16 to seek and recover statutory costs.

17 **SEVENTH CAUSE OF ACTION**
18 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**
19 ***(Against Defendants Sun Gir, and Does 1 through 100, inclusive)***

20 71. Plaintiffs repeat and reallege by this reference each and every allegation
21 contained in paragraphs 1 through 19, 21 through 29, 31 through 38, 40 through 44, 46
22 through 49, 51 through 57, 59 through 70 and incorporates the same as though fully set forth
23 herein.

24 72. Employees regularly worked shifts greater than five hours and in some instances,
25 greater than ten hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC
26 Wage Order, an employer may not employ someone for a shift of more than five hours without
27 providing him or her with a meal period of not less than thirty minutes or for a shift of more than
28 ten hours without providing him or her with a second meal period of not less than thirty minutes.

///

1 73. Defendants failed to provide Employees with meal periods as required under the
2 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
3 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
4 provided them after Employees worked beyond the fifth hour of their shifts or Employees
5 otherwise had them shortened and interrupted by work demands and requirements to remain under
6 Defendants' control during off the clock time, including by being required to remain on
7 Defendants' restaurant premises during breaks. Furthermore, upon information and belief, on the
8 occasions when Employees worked more than ten hours in a given shift, they did so without
9 receiving a second uninterrupted thirty minute meal period as required by law.

10 74. Defendants thus failed to provide Plaintiffs and the Class members with meal
11 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
12 including by not providing them with the opportunity to take meal breaks, by providing them late
13 or for less than thirty minutes, or by requiring them to perform work during breaks or otherwise
14 remain under Defendants' control.

15 75. Moreover, Defendants failed to compensate Employees for each meal period not
16 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
17 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
18 employee a meal period in accordance with this section, the employer shall pay the employee one
19 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
20 period is not provided. Defendants failed to compensate the Employees in the Class for each meal
21 period not provided or inadequately provided, as required under Labor Code § 226.7 and
22 paragraphs 11 and 20 of the applicable IWC Wage Order.

23 76. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
24 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
25 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or
26 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory
27 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and
28 other statutes and applicable IWC Wage Order paragraphs.

EIGHTH CAUSE OF ACTION
REST-BREAK LIABILITY UNDER LABOR CODE § 226.7
(Against Defendants Sun Gir, and Does 1 through 100, inclusive)

77. Plaintiffs repeat and reallege by this reference each and every allegation contained in paragraphs 1 through 19, 21 through 29, 31 through 38, 40 through 44, 46 through 49, 51 through 57, 59 through 70, 71 through 76, and incorporates the same as though fully set forth herein.

78. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that employers must authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four work hours.

79. Employees consistently worked consecutive four hour shifts and were generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for each consecutive four hour shift, and Defendants failed to provide Employees with timely rest breaks of not less than ten minutes for each consecutive four hour shift. Employees were often required to work or to otherwise remain under Defendants' control during rest periods, and had breaks provided untimely as a result of the above described off the clock work. Plaintiffs and the Class members were also not permitted to leave their work premises during rest breaks.

80. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders provide that if an employer fails to provide an employee rest period in accordance with this section, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

81. Defendants, and each of them, have therefore intentionally and improperly denied rest periods to Plaintiffs and the Class members in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of the applicable IWC Wage Orders.

82. Defendants failed to authorize and permit Plaintiffs and the Class members to take rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed

1 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
2 12 and 20 of the applicable IWC Wage Orders.

3 83. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
4 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour
5 of wages at their effective hourly rates of pay for each day worked without the required rest
6 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
7 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

8 **NINTH CAUSE OF ACTION**
9 **VIOLATION OF LABOR CODE § 203**

10 ***(Against Defendants Sun Gir, and Does 1 through 100, inclusive)***

11 84. Plaintiffs repeat and reallege by this reference each and every allegation
12 contained in paragraphs 1 through 19, 21 through 29, 31 through 38, 40 through 44, 46
13 through 49, 51 through 57, 59 through 70, 71 through 76, 78 through 83 and incorporates the
14 same as though fully set forth herein.

15 85. Numerous Class members are no longer employed by Defendants; they either quit
16 Defendants' employ or were fired therefrom.

17 86. Defendants failed to pay these Employees all wages due and certain at the time of
18 termination or within seventy-two hours of resignation, as addressed in detail above.

19 87. The wages withheld from these Employees by Defendants remained due and owing
20 for more than thirty (30) days from the date of separation from employment.

21 88. Defendants failed to pay Plaintiffs and the Class members without abatement, all
22 wages as defined by applicable California law. Among other things, these Employees were not
23 paid all regular and overtime wages, including by Defendants failing to pay for all hours worked
24 or requiring off the clock work or by unlawfully under-recording time entries to the detriment of
25 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and
26 rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
27 required time was willful within the meaning of Labor Code § 203.

28 89. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
are required "to pay each employee, on the established payday for the period involved, not less

1 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
2 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
3 or under conditions of labor prohibited by the order is unlawful.” Plaintiffs and the Class members
4 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
5 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
6 IWC Wage Orders. Also, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are
7 subject to a fine of not less than \$100 for causing Employees “to work for longer hours than those
8 fixed, or under conditions of labor prohibited by an order of the commission” or if the employer
9 pays “a wage less than the minimum fixed by an order of the commission” or “violates...any
10 provision of this chapter or any order or ruling of the commission.”

11 90. Defendants’ failure to pay wages, as alleged, entitles these former Employee Class
12 members to penalties under Labor Code § 203 and the applicable paragraphs of the IWC Wage
13 Orders as addressed above, including the requirement that an employee’s wages shall continue
14 until paid for up to thirty (30) days from the date they were due

15 **TENTH CAUSE OF ACTION**
16 **VIOLATION OF LABOR CODE § 204**
(Against Defendants Sun Gir, and Does 1 through 100, inclusive)

17 91. Plaintiffs repeat and reallege by this reference each and every allegation
18 contained in paragraphs 1 through 19, 21 through 29, 31 through 38, 40 through 44, 46
19 through 49, 51 through 57, 59 through 70, 71 through 76, 78 through 83, 85 through 90, and
20 incorporates the same as though fully set forth herein.

21 92. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
22 employment are due and payable twice during each calendar month, on days designated in
23 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
24 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
25 during which the labor was performed, and labor performed between the 16th and the last day,
26 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
27 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment
28 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven

1 calendar days following the close of the payroll period.” As detailed above, Defendants
2 maintained a consistently applied policy and practice of not paying all wages earned between the
3 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
4 between the 16th and the last day of the month between the 1st and 10th day of the following month.
5 This included failing to pay all wages due and owing to Plaintiffs and the Class members for all
6 hours they worked and failing to pay all wages earned by not more than seven calendar days
7 following the close of the payroll period.

8 93. All wages due and owing to Plaintiffs and the Class members, including as required
9 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
10 required by Labor Code § 1194 and other sections became due and payable to each employee in
11 each pay period that he or she was not provided with a meal period or rest period or paid straight
12 or overtime wages to which he or she was entitled.

13 94. Defendants violated Labor Code § 204 by systematically refusing to timely pay
14 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
15 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
16 payday for the period involved, not less than the applicable minimum wage for all hours worked in
17 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
18 hours than those fixed by the order or under conditions of labor prohibited by the order is
19 unlawful.” Plaintiffs and the Class members may therefore pursue damages and penalties for
20 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
21 penalties under paragraph 20 of the applicable IWC Wage Orders.

22 95. As a result of the unlawful acts of Defendants, Plaintiffs and the Class he seeks to
23 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
24 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
25 pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
26 applicable IWC Wage Orders.

27 ///

28 ///

ELEVENTH CAUSE OF ACTION
FAILURE TO PAY COVID-19 SUPPLEMENTAL SICK LEAVE
(Against Defendants Sun Gir, and Does 1 through 100, inclusive)

96. Plaintiffs repeat and reallege by this reference each and every allegation contained in paragraphs 1 through 19, 21 through 29, 31 through 38, 40 through 44, 46 through 49, 51 through 57, 59 through 70, 71 through 76, 78 through 83, 85 through 90, 91 through 95, and incorporates the same as though fully set forth herein.

97. Pursuant to Labor Code §1197, “[t]he minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Various emergency and statutory enactments including Executive Order N-51-20, SB 95, and Labor Code section 248 et seq ensure access to up to 80 hours of COVID-19 supplemental paid sick leave for eligible employees, including those advised to quarantine or isolate and those caring for COVID-impacted family members. In the case of COVID-19, Defendants were required to provide 80 hours of paid sick leave to full time employees, in addition to sick pay for part time employees. As applied to food sector workers like Plaintiffs and Class Members, employees who work full time are entitled to 80 hours of paid sick leave, and employees who work part time are similarly entitled to sick leave, if the worker is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, or the worker is advised by a health care provider to self-isolate or self-quarantine due to health concerns related to COVID-19, or the worker is prohibited from working by the worker’s hiring entity due to health care concerns related to the potential transmission of COVID-19.

98. In this case, Plaintiffs knew of several employees who contracted Covid during their employment. Subsequently they took time off work to recover and to quarantine, yet Defendants refused to pay for their time off. Defendants are a covered employer under relevant sick pay laws, including N-51-20, SB 95, and the recently enacted Labor Code 248 et seq., and Plaintiffs and Class Members are covered employees. Plaintiffs and Class Members were required to take time off due to COVID-19 related illness or quarantine requirements yet received zero sick pay.

///

1 99. As a result of these practices, Defendants have violated Cal. Labor Code §§218,
2 246, 248, 510, 1194, 1197, 1198 and Industrial Welfare Commission Wage Orders
3 paragraph(3)(A)(1) for failure to pay sick pay wages. Employers are liable for civil penalties
4 pursuant to Cal. Labor Code §558.

5 **TWELFTH CAUSE OF ACTION**
6 **FAILURE TO PROVIDE A SAFE AND HEALTHFUL PLACE OF EMPLOYMENT**
7 ***(Against Defendants Sun Gir, and Does 1 through 100, inclusive)***

8 100. Plaintiffs repeat and reallege by this reference each and every allegation contained
9 in paragraphs 1 through 19, 21 through 29, 31 through 38, 40 through 44, 46 through 49, 51
10 through 57, 59 through 70, 71 through 76, 78 through 83, 85 through 90, 91 through 95, 97
11 through 100, and incorporates the same as though fully set forth herein.

12 101. Labor Code §§6400 requires employers to provide place of employment that is safe
13 and healthful; §6401 requires employers to furnish and use safety devices and safeguards, and
14 adopt and use practices, means, methods, operations, and processes which are reasonably adequate
15 to render such employment and place of employment safe and healthful; §6401.7 requires
16 employers to implement and maintain an effective written injury prevention program; §6402 does
17 not require to go or be in employment or place of employment that is not safe and healthful; §6403
18 provides that no employer shall fail or neglect to provide and use safety devices and safeguards
19 reasonably adequate to render the employment and place of employment safe, adopt and use
20 methods and processes reasonably adequate to render the employment and place of employment
21 safe, and must do every other thing reasonably necessary to protect the life, safety, and health of
22 employees.

23 102. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any
24 place of employment that is not safe and healthful. Cal. Labor Code §6407 provides that every
25 employer and every employee shall comply with occupational safety and health standards, with
26 Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant
27 to this division which are applicable to their own actions and conduct. Title 8 of the California
28 Code of Regulations, Section 3203 requires that employers take the steps necessary to protect
employees' health and safety.

1 103. Defendants failed to timely make changes to the workplace at the onset of COVID.
2 During the height of the pandemic and throughout, the employer did not require distancing.
3 Plaintiffs and Class Members were discouraged from taking time off if they had or thought they
4 had COVID as a result of not getting paid for the time off. They were also charged \$2.50 for
5 masks if they did not bring their own, making it difficult for these minimum wage earners to abide
6 by the mask wearing requirement. And finally, there was no effective written covid prevention
7 program.

8 104. Defendants' conduct as alleged herein violates California Code of Regulation, Title
9 8, section 3203. Plaintiffs and the Class are therefore entitled to compensation and penalties as
10 provided by law. Plaintiffs seek all available remedies for Defendants' violations including, but
11 not limited to any and all wages due, penalties, monies, interest, attorneys' fees, and costs to the
12 extent permitted by law.

13 **THIRTEENTH CAUSE OF ACTION**
14 **FAILURE TO PROVIDE SUITABLE SEATING**
 (Against Defendants Sun Gir, and Does 1 through 100, inclusive)

15 105. Plaintiffs repeat and reallege by this reference each and every allegation contained
16 in paragraphs 1 through 19, 21 through 29, 31 through 38, 40 through 44, 46 through 49, 51
17 through 57, 59 through 70, 71 through 76, 78 through 83, 85 through 90, 91 through 95, 97
18 through 100, 101 through 104 and incorporates the same as though fully set forth herein.

19 106. Labor Code section 1198 states, in pertinent part, "The employment of any
20 employee... under conditions of labor prohibited by the [Wage Order] is unlawful."

21 107. Section 14 of Wage Order 5 provides that:

22 (A) All working employees shall be provided with suitable seats
23 when the nature of the work reasonably permits the use of seats.

24 (B) When employees are not engaged in the active duties of their
25 employment and the nature of the work requires standing, an
26 adequate number of suitable seats shall be placed in reasonable
 proximity to the work area and employees shall be permitted to use
 such seats when it does not interfere with the performance of their
 duties.

27 108. At all relevant times, employer failed to provide Plaintiffs and Class Members with
28 suitable seating during their employment as required by section 14 of the applicable Wage Order.

1 Plaintiffs and Class Members were not provided with seating during their shifts, the pressure to
2 stay standing even during slow periods when it was possible for them to briefly take a seat for rest,
3 they had to squat on the ground out of sight of cameras for fear of being seen taking a rest by
4 Defendants.

5 **FOURTEENTH CAUSE OF ACTION**
6 **FAILURE TO PROVIDE POTABLE DRINKING WATER**
7 ***(Against Defendants Sun Gir, and Does 1 through 100, inclusive)***

8 109. Plaintiffs repeat and reallege by this reference each and every allegation contained
9 in paragraphs 1 through 19, 21 through 29, 31 through 38, 40 through 44, 46 through 49, 51
10 through 57, 59 through 70, 71 through 76, 78 through 83, 85 through 90, 91 through 95, 97
11 through 100, 101 through 104, 106 through 108 and incorporates the same as though fully set forth
12 herein.

13 110. Labor Code §226.7 requires that employers provide rest periods that comply with
14 state laws, including those that require potable drinking water. California Labor Code §2441
15 requires employers to provide fresh, free, and pure drinking water for employees, at reasonable
16 and convenient times and places. 8 CCR §3395 requires the provision of “potable drinking water
17 meeting the requirements of §§1524, 3363, and 3457, as applicable, including but not limited to
18 the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge.”⁸
19 CCR § 3457(c) further requires the provision of potable drinking water and single use cups.
20 Plaintiffs and aggrieved employees were expected to bring their own cups from home if they
21 wanted to drink water and other beverages supplied by Defendants. There were no cups for them
22 provided by Defendants. If Plaintiffs and Class Members did not have a cup from home, they were
23 forced to purchase a cup from Defendants if they wanted to drink any beverages at the restaurant,
24 including water.

25 111. Pursuant to §2441, “Any violation of this section is punishable for each offense by
26 a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or by
27 imprisonment for not more than 30 days, or by both the fine and imprisonment.” Pursuant to Cal.
28 Labor Code §6712, “any employer who fails to provide the facilities required by the field
sanitation standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars

1 (\$750) for each violation.”

2 **FIFTEENTH CAUSE OF ACTION**
3 **FAILURE TO PROVIDE SAFE WORKING CONDITIONS**
4 ***(Against Defendants Sun Gir, and Does 1 through 100, inclusive)***

5 112. Plaintiffs repeat and reallege by this reference each and every allegation contained
6 in paragraphs 1 through 19, 21 through 29, 31 through 38, 40 through 44, 46 through 49, 51
7 through 57, 59 through 70, 71 through 76, 78 through 83, 85 through 90, 91 through 95, 97
8 through 100, 101 through 104, 106 through 108, 110 through 11 and incorporates the same as
9 though fully set forth herein.

10 113. Defendants’ workplaces would get unsafely hot in the kitchen due to the grill and
11 frying area. Plaintiffs and Class Members are required to work in enclosed spaces where there is
12 inadequate air conditioning and ventilation.

13 114. Defendants do not have proper climate control. Plaintiffs and their coworkers
14 worked in unbearable heat in the kitchen area. Wage Order 5 15 requires:

15 (A) The temperature maintained in each work area shall provide
16 reasonable comfort consistent with industry-wide standards for the
17 nature of the process and the work performed.

18 (B) If excessive heat or humidity is created by the work process, the
19 employer shall take all feasible means to reduce such excessive heat
20 or humidity to a degree providing reasonable comfort.

21 115. Labor Code 1198 makes it unlawful to employ employee in conditions prohibited
22 by the wage order. By violating the wage order, Defendants are liable for civil penalties pursuant
23 to §2698 et. seq.

24 **SIXTEENTH CAUSE OF ACTION**
25 **PENALTIES UNDER PAGA, LABOR CODE SECTION 2698**
26 ***(Against Defendants Sun Gir, and Does 1 through 100, inclusive)***

27 116. Plaintiffs repeat and reallege by this reference each and every allegation contained
28 in paragraphs 1 through 19, 21 through 29, 31 through 38, 40 through 44, 46 through 49, 51
through 57, 59 through 70, 71 through 76, 78 through 83, 85 through 90, 91 through 95, 97
through 100, 101 through 104, 106 through 108, 110 through 111, 113 through 115, and
incorporates the same as though fully set forth herein.

///

117. Plaintiffs and the Employees in the Class are also aggrieved employees as defined under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and either were or are employed by the alleged violators, Defendants.

118. In failing to pay Aggrieved Employees minimum wages and overtime, not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders.

119. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, inter alia, on the following California Labor Code sections: 201, 202, 203, 204, 210, 223, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and 2698 *et seq.*

120. More specifically, after complying with the notice procedures of Labor Code § 2699.3, Plaintiffs assert, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions,

121. As also addressed above, Plaintiffs, on behalf of the Aggrieved Employees, also seek the penalties and remedies set forth in Labor Code § 558, which states:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

1 (b) If upon inspection or investigation the Labor Commissioner
2 determines that a person had paid or caused to be paid a wage for
3 overtime work in violation of any provision of this chapter, or any
4 provision regulating hours and days of work in any order of the
5 Industrial Welfare Commission, the Labor Commissioner may issue
a citation. The procedures for issuing, contesting, and enforcing
judgments for citations or civil penalties issued by the Labor
Commissioner for a violation of this chapter shall be the same as
those set out in Section 1197.1.

6 (c) The civil penalties provided for in this section are in addition
7 to any other civil or criminal penalty provided by law.

8 122. Plaintiff Escalante has exhausted his administrative remedies by sending a certified
9 letter to the LWDA and Defendants postmarked on **January 5, 2021** (LWDA-CM-817880-21)
10 addressing in detail the specific provisions of the Labor Code Defendants have violated and
11 addressing the facts and legal theories to support the alleged violations and requested penalties.
12 The LWDA has not provided notice of its intent to investigate the alleged violations within 65
13 calendar days of the postmark date of the letter.

14 123. Plaintiff Castillo-Guerrero has exhausted his administrative remedies by sending a
15 certified letter to the LWDA and Defendants postmarked on **August 30, 2021** (LWDA-CM-
16 842918-21) addressing in detail the specific provisions of the Labor Code Defendants have
17 violated and addressing the facts and legal theories to support the alleged violations and requested
18 penalties. The LWDA has not provided notice of its intent to investigate the alleged violations
19 within 65 calendar days of the postmark date of the letter.

20 **SIXTEENTH CAUSE OF ACTION**
21 **FAILURE TO PAY WAGES UNDER THE FLSA 29 USC § 201 *et seq.***
(Against Defendants Sun Gir, and Does 1 through 100, inclusive)

22 124. Plaintiffs repeat and reallege by this reference each and every allegation contained
23 in paragraphs 1 through 19, 21 through 29, 31 through 38, 40 through 44, 46 through 49, 51
24 through 57, 59 through 70, 71 through 76, 78 through 83, 85 through 90, 91 through 95, 97
25 through 100, 101 through 104, 106 through 108, 110 through 111, 113 through 115, 117 through
26 123, and incorporates the same as though fully set forth herein.

27 125. At all relevant times hereto, Defendants have been an “enterprise engaged in
28 commerce or in the production of goods for commerce,” as defined under 29 U.S.C. § 203(s)(1).

1 126. Plaintiffs are informed and believe, and thereon allege, that Defendants have
2 required the Plaintiffs and Employee Class members as part of their employment to work off the
3 clock and for less than minimum wage under 29 U.S.C. § 206(a)(1). That Section provides the
4 following:

5 Every employer shall pay to each of his employees who in any
6 workweek is engaged in commerce or in the production of goods for
7 commerce, or is employed in an enterprise engaged in commerce or
8 in the production of goods for commerce, wages at the following
9 rates:

- 10 (1) except as otherwise provided in this section, not less than—
11 (A) \$5.85 an hour, beginning on the 60th day after May 25, 2007;
12 (B) \$6.55 an hour, beginning 12 months after that 60th day; and
13 (C) \$7.25 an hour, beginning 24 months after that 60th day;...

14 127. Plaintiffs are informed and believe, and thereon allege, that certain or all of the
15 Class members were not exempt employees under the FLSA's overtime provisions and that
16 Defendants also required Plaintiffs and the Class members to work without overtime in excess of
17 the forty (40) hours per week maximum under 29 U.S.C. § 207(a)(1). That Section provides the
18 following:

19 Except as otherwise provided in this section, no employer shall
20 employ any of his employees ... for a workweek longer than forty
21 hours unless such employee receives compensation for his
22 employment in excess of the hours above specified at a rate which
23 is not less than one and one-half times the regular rate at which he
24 is employed.

25 128. In the performance of their duties for Defendants, Employees as Class Members
26 often did work off the clock and over forty (40) hours per week, had overtime underpaid by
27 Defendants' policies and practices addressed above, and did not receive minimum wages and other
28 required compensation for the work, labor and services they provided to Defendants, as required
by the FLSA, 29 U.S.C. §§ 206 and 207 and as addressed in detail above.

 129. At all times relevant to this action, Plaintiffs were each an "employee" of
Defendants within the meaning of 29 U.S.C. § 203(e)(1) of the FLSA. At all times relevant to this
action, Defendants "suffered or permitted" Plaintiffs and the Class members to work and thus
"employed" them within the meaning of 29 U.S.C. § 203(g) of the FLSA. At all times relevant to
this action, Defendants required Class members to perform work under Defendants' employ but

1 failed to pay them the federally mandated wages and overtime compensation for all services
2 performed. The precise amount of unpaid wages and unpaid hours will be proven at trial.

3 130. The FLSA also imposes a record-keeping requirement on employers, including the
4 obligation to keep accurate records of all hours worked by employees. Defendants have knowingly
5 and willfully failed and continue to willfully fail to record, report, and/or preserve accurate records
6 of all hours worked by Plaintiffs and the Class members. By failing to record, report, and/or
7 preserve records of all hours worked by their Employees, Defendants have violated, and continue
8 to violate, the FLSA, 29 U.S.C. §§ 201, *et seq.*

9 131. Plaintiffs propose to undertake appropriate proceedings to have such Class
10 members aggrieved by Defendants' unlawful conduct notified of the pendency of this action and
11 to provide them with the opportunity to join this action as plaintiffs, pursuant to 29 U.S.C. §
12 216(b). Defendants' violations of the FLSA were willful within the meaning of the statute and
13 interpretive case law and decisions.

14 132. Plaintiffs seek judgment against Defendants on their own behalf and on behalf of
15 those Class members who will seek joinder in this action, for all unpaid wages, including
16 minimum and overtime wages owed by Defendants, pursuant to 29 U.S.C. §§ 206 and 207,
17 together with an award of an additional equal amount as liquidated damages, and costs, interest,
18 and reasonable attorneys' fees, as provided for under 29 U.S.C. § 216(b) and which may be
19 brought in "any Federal or State court of competent jurisdiction by any one or more employees for
20 and in behalf of himself or themselves and other employees similarly situated."

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray that judgment be entered in their favor and against
23 Defendants, and each of them, as follows:

- 24 1. For compensatory damages;
- 25 2. For restitution of all monies due to Plaintiffs and Class Members as a result of
- 26 Defendants' unlawful business practices;
- 27 3. For waiting time penalties pursuant to Labor Code section 203;

28 ///

1 4. For compensatory damages in the amount of the unpaid minimum wages for work
2 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
3 the filing of this action, as may be proven;

4 5. For liquidated damages in the amount equal to the unpaid minimum wage and
5 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;

6 6. For statutory damages, liquidated damages and penalties pursuant to Labor Code
7 sections 203, 210, 226, 226.3, 558, 1194, 1194.2, 1197.1, 1197.2, and IWC Wage Order No. 5;

8 7. For compensatory damages in the amount of the hourly wage made by Employees
9 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
10 years prior to the filing of this action, as may be proven;

11 8. For compensatory damages in the amount of the hourly wage made by Employees
12 for each day requisite rest breaks were not provided or were deficiently provided where no
13 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
14 be proven;

15 9. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

16 10. For restitution and/or damages and penalties for Defendants' failure to pay all
17 wages due twice monthly under Labor Code § 204, as may be proven;

18 11. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
19 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

20 12. For accrued interest on all due and unpaid wages from the date wages were due and
21 payable, pursuant to Labor Code section 218.6;

22 13. For an order enjoining defendants from engaging in the unlawful and unfair
23 business practices complained of herein;

24 14. For attorneys' fees and costs pursuant to Labor Code sections 218.5, 226, 1194 and
25 2699, and Code of Civil Procedure section 1021.5; and

26 15. For all such other and further relief that the Court may deem just and proper.

27 ///

28 ///

1 DATED: March 17, 2023

RGLAWYERS, LLP

2

3

By: sg
Solomon E. Gresen

4

Attorneys for Plaintiff Sheldon Monroe on behalf of himself
and all other similarly situated

5

6 DATED: March 17, 2023

DAVID YEREMIAN AND ASSOCIATES, INC

7

8

By: Alvin B. Lindsay
David Yeremian

9

Alvin B. Lindsay

10

Attorneys for Plaintiff Javier Escalante on behalf of himself
and all other similarly situated

11

12 DATED: March 17, 2023

KOUL LAW

13

14

By: Nazo Koulloukian
Nazo Koulloukian

15

Attorneys for Plaintiff Manuel Castillo-Guerrero on behalf of
himself and all other similarly situated

16

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

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 2540 Foothill Blvd., Suite 201 La Crescenta, CA 91214.

Richard J. Simmons
Jason W. Kearnaghan
Ryan J. Krueger
Elyssa M. Sternberg
**SHEPPARD, MULLIN, RICHTER
& HAMPTON LLP**
333 South Hope Street, 43rd Floor
Los Angeles, California 90071

[] **(BY MAIL)** I placed such envelope with postage thereon fully paid in the United States mail at La Crescenta, California. I am “readily familiar” with this firm’s practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Natalia Bermudes
Natalia Bermudes

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES Branch Name: Spring Street Courthouse Mailing Address: 312 North Spring Street City, State and Zip Code: Los Angeles CA 90012	
SHORT TITLE: SHELDON MONROE VS SUN GIR INCORPORATED ET AL NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: BC690757

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of LOS ANGELES. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Legal Connect
 Reference Number: 7305159_2023_03_27_10_15_39_166_7
 Submission Number: 23LA00439555
 Court Received Date: 03/27/2023
 Court Received Time: 10:19 am
 Case Number: BC690757
 Case Title: SHELDON MONROE VS SUN GIR INCORPORATED ET AL
 Location: Spring Street Courthouse
 Case Type: Civil Unlimited
 Case Category: Other Employment Complaint Case
 Jurisdictional Amount: Over \$25,000
 Notice Generated Date: 03/27/2023
 Notice Generated Time: 2:22 pm

Documents Electronically Filed/Received

Status

Amended Complaint

Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: Legal Connect
 Contact: Legal Connect
 Phone: (800) 909-6859