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10 Attorneys for Plaintiff BRIANNA GUIHER

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SACRAMENTO

14 RANDY KUNSMAN, on behalf of himself
and all “aggrieved employees” pursuant to
15 Labor Code § 2698 et seq.

16 Plaintiff,

17 v.

18 PUNCH BOWL SACRAMENTO, LLC, a
19 Delaware limited liability company;
PUNCH BOWL RANCHO
20 CUCAMONGA, LLC, a Delaware limited
liability company; PUNCH BOWL SAN
21 DIEGO, LLC, a Delaware limited liability
company, and DOES 1 through 10,
22 inclusive,

23 Defendants,

Case No. 34-2018-00243175

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

**DECLARATION OF BRIAN R. SHORT IN
SUPPORT OF PLAINTIFFS’ MOTION: (1)
FOR LEAVE TO AMEND THE
OPERATIVE COMPLAINT; 2)
PROVISIONALLY CERTIFYING
SETTLEMENT CLASS; 3)
PRELIMINARILY APPROVING CLASS
SETTLEMENT; 4) DIRECTING
DISTRIBUTION OF NOTICE OF
SETTLEMENT TO THE CLASS; 5)
APPOINTING CLASS COUNSEL AND
CLASS REPRESENTATIVE; AND 6)
SETTING A HEARING FOR FINAL
APPROVAL OF CLASS SETTLEMENT**

CLASS ACTION [CCP § 382]

Date: August 30, 2019

Time: 2 p.m.

Judge: David I. Brown

Dept.: 53

Trial Date: None set

Complaint filed: October 23, 2018

1 I, Brian R. Short, state and declare:

2 1. I am an attorney at law licensed to practice before all courts of the State of California. I
3 am the managing shareholder of ShortLegal, APC in San Diego, California. I am thoroughly familiar with
4 and have personal knowledge of all of the facts set forth herein. If called as a witness, I could and would
5 competently testify thereto.

6 2. My law firm, ShortLegal, APC and my Associate Dorota A. James are the attorneys of
7 record for Plaintiff Brianna Guiher (“Plaintiff”) in the related case of *Guiher v. Punch Bowl SanDiego,*
8 *LLC et al.*, San Diego County Superior Court, Case No. 37-2019-000002512-CU-OE-CTL, filed January
9 15, 2019. I submit this declaration in support of Plaintiffs Randy Kunsman and Brianna Guiher’s
10 (“Plaintiffs”) Motion for Preliminary Approval of Class Action Settlement which seeks primarily: (1) the
11 granting of preliminarily approval of the proposed Settlement; (2) the approval of the distribution of the
12 Class Notice to the Class; (3) the appointment of Daniel F. Gaines and Evan S. Gaines of Gaines & Gaines,
13 APLC and Brian Short and Dorota A. James of ShortLegal, APC as Class Counsel, the appointment of
14 Plaintiffs’ as Class Representatives, and Phoenix Class Action Settlement Solutions as Claims
15 Administrator; (4) and the setting of a hearing for final approval and class counsel’s requested fees and
16 costs and Class Representatives’ service award request. The Class Action Settlement Agreement
17 (“Stipulation” or “Agreement”) and the Proposed Notice to the class are attached to the Declaration of
18 Daniel F. Gaines filed in support of this Motion as **Exhibit A.**

19 CLASS COUNSEL’S CLASS ACTION EXPERIENCE

20 3. I have been a member of the State Bar of California since 2005. I am also admitted to
21 practice in various Districts of United States District Court. I have been practicing almost exclusively in
22 complex class action matters in state and federal courts since I began my legal practice in 2005. Since
23 February 2009, I have spent almost my entire practice representing employees in class and representative
24 action wage and hour litigation. My primary practice in complex class action litigation spans more than
25 14 years.

26 4. During just the last 10 years, I have served as plaintiffs’ counsel of record in the
27 following wage/hour employment class action cases, where I was responsible for the prosecution of said
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1 cases: Weaver v. Hallmark Marketing Corporation, United States District Court for the Central District
2 of California (3,846 class members); Mahoney v. AT&T Corp, Superior Court for the County of Los
3 Angeles; Thomson v. LawInfo.com, Superior Court for the County of San Diego; Vest v. Scher Tire,
4 Inc., Superior Court for the County of Riverside; Duarte v. Rainbow Disposal Co., Inc., Superior Court
5 for the County of Orange; Julio v L&M Tire Co., Inc., Superior Court for the County of San Diego;
6 Lucarini v. Dresser, Inc., Superior Court for the County of Los Angeles; Stevenson v. Falcon Critical
7 Care Transport, Superior Court for the County of Contra Costa; Iskandaryan v. Casual Male Retail
8 Group, Inc., Superior Court for the County of Los Angeles; Williams v. OneLegacy, Superior Court for
9 the County of Los Angeles; Corral v. Lifecare Solutions, Inc., et al., Superior Court for the County of
10 Los Angeles; Huerta v. Venture Petroleum Company, Inc., Superior Court for the County of San Diego;
11 Frugard v. Unified Protective Services, et al., Superior Court for the County of Los Angeles; Turnage v.
12 Park Management Corp. dba. Six Flags Discovery Kingdom, Superior Court for the County of Solano;
13 Clancy, et al. v. Scripps Health, Superior Court for the County of San Diego; Solaberrieta v. Baker
14 Hughes Oilfield Operations, Inc., et al., Superior Court for the County of Los Angeles; Gutierrez v. L &
15 M Tire Company, Inc., Superior Court for the County of San Diego; Stafford v. Dollar Tree Stores, Inc.,
16 Eastern District of California; Stafford v. Dollar Tree Stores, Inc., Superior Court for the County of
17 Solano; Turnage v. Old Dominion Freightlines, Inc., Central District of California; Green v. Lawrence
18 Service Company, United States District Court for the Central District of California; Radford v. ACD
19 Direct, Superior Court for the County of San Diego; De La Rosa v. Quten Research Institute, LLC,
20 Superior Court for the County of San Diego; Frayre v. UPS, Superior Court for the County of San
21 Diego; Leonard et al. v. ABTTC, Inc., Superior Court for the County of Riverside; Loveless v. ASM
22 Affiliates, Superior Court for the County of San Diego; Alfaro v. KSC Studios dba OneKreate, LLC,
23 Superior Court for the County of San Diego; Madriz v. North County Ford, Inc., Superior Court for the
24 County of San Diego; Troxel v. LA Leasing, Inc., Superior Court for the County of San Diego, and
25 Garcia v. WSI, et al, Superior Court for the County of San Diego; and Enriquez v. Colt Services,
26 Superior Court for the County of San Diego; Virrisimo v. L'Oreal USA Products, Inc. et al, Superior
27 Court for the County of San Diego; Horton v. Socket Payment Services, United States District Court for
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1 the Southern District of California; Alfaro v. Ten Stories, Inc., Superior Court for the County of San
2 Diego; Lemar v. Earthlite, LLC, et al., Superior Court for the County of San Diego; and Rodriguez v.
3 Chimney Sweeps, Superior Court for the County of San Diego; and Burgueno v. Tayman Industries,
4 Inc., Superior Court for the County of San Diego.

5 5. My Associate Dorota A. James has a long history of experience litigating complex wage
6 and hour class actions. Ms. James is a third-year attorney who has extensive experience dealing with
7 complex wage and hour litigation. Additionally, she served as a certified paralegal for a prominent San
8 Diego law firm who specializes in plaintiff-side wage and hour class actions prior to becoming an
9 attorney. She received her Paralegal Certificate from the USD Paralegal Program in 2007. Prior to that,
10 she was trained at the Law School at the University of Wroclaw, Poland where she graduated in 1994.
11 Thereafter, Ms. James moved to Germany where she first received her LL.M. degree and then earned
12 her title of Doctor of the Science of Law (S.J.D) at the University of Saarland (Germany). While
13 completing her LL.M. degree, Ms. James worked as a law assistant in a German attorney's office with
14 the focus on a civil and business litigation, including labor disputes. Ms. James completed the L.L.M.
15 Program in Comparative Law at the University of San Diego and became a licensed member of the
16 California State Bar in June 2016. Ms. James has significant experience and knowledge of complex
17 class actions against employers in wage and hour disputes. Before she joined my law firm, Ms. James
18 worked with myself and Ms. De La Rosa as a senior litigation paralegal at another San Diego law firm
19 which specialized in representing plaintiffs in wage and hour employment litigation. During her time
20 spent at my current firm and the time she spent at our previous firm she provided all aspects of litigation
21 support pertaining to complex class action litigation from pre-filing research, discovery, pre-mediation
22 analysis through to post-settlement claims. She is actively assisting in the litigation of each of the cases
23 listed in paragraph 6, above. During her career as employment law paralegal she assisted with and
24 worked on more than 50 employment class action cases.

25 6. I and my Associate Dorota A. James are currently serving as plaintiff's counsel of record
26 in the following wage/hour and employment class action and/or PAGA representative action cases:
27 Rodriguez v. PetSmart, Inc., United States District Court, Southern District; Enriquez v. FedEx Office
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1 and Print Services, Inc., Superior Court for the County of San Diego; Rivera v. Octavian FM, LLC,
2 Superior Court for the County of San Diego; Virissimo v. L’Oreal USA Products, Inc. et al., Superior
3 Court for the County of San Diego; Ruess v. Fun Bike Center, San Diego Superior Court of San Diego;
4 and Hitchko et al v. NPTI of Southern California, et al., Superior Court for the County of San Diego,
5 Dortch v. Southern California Addiction Center, Superior Court for County of Orange; Fox v. Capital
6 Growth Properties, Inc.; Superior Court for the County of San Diego; Davis v. SoCal Interiors, Inc.,
7 Superior Court for the County of San Diego.; Garcia v. J.C. Penney Corporation, Superior Court for the
8 County of San Diego; Taalib-Din v. FedEx Office and Print Services, Inc., Superior Court for the
9 County of San Diego; Burns v. Driveline Retail Merchandising, Inc., Superior Court for the County of
10 Sacramento; and Hubbard v. L’Oreal USA Inc., United State District Court, Northern District .

11 7. Ms. James and I have extensive experience litigating class actions, other complex litigation
12 and wage and hour claims, such as those asserted in this action. Our knowledge of the applicable wage
13 and hour laws is evidenced by our representation of employees in numerous disputes in state and federal
14 courts in California.

15 8. Ms. James I are the attorneys of record for Plaintiff Brianna Guiher (“Plaintiff”), who is a
16 former employee of Defendant Punch Bowl SanDiego, LLC. Plaintiff worked as a server for Defendants
17 during the Class Period.

18 9. In or around August 2018, Plaintiff contacted our law firm with concerns arising out of her
19 employment with Defendants. We immediately sent out a request for a copy of Plaintiff’s pay records,
20 time records, and personnel file. Accordingly, based on the information known at that time, on October 1,
21 2018, Plaintiff submitted the requisite notice letter to the Labor Workforce and Development Agency.
22 Subsequently, on January 15, 2019, my firm filed a putative class and representative action lawsuit on
23 behalf of the Plaintiff in the California Superior Court, County of San Diego. The case number is 37-2019-
24 00002512-CU-OE-CTL. Attached as Exhibit 1 is a true and correct copy of the operative complaint
25 pending in San Diego Superior Court.

26 10. Prior to filing the complaint, my firm conducted a lengthy investigation into the merits of
27 Plaintiff’s claims as well as Defendants’ potential affirmative defenses. Initially, we identified the primary
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1 claims that the Plaintiff and other similarly aggrieved employees were subject to unlawful mandatory tip
2 sharing policy and did not receive pay for all hours worked. Plaintiff also alleged failure to provide meal
3 and rest periods and related premiums, failure to pay timely wages, failure to provide her with accurate
4 itemized wage statements, and failure to maintain records. Plaintiff sought damages, penalties, interest,
5 disgorgement of profits, injunctive relief and attorney's fees and costs.

6 11. My firm conducted extensive interviews with the named Plaintiff regarding the claims in
7 the action and thoroughly analyze the various time and pay records and Defendants' employment policies
8 maintained by Plaintiff.

9 12. After filing the Guiher action in San Diego Superior Court, I became informed about the
10 *Kunsman et al. v. Punch Bowl Sacramento, LLC et al.* case filed at the Sacramento County Superior Court,
11 Case No. 34-2018-00243175 ("Kunsman Action"). Plaintiff Guiher and my offices formed a co-counsel
12 relationship with Gaines & Gaines, APLC representing Plaintiff Kunsman in order to efficiently litigate
13 and mediate the pending cases in an attempt to reach a global resolution of both matters.

14 13. In order to proceed in an efficient manner and reduce the expenditure of unnecessary
15 litigation costs, the parties began to engage in discussions regarding early mediation, including the
16 exchange of informal documents to evaluate the potential damages on behalf of the Class. As a result, we
17 scheduled a mediation with experienced wage and hour class action mediator Lisa Klerman for May 6,
18 2019.

19 14. Prior to mediation, the parties engaged in several pre-mediation discussions in order to
20 understand and evaluate the merits and potential defenses which would be asserted at the mediation. These
21 additional pre-mediation discussions are not often utilized in class action cases, but I believe that it
22 significantly narrowed the scope and arguments which were presented at mediation. Moreover, it
23 permitted the parties to better analyze the claims asserted, defenses raised and was a significant factor in
24 the parties' ability to reach resolution at mediation. Additional analysis prepared by each party were
25 confirmed and compared at mediation.

26 15. My firm meticulously scrutinized and analyzed the informal discovery documents and
27 records for accuracy and compliance with the California Labor Code. We also performed comprehensive
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1 legal research based on each theory of recovery and the possible legal defenses thereto. Class counsel
2 also retained an expert to perform a comprehensive class-wide damage study under each theory of
3 recovery to evaluate the extent of the class wage loss after receiving employee payroll records. The expert
4 calculated the estimated value for wage and hour violations, as well as the penalties and wage premiums
5 for: failure to provide meal and rest periods and the amount of waiting time penalties and other penalties
6 that would result from the above violations.

7 16. The total calculated potential damages if Plaintiffs were successful on all claims at trial are
8 as follows:

9 i. **Failure to Pay all Waiting Time Penalties: \$2,233,400.00**

10 The thrust of Plaintiffs' claims was that Defendants failed to pay all wages timely,
11 thereby owing their employees waiting time penalties. This was calculated by
12 determining the average daily hours worked (8 hours), the average hourly rate (\$11)
13 and multiplying this amount by 30 days to determine the waiting time penalty owed
14 to one employee. This was then multiplied by the total number of former employees
15 in the Class Period (846).

16 ii. **Unpaid Rest Period Premium Wages: \$1,025,772.**

17 As a result of Defendants' rest period policies and practices, Plaintiffs contended
18 that Defendants also owed their employees rest period premium wages. Plaintiffs
19 calculated this amount owed by first determining the total number of shifts worked
20 greater than 3.5 hours in duration during the Class Period (93,252). This number
21 was then multiplied by the average rate of pay (\$11) to reflect the missed premium
22 wages for rest periods for all eligible shifts.

23 iii. **Unpaid Meal Period Premium Wages: \$358,468.00.**

24 As a result of Defendants' meal period practices and policies, Plaintiffs contended
25 that Defendants also owed their employees meal period premium wages. Plaintiffs
26 calculated this amount by determining the total number of shifts with missed, short,
27 and/or late lunches (32,588) which was then multiplied by the average rate of pay
28 to reflect the total amount owed for meal premium wages.

1 iv. **Failure to Provide Wage Statements: \$1,838,950.00**

2 Plaintiffs contended that the class was owed penalties and damages from the failure
3 to provide wage statements. The code allows for recovery of the greater of all actual
4 damages recovered, or a penalty of \$50-100 per pay period (up to a maximum of
5 \$4,000 per affected employee). The total amount of damages resulting from the
6 inaccurate wage statements was in the form of unpaid wages for meal and rest break
7 premiums. For the class of 1,167 total number of non-exempt California employees
8 employed during the PAGA period, this amount was \$1,838,950.00.

9 17. On May 6, 2019, the Parties engaged in a full-day mediation. During the mediation,
10 Defendant was represented by John Lecrone of Davis Wright Tremaine LLP and Plaintiffs Randy
11 Kunsman and Brianna Guiher by Daniel F. Gaines and Evan S. Gaines of Gaines & Gaines, APLC and
12 Brian Short and Dorota A. James of ShortLegal, APC respectively. After a full day of negotiations,
13 information exchanges conducted through the mediator and directly through the parties' representatives,
14 the parties were able to come to the terms of the present global settlement agreement which would permit
15 global resolution of the claims asserted in both actions. The parties also agreed, for settlement purposes
16 only, to amend the Kunsman Action to include Plaintiff Guiher and the claims alleged in the Guiher
17 Action, subject to Defendants' review and approval prior to its filing with the court. Plaintiff Guiher
18 agreed to take steps necessary to stay the Guiher Action so the parties may seek approval of a global
19 settlement in the amended Kunsman Action. Within 15 days of the Court granting final approval of
20 settlement of the Kunsman Action, Plaintiff Guiher will dismiss, with prejudice, all claims in the Guiher
21 Action. Should the Court not grant final approval of settlement, the parties agreed to work in good faith
22 to resolve the Litigation and all claims in a manner consistent with this Agreement.

23 18. Defendants vehemently denied all of the Class Action allegations. Defendants maintained
24 several arguments to Plaintiffs' theories. Defendants maintained that each employee received a full thirty-
25 minute meal period. Defendants claimed that they had a policy requiring all non-exempt employees to
26 clock in and out for the lunches and the timecards evidence substantial number of Class Members
27 complied with this policy. Contrary to Plaintiffs' claims, Defendant contended that the work schedule for
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1 each Punch Bowl restaurant was set to allow every employee to take a complaint meal and rest break.
2 Defendants consequently discredited Plaintiffs' meal and rest breaks.

3 19. Defendants' argument against the imposition of waiting time penalties fell under two
4 theories. First Defendants contended that there was no underpayment of wages, and therefore no waiting
5 time penalties. Second, they argued that no willfulness existed for any alleged payment. Finally,
6 Defendants believed that their employees were properly compensated and the amount of unpaid wages
7 per employee may not support imposition of significant PAGA penalties.

8 20. Accordingly, Plaintiffs considered the risks of receiving no recovery whatsoever, and/or
9 very lengthy litigation and appeals process, balanced by the exhaustive analysis and investigation.
10 Plaintiffs have also taken into account the uncertain outcome and the risk of loss in any litigation,
11 especially in complex actions such as this. Plaintiffs are also mindful of the inherent problems of proof
12 under - and possible defenses to - the causes of action asserted in the lawsuit. Even though Plaintiffs
13 believe that their case possesses substantial merit, the litigation cannot legitimately be characterized as
14 being without risk or that Plaintiffs would inevitably prevail at trial or at the appeals process. Defendants
15 are represented by able counsel who have mounted a vigorous and knowledgeable defense on their behalf.

16 21. The parties would have to undergo further extensive discovery including discovery related
17 to class certification and the merits if the case did not settle. Even if class certification was achieved, there
18 could be potential motions for decertification of the class. The parties would file cross-motions for
19 summary judgment. If Defendants' financial condition could withstand litigation, the putative class action
20 would potentially continue several additional years.

21 22. It was after months of preparation for mediation, an extended full-day of negotiations, the
22 continued assistance of the knowledgeable and impartial mediator, reviews of calculations, comparison of
23 data and exchange of information that Plaintiffs agreed to accept \$ 950,000.00 in settlement of all of the
24 claims presented. Based on all of the circumstances, including the uncertain outcome and the risk of the
25 litigation, I believe that this is a fair and reasonable settlement value. I believe that it is nevertheless fair
26 and reasonable in order to permit the putative class to receive immediate payment of wages for all of the
27 asserted claims.

1 23. All of the Net Settlement Amount, approximately \$560,500 before employee-side payroll
2 taxes are deducted and any residuals are added in (the amount remaining from the Gross Settlement
3 Amount after deducting the requested reasonable attorney’s fees and litigation costs, reasonable Claims
4 Administration Costs, reasonable Service Award, and PAGA penalties) will be allocated among the
5 participating class members. This equates to an average payment of \$434.83 per class member.

6 24. In order to participate in the settlement, putative class members are not required to
7 affirmatively perform any duties. They are not required to submit a claim form and a check will
8 automatically be sent to their best available address in a timely manner after the address-verification
9 procedures are performed. The participating class members shall be paid their Individual Settlement
10 Amounts from the Net Settlement calculated based on the total number of workweeks worked by the
11 Participating Class Member while he/she was employed by Defendants in California during the Class
12 Period.

13 25. Defendants have agreed to pay the Labor and Workforce Development Agency (LWDA)
14 a penalty payment of \$10,000 from the settlement proceeds. This equates \$7,500 (75% of the total PAGA
15 penalties) being made payable to the LWDA, and the remaining 25% distributed amount the participating
16 class members. We believe this is a fair and reasonable apportionment in light of the bulk of the damages
17 being waiting time penalties which would require a finding of willfulness. Furthermore, the assessment
18 of civil penalties at trial has not been well-tested the actual probability of recovery remains relatively
19 speculative. This amount provides a reasonable percentage in comparison to the fund available to the class
20 and allows for more wages to be distributed to the affected employees.

21 26. Collectively, the two Plaintiffs’ firm will request attorney’s fees of no more than \$332,500
22 which equates to 35% of \$950,000, and for reimbursement of the law firms’ litigation costs up to \$12,000.
23 The fee is warranted and “reasonable” because of the significant efforts expended in litigating this case,
24 the risks involved in taking this case on a contingency fee basis and the exceptional result achieved for
25 the class members.

26 27. I believe that the attorney’s fees requested are fair and reasonable because of the
27 exceptional results achieved for the class members in the face of the formidable defense mounted by
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1 Defendants’ experienced attorneys, the difficulties presented in these highly-technical wage and hour
2 claims and the experience necessary to negotiate a settlement which contemplates claims where much of
3 the damages are dependent on demonstrating willfulness and are subject to discretionary reduction. The
4 attorneys and paralegal staff at my firm record time worked and billed contemporaneously in increments
5 of tenths of an hour. Upon the submission of my firm’s fee request, which will be submitted to be heard
6 in conjunction with the Motion for Final Approval, the request will be supported by a detailed explanation
7 of the qualifications of each timekeeper along with an explanation of the tasks performed by my office
8 during the litigation. The costs requests will also be supported at the time of final approval with an
9 explanation of the amount and nature of the costs incurred.

10 28. Plaintiff Brianna Guiher spent a great deal of time and made personal sacrifices to act as
11 Class Representative in furtherance of the litigation. Plaintiff contributed extensively during the case,
12 including frequently communicating with counsel, providing valuable factual resources, searching for and
13 providing numerous documents, and rearranging personal obligations in order to make herself available
14 to answer questions from the mediator or my office during the full-day mediation and settlement
15 negotiations. At all times, she acted to protect the best interests of the Class in order to achieve the
16 proposed settlement. Plaintiff was always available to respond to his Counsel’s inquiries and made
17 significant time available as the date of mediation approached. She also assisted with evaluating the
18 proposed settlement. This work was undertaken in order to achieve the proposed settlement. A declaration
19 detailing the extent of the named Plaintiff’s work and hours worked for the benefit of the class will be
20 submitted in conjunction with the Motion for Final Approval.

21 29. Most significantly, Plaintiff undertook a great deal of risk that instituting this litigation
22 against her former employers may preclude or negatively affect her ability to obtain employment with
23 another company in the future due to the public nature of this lawsuit against her former employer. This
24 is this age of internet and Google searching where a future potential employer can readily search Plaintiff’s
25 name and may very easily forgo hiring Plaintiff upon learning about this lawsuit against her former
26 employer. For this precise reason, employees are very often intimidated and discouraged from bringing
27 actions against their former employers and are even more deterred from acting as a Class Representative.

1 Indeed, on several previous cases in my office, a simple Google search of class representative names along
2 with the term “class action” has yielded search results that place their lawsuit at the top page of results
3 and were therefore readily available to any potential future employer. Plaintiff nevertheless had the
4 courage to bring this action and placed the class’ interests before her own. Plaintiff’s participation as the
5 Class Representative was an essential element that allowed my firm to settle the class claims.

6 30. In addition, Plaintiff is agreeing to a much broader general release and §1542 waiver which
7 leaves her without recourse for known and unknown potential claims she may have against Defendant
8 now or in the future. This concession is significant and real. Considering these risks, Plaintiff’s selfless
9 desire to see that all similarly situated employees are included in this recovery is to be commended and
10 should be recognized. I believe that the requested service award in the total amount of \$10,000 for Plaintiff
11 is fair and reasonable.

12 31. Granting approval of the class action settlement would create a settlement fund that would
13 streamline this process and Class members who participate in the settlement will receive payments for
14 their claims and other damages and penalties in the immediate future.

15 32. My Associate Dorota A. James and I are qualified to evaluate the class claims and viability
16 of defenses in this unpaid wage class action based on our combined experience in other wage and hour
17 cases. The recovery for each class member is reasonable, fair and adequate, and a settlement at this time
18 is in the best interests of the class. The settlement gives each class member a fair amount of payment for
19 waiting time penalties, overtime compensation, rest and meal periods, and penalties.

20 33. I believe that the settlement of \$ 950,000.00 is an excellent result. It is fair, reasonable,
21 and in the parties' best interests, especially after balancing the proposed settlement terms against the
22 probable outcome of liability, the untested issues, the range of recovery at trial, and the likelihood of
23 collection of any recovery at trial, the financial condition of the Defendant, the prospect of an adverse
24 ruling on summary judgement and/or class certification, the difficulties of complex litigation, the
25 lengthy process of establishing specific damages; individual issues, and possible delays and appeals.
26 This provides a fair recovery to the class, the amount of which easily falls within the range of
27 reasonableness. As such, the evidence utilized to assess the magnitude of the class's potential damages,
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as well as the sums proposed to be paid are reasonable and meet the criteria set forth in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed August 6, 2019 at San Diego, California.



Brian R. Short

Exhibit 1

1 Brian R. Short (SBN 236140)
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9 Attorneys for Plaintiff BRIANNA GUIHER

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

BRIANNA GUIHER, Individually and on
behalf of all similarly-situated employees of
Defendants in the State of California,

Plaintiffs,

v.

PUNCH BOWL SANDIEGO, LLC, PBS
BRAND CO., LLC, and DOES 1 through 50

Defendants.

Case No.: 37-2019-00002512-CU-OE-CTL

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

FIRST AMENDED COMPLAINT

CLASS ACTION [CCP § 382]

1. Failure to Pay Minimum and Regular Wages
2. Failure to Authorize and Permit Rest Periods
3. Failure to Authorize and Permit Meal Periods
4. Failure to Pay Reporting Time Wages
5. Unlawful Tip-Pooling
6. Failure to Provide and Maintain Accurate Itemized Wage Statements
7. Failure to Timely Pay Wages Due Upon Separation of Employment
8. Retaliation
9. PAGA Claim for Civil Penalties
10. Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*)

SHORTLEGAL, APC
350 10TH AVE., SUITE 1000
SAN DIEGO, CA 92101

1 Plaintiff BRIANNA GUIHER on behalf of herself and all other similarly-situated and current
2 and former aggrieved employees alleges as follows:

3 I.

4 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

5 1. Plaintiff BRIANNA GUIHER (hereinafter “GUIHER”), brings this individual,
6 representative and class action suit against Defendants PUNCH BOWL SANDIEGO, LLC (“PUNCH
7 BOWL”), PBS BRAND CO., LLC, (“PBS”) and DOES 1 through 50, inclusive (collectively referred to
8 herein as “Defendants”), on behalf of herself and all other current and former similarly-situated and
9 aggrieved employees for engaging in a systemic pattern of wage and hour violations under California
10 Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders.

11 2. Defendant PUNCH BOWL SANDIEGO, LLC, is a restaurant and entertainment company.
12 PUNCH BOWL SANDIEGO, LLC is one of 14 restaurants operated nationwide by a Colorado based
13 company, Punch Bowl Social.

14 3. Defendant PBS BRAND CO., LLC is corporation incorporated in 2012 and based in
15 Glendale, Colorado. PBS BRAND CO., LLC manages and operates restaurants throughout California
16 including PUNCH BOWL SANDIEGO, LLC.

17 4. Plaintiff GUIHER, at times relevant, was employed by Defendants as a server at PUNCH
18 BOWL SANDIEGO, LLC located in San Diego, California.

19 5. Plaintiff is informed and believes, and thereon alleges, that Defendants decreased their
20 employment-related costs in order to increase their level of productivity and profits by systematically
21 violating both state wage and hour laws and IWC Wage Order 5-2001, including, but not limited to:

- 22 a. Failing to pay for minimum, regular wages for all hours worked;
- 23 b. Failing to provide compliant rest and meal breaks;
- 24 c. Failing to pay reporting time;
- 25 d. Implementing unlawful tip-pooling and sharing practices;
- 26 e. Failing to provide and maintain accurate records and itemized wage statements;
- 27 and
- 28 f. Failing to timely pay wages due during and upon termination of employment.

1 g. Retaliating against employees who complained about wage and hour violations.

2 6. Plaintiff brings this lawsuit seeking injunctive, restitution and monetary relief against
3 Defendants, and each of them, on behalf of Plaintiff individually and on behalf of all aggrieved and
4 similarly-situated employees to recover, among other things, unpaid wages and benefits, interest,
5 penalties, liquidated damages, attorney's fees and costs pursuant to California Labor Code §§ 98.6, 201,
6 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.7, 233, 246.5, 350, 351, 353, 354, 512, 558, 1102.5,
7 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, and Labor Code § 2699, and California Code
8 of Civil Procedure 1021.5, and provisions of IWC Wage Order 5-2001. Plaintiff reserves the right to
9 name additional representatives throughout the State of California.

10 **II.**

11 **PARTIES, JURISDICTION AND VENUE**

12 7. Venue is proper in this judicial district pursuant to Section 395 of the California
13 Civil Procedure Code.

14 8. Plaintiff GUIHER is and at all relevant times was a resident of the County of San Diego,
15 State of California, and at all relevant times was employed by Defendants in San Diego County, California.

16 9. Defendant PUNCH BOWL, is a Delaware corporation based in Denver, Colorado that
17 operates and does business in California, including within San Diego County, California

18 10. Defendant PBS is a Colorado corporation that operates and manages in PUNCH BOWL
19 restaurants located in California, including PUNCH BOWL SANDIEGO, LLC in San Diego County.

20 11. Plaintiff is informed and believes, and thereon alleges, that at times relevant PUNCH
21 BOWL, PBS, and Does 1 through 50 are the alter egos of each other and directly or indirectly, or through
22 agents or other persons, employed Plaintiff and other similarly-situated and aggrieved employees, and
23 exercised control over their wages, hours, and/or working conditions. Plaintiff is informed and believes,
24 and thereon alleges, that each Defendant directly or indirectly, or through agents or other persons, acted
25 and/or ratified in all respects pertinent to this action as the agent of the other Defendants, carried out a
26 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is
27 legally attributable to the other Defendants.

1 12. Plaintiff was, at times relevant, employed by Defendants in San Diego, San Diego County
2 as a server and was subject to the employment policies, procedures and practices implemented by
3 Defendants which applied to all of their employees throughout the State of California, including in San
4 Diego County.

5 13. Defendants, at all relevant times, conducted business in the State of California and were
6 employers who violated, or caused to be violated, a section of Part 2, Chapter 1, of the California Labor
7 Code or any provision regulating hours and days of work in any order of the Industrial Welfare
8 Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code
9 § 558 and or 558.1.

10 14. The true names and capacities of the Defendants named as DOES 1 through 10, inclusive,
11 are presently unknown to Plaintiff. Plaintiff will amend this Complaint setting forth the true names and
12 capacities of these fictitious defendants when they are ascertained. Plaintiff is informed and believes, and
13 on that basis, alleges that each of the fictitious Defendants have participated in the acts alleged in this
14 Complaint.

15 15. Jurisdiction and venue are proper for San Diego County Superior Court because
16 Defendants maintain offices, transact business, and/or have an agent in San Diego County and some of
17 the acts and events complained of herein occurred in the judicial district of San Diego County and the
18 State of California.

19 **III.**

20 **GENERAL ALLEGATIONS**

21 16. Plaintiff GUIHER is a resident of San Diego, California. She commenced her employment
22 with Defendants in May 2018 and worked for Defendants until August 6, 2018 when she was terminated.

23 17. Defendant PUNCH BOWL is an employer doing business in San Diego, California and
24 operates a restaurant/bar/entertainment venue offering arcade games and karaoke.

25 18. On information and belief, PBS is an employer operating 14 Punch Bowl restaurants
26 nationwide, including three (3) locations in California and one (1) location in San Diego County where
27 Plaintiff GUIHER worked as a server.

1 19. At all relevant times, Plaintiff worked under numerous policies, practices, and procedures
2 relating to rest periods, tip pooling, wage statements, recordkeeping, and payment of wages applicable to
3 Defendants’ facilities throughout the entire State of California. Defendants failed to pay all wages to
4 Plaintiff as a result of Defendants’ unlawful policies and practices.

5 20. During her tenure with Defendants, Defendants had a mandatory, tip sharing policy which
6 was part of an overall cost-cutting scheme to maximize Defendants’ profits and shifts its non-tip-eligible
7 labor costs to their servers and other tip-eligible staff.

8 21. Under Defendants’ unlawful policy, all gratuities received by Plaintiff, other servers and
9 employees working in a designated zone were collected by their supervisors at the end of each shift. The
10 zone supervisors divided the total amount of tips among the zone’s team members based on the number
11 of hours worked by each individual during the respective shift without regard to whether these employees
12 were all in the line-of-service and therefore tip-eligible according to California law. In fact, the zone team
13 included employees who were not in the chain of service, including the activities cage employees.

14 22. At all relevant times, Plaintiff and other similarly situated employees who worked shifts
15 which Defendants cut-short due to lack of customers, were not included in the tip pool and received no
16 portion of the tips accumulated during the time in which they worked. As a result, tips earned by Plaintiff
17 and similarly situated and aggrieved employees were illegally withheld from them by Defendants. This
18 stands in stark contrast to the team ethos as stated in the PUNCH BOWL handbook: “This model is
19 extremely effective in providing superior service and promoting team ownership of the dining experience
20 which is critical to execution in the Punch Bowl Social environment.”

21 23. Defendants routinely collected and redistributed tips earned by Plaintiff and similarly-
22 situated and aggrieved employees to other employees not-in-chain of service to subsidize their wages in
23 accordance with Defendants’ own self-interest and priorities. Defendants used their mandatory “tip-pool”
24 to subsidize the minimum and in some cases market wages of non-tipped employees. This gave them a
25 competitive edge in hiring employees, particularly not tipped employees, by promise of higher income at
26 the expense of tip-eligible employees and in violation of the California Labor Code.

27 24. Defendants’ tip-pooling is unlawful under Labor Code § 351, but it also operates as a fraud
28 on the consumer pursuant to Labor Code § 356. This is precisely what Judge P.J. Klein warned of in his

1 dissent in *Etheridge v. Reins Int'l California, Inc.*: “Today, the gratuity is deemed a business asset and a
2 part of the employer's cash flow, which the employer may take and apply toward its payroll to augment
3 the wages of non-tipped employees, in lieu of a pay raise for those employees.” (*Etheridge v. Reins Int'l*
4 *California, Inc* (2009 172 Cal.App.4th at 937 (P.J. Klein, dissenting).) “In addition to denigrating the
5 property rights of tipped employees, the practice of employer-mandated tip pooling works a fraud on
6 consumers. (Labor Code § 356.) Unbeknownst to the average patron, it is now the employer, not the
7 patron, who designates the recipients of gratuities. If a restaurant were to advise its patrons of the existence
8 and particulars of its employer-mandated tip pooling policy, that disclosure may well affect the tipping
9 practices of individual patrons.” (*Id* at 937-938.)

10 25. Defendants deceive their servers by prohibiting the release of important information which
11 would shine a light on the unlawful, unreasonable, and unfair tip pool scheme by failing to explain the
12 operation, effect, formula, and purpose of the scheme. Without such information, servers are left in the
13 dark and cannot even confirm whether their tips are being gathered and distributed appropriately pursuant
14 to the purported pool. In accordance with the provisions of Labor Code Section 353, these records are
15 required to be kept by the employer and made available to the employee upon request. However, Plaintiff
16 did make such a request of her employer and was subsequently terminated in retaliation for attempts to
17 verify this legally-accessible information.

18 26. At all relevant times, Defendants required Plaintiff and other similarly-situated and
19 aggrieved employees to clock out for their shifts prior to their managers performing so-called “check-
20 outs for the shifts.” Plaintiff and other similarly situated employees would have to remain at the jobsite
21 at the direction and control of the employer, waiting for a manager to become available to complete their
22 checks outs. The check-out procedure often took 15-20 minutes per shift and employees were under the
23 control of Defendants during this time. Despite being compensable time, Plaintiff and other similarly
24 situated employees were not compensated for the post-shift work. Accordingly, Defendants failed to
25 pay Plaintiff and aggrieved and similarly-situated employees all minimum, regular and overtime wages
26 for all hours worked.

27 27. At all relevant times, Defendants failed to pay Plaintiff and other similarly-situated and
28 aggrieved employees required reporting time. On multiple occasions, Plaintiff and other similarly-situated

1 and aggrieved employees would come to the restaurant to work their scheduled shifts but they were sent
2 back home after one (1) hour due to lack of customers. Plaintiff and other similarly-situated and aggrieved
3 employees were not paid the required reporting time pay, i.e. half of their shifts at a regular rate of pay,
4 but in no event less than two hours or more than four hours, in accordance with the applicable Wage Order.

5 28. At all times relevant, Defendants did not maintain compliant meal period policies for
6 Plaintiff as required by the California Labor Code, nor did they provide meal periods compliant under
7 California law, to Plaintiff and other similarly-situated and aggrieved employees. Defendants failed to
8 adequately inform Plaintiff and other aggrieved and similarly-situated employees of their rights to take
9 meal periods.

10 29. Although Plaintiff and other aggrieved and similarly-situated employees were non-exempt
11 employees under California law, Plaintiff and other similarly-situated and aggrieved employees were
12 regularly prevented from taking timely meal periods and/or was required to miss their meal periods
13 completely due to the working conditions imposed by Defendants, particularly lack of employees to cover
14 employees who were supposed to take a break.

15 30. Defendants failed to pay Plaintiff and other aggrieved and similarly-situated meal period
16 premium wages for each day in which they did not provide Plaintiff an opportunity to take a compliant
17 meal period.

18 31. At all times relevant, Defendants did not maintain compliant rest period policies for
19 Plaintiff as required by the California Labor Code, nor did they provide rest periods compliant under
20 California law, to Plaintiff and other aggrieved and similarly-situated. During Plaintiff's employment,
21 Defendants had a common pattern and practice of failing to properly authorize and permit compliant off-
22 duty rest periods to Plaintiff and other employees when they worked greater than 3.5 hours in a workday.

23 32. When a rest break was provided, Defendants had a common policy and practice of
24 requiring Plaintiff and other employees to clock out during their rest periods while they were working.
25 Consequently, Plaintiff and other similarly situated employees were not compensated during rest breaks
26 as required by the California Labor Code.

27 33. Defendants failed to pay Plaintiff and other employees rest period premium wages for each
28 day in which they did not authorize or permit them to take compliant paid rest periods.

1 34. Defendants failed to provide Plaintiff and other aggrieved and similarly-situated with wage
2 statements accurately itemizing information required by Labor Code § 226(a) and Section 7 of the
3 applicable Wage Order including. The wages statements provided to Plaintiff and other similarly-situated
4 employees did not include all the items required by law and the little information they did contain was
5 inaccurate. For example, the wage statements did not include the correct number of hours worked by
6 Plaintiff and other similarly-situated employees during a pay period or the accurate amount of pay to
7 which they were entitled. On information and belief, other similar-situated employees were subject to the
8 same policy and practice concerning wage statements and receive similarly deficient wage statements.

9 35. As a result of these deficiencies and inaccuracies, Plaintiff and other aggrieved and
10 similarly-situated were not able to promptly and easily determine from the wage statements alone their
11 total all wages earned.

12 36. Defendants failed to maintain accurate records reflecting the beginning and ending time of
13 each shift, including meal periods, and all wages earned as required by law. Defendants instructed Plaintiff
14 and other aggrieved and similarly-situated to record inaccurate hours worked and not the true and correct
15 time worked. Plaintiff and other aggrieved and similarly-situated were required to clock out for their shifts
16 prior to doing the so-called “check-out” for the shift performed by their managers. The post-time shift
17 Plaintiff and other similarly-situated employees spent on the premises under the control of their employer
18 was not recorded on their time records.

19 37. Defendants failed to pay Plaintiff and other aggrieved and similarly-situated employees for
20 all wages due and owing and within the timeframe as set forth by Labor Code § 204 and Section 4 of the
21 applicable Wage Order in that Defendants failed to properly compensate said employees for all hours
22 worked.

23 38. Defendants failed to pay Plaintiff GUIHER and other aggrieved and similarly-situated all
24 wages due and owing at the time of termination of employment as required by Labor Code §§ 201(a) and
25 202(a), as applicable, because Plaintiff GUIHER and other aggrieved and similarly-situated were not
26 properly compensated for all hours worked. On information and belief, Defendants willingly withheld
27 wages including, but not limited to, minimum wages and regular wages.
28

1 39. Defendants have engaged in unfair business practices in California and willingly and
2 knowingly have practiced, employed, and utilized the employment patterns and practices alleged in this
3 complaint in violation of Business & Professions Code §§ 17200, *et seq.*

4 IV.

5 **CLASS ACTION DESIGNATION**

6 40. Plaintiff brings this class action pursuant to Code of Civil Procedure § 382 on behalf of all
7 current and former aggrieved and similarly-situated employees. The Classes that Plaintiff seeks to
8 represent is defined as follows:

9 All non-exempt employees who were employed by Defendants in the State
10 of California at any time commencing four (4) years prior to the filing of
11 this Action who held the job position of “server” and/or any position with
substantially similar titles and duties.

12 41. As to Causes of Action One through Seven and Ten, Plaintiff seeks to recover on behalf of
13 the Class all remedies available to the extent permitted by law including, but not limited to, wages,
14 damages, penalties, liquidated damages, interest, attorney’s fees, costs, other monies due and owing and
15 injunctive relief.

16 42. Causes of Action One through Seven and Ten are appropriately suited for a class action
17 under Code of Civil Procedure § 382 because:

18 a. Numerosity: While the precise number of Class Members has not been
19 determined at the time, Plaintiff is informed and believes and thereon alleges that at all relevant times,
20 Defendants employed over 20 similarly-situated current and former employees who were affected by
21 the unlawful employment practices alleged herein. Based on the potential class size, joinder of all
22 employees individually would be impractical.

23 b. Commonality: This action involves common questions of law and fact particular
24 to the putative Class because the action focuses on Defendants’ systematic course of illegal conduct
25 with respect to violating the Labor Codes and IWC Wage Orders and implementing company-wide
26 policies uniformly applied to all members of the putative Class.

27 i. Common questions of law and fact include, without limitation and
28 subject to possible further amendment, the following:

- 1 1. Whether Defendants violated the Labor Code and the applicable Wage
2 Order by not fully compensating Plaintiff and the Class by failing to pay
3 state minimum/regular/contract wages as required by law;
- 4 2. Whether Defendants violated the applicable Wage Order by failing to
5 compensate Plaintiff and the Class for the reporting time pay;
- 6 3. Whether Defendants' policy or practice of not paying hourly employees
7 all of their wages due in their final paychecks immediately upon
8 involuntary termination or when 72 hours-notice was provided before
9 voluntary resignation, is unlawful under Labor Code §§ 201, 202 and/or
10 203;
- 11 4. Whether Defendants' policy or practice unlawfully precluded Plaintiff and
12 putative Class Members from enjoying their right to take all of their
13 compliant meal and rest breaks;
- 14 5. Whether Defendants violated Labor Code § 226 by not providing accurate
15 paystubs;
- 16 6. Whether Defendants violated Labor Code §§ 350 et seq. by implementing
17 unlawful tip pooling;
- 18 7. Whether Defendants violated Labor Code §§ 1174 by not maintaining
19 required personnel records; and
- 20 8. Whether Plaintiff and the members of the Class are entitled to remedies
21 pursuant to Business & Professions Code §§ 17200, et seq.

22 c. Typicality: Plaintiff's claims as alleged herein are typical of the claims of each
23 of the putative Class because Plaintiff was subjected to the same violations of her rights under California
24 law and seeks the same types of damages, restitution, and other relief on the same theories and legal
25 grounds as those of the members of the putative Class he seeks to represent.

26 d. Adequacy of Representation: Plaintiff is able to fairly and adequately protect the
27 interests of all members of the putative Class because it is in his best interest to prosecute the claims
28 alleged herein to obtain full compensation due to her for all pay, benefits and other relief afforded under

1 the Labor Code and IWC Wage Orders. Plaintiff's interest is not in conflict with those of the putative
2 class members. Plaintiff's counsel are competent and experienced in litigating large employment class
3 actions including wage and hour cases such as this case.

4 e. Superiority of Class Action: Class certification is appropriate because a class
5 action is superior to other available means for the fair and efficient adjudication of these claims. Each
6 putative class member has been damaged and is entitled to recovery by reason of Defendants' illegal
7 policies, and/or practices as alleged herein. Class action treatment will allow those similarly-situated
8 persons to litigate his/her claims in the manner that is most efficient and economical for the parties and
9 the judicial system.

10 V.

11 **PRIVATE ATTORNEYS GENERAL ACT OF 2004 DESIGNATION**

12 43. The Causes of Action alleged herein are appropriately suited for a Labor Code Private
13 Attorneys General Act of 2004 (hereinafter referred to as "PAGA") representative action because:

14 a. This action involves allegations of violations of provisions of the California
15 Labor Code that either do not provide for a civil penalty or provide for a civil penalty to be assessed and
16 collected by the Labor and Workforce Development Agency (hereinafter referred to as "LWDA") or
17 any departments, divisions, commissions, boards, agencies or employees;

18 b. Plaintiff GUIHER is an "aggrieved employee" because she was employed by the
19 alleged violators and had one or more of the alleged violations committed against her and, therefore, is
20 properly suited to represent the interests of all other current and former employees of Defendants;

21 c. Plaintiff GUIHER seeks to recover all applicable penalties under PAGA on behalf
22 of herself and all other aggrieved employees including, but not limited to, an amount sufficient to recover
23 underpaid wages including all unpaid and/or underpaid wages pursuant to Labor Code § 558.

24 d. Pursuant to Labor Code § 2698, *et seq.*, Plaintiff GUIHER has complied with her
25 notice requirements by submitting the PAGA notice via online system to the LWDA and serving via
26 certified mail, return receipt requested, Defendants, a notice with her claims for wage and hour violations
27 and penalties. The PAGA claims have been tolled during the pendency of the notice period to the
28 LWDA. The statutory period expired, and the LWDA did not serve Plaintiff GUIHER with a notice of

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1 intent to assume jurisdiction over the applicable penalty claims. Therefore, Plaintiff GUIHER has
2 satisfied and exhausted the procedural notice requirement to pursue penalties against Defendants
3 pursuant to Labor Code § 2699, et seq. Pursuant to Labor Code § 2698, et seq.

4 **VI.**
5 **CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY MINIMUM AND REGULAR WAGES**

8 (Violation of Labor Code §§ 1194, 1197, 1198, 2699 et seq. and the Applicable Wage Order)
9 (Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

10 44. Plaintiff GUIHER realleges and incorporates by reference the foregoing allegations, as
11 though set forth herein.

12 45. Plaintiff and members of the Class are/were “non-exempt” employees of Defendants in the
13 State of California within the meaning of the Labor Code and the applicable Wage Order.

14 46. Labor Code § 1197 states “The minimum wage for employees fixed by the commission or
15 by any state or local law, is the minimum wage to be paid to employees, and the payment of a less wage
16 than minimum wage so fixed is unlawful.”

17 47. Labor Code § 1198 states “The maximum hours of work and the standard conditions of
18 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
19 for employees. The employment of any employee for longer hours than those fixed by the order or under
20 conditions of labor prohibited by the order is unlawful.”

21 48. IWC Wage Order 5-2001 § 4 provides that an employer may not pay employees less than
22 the applicable minimum wage for all hours worked.

23 49. Labor Code § 1194 states “Notwithstanding any agreement to work for a lesser wage, any
24 employee receiving less than the legal minimum wage or the legal overtime compensation applicable to
25 the employee is entitled to recover in a civil action the unpaid balance of the full amount of his minimum
26 wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

27 50. As set forth above, members of the class were not paid all minimum and regular wages for
28 all hours worked. Furthermore, Plaintiff and other aggrieved and similarly-situated employees were

1 required to attend mandatory company meetings without being compensated for that time as required by
2 the California Labor Code.

3 51. At all material times, Defendants were and/or are Plaintiff's and/or other aggrieved and
4 similarly-situated employees' employers and/or persons acting on behalf of Defendants within the
5 meaning of Labor Code § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter
6 1, of the California Labor Code or any provision regulating hours and days of work in any Order of the
7 Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set
8 forth in Labor Code § 558/558.1 including the payment of the underpaid wages to affected employees.

9 52. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
10 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who
11 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work
12 in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code
13 Sections 203, 226, 226.7, 1193.6, 1194, and as such, are liable as an employer of Plaintiff for such
14 violations pursuant to California Labor Code § 558.1.

15 53. As a direct result of Defendants' violations alleged herein, Plaintiff and Class Members
16 have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages,
17 including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants
18 to fully perform their obligation under state law, all to their respective damage in amounts according to
19 proof at trial and within the jurisdictional limitations of this Court.

20 54. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the
21 unpaid wages resulting from Defendants' minimum wage violations including interest thereon, reasonable
22 attorney's fees and costs of suit, penalties, and liquidated damages to the fullest extent permissible
23 including those permitted pursuant to Labor Code §§ 558, 1194 and 1194.2 and Code of Civil Procedure
24 § 1021.5.

25 WHEREFORE, Plaintiff GUIHER prays for relief as hereinafter requested.

26 ///

27 ///

28 ///

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(Violation of Labor Code §§ 226.7(b), 512(a), 1198, 2699 et seq.
and the “Meal Period” Section of the Applicable Wage Order)
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

55. Plaintiff GUIHER realleges and incorporates by reference the foregoing allegations, as though set forth herein.

56. At all times relevant, Plaintiff was a “non-exempt” employee of Defendants in the State of California within the meaning of the Labor Code and the applicable Wage Order.

57. Labor Code § 226.7(b) provides: “No employer shall require any employee to work during any meal or rest or recovery period mandated by an applicable order of the Industrial Welfare Commission.”

58. Labor Code § 512(a) provides: “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

59. Labor Code § 1198 states “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

60. Section 11 of the application IWC Wage Order provides, in part, that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the

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1 employee only if the first meal period was not waived. Subsection D of the applicable IWC Wage Order
2 § 11 provides that if an employer fails to provide an employee a meal period in accordance with the
3 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
4 employee's regular rate of compensation for each workday that the meal period is not provided.

5 61. Through Defendants' conduct during the applicable statutory period including, but not
6 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants
7 violated Labor Code §§ 226.7(b), 512(a), 1198, and the applicable Wage Order when they failed to provide
8 a 30-minute uninterrupted, duty-free meal period no later than the start of the sixth hour of work during
9 work periods in excess of five consecutive hours and, when applicable, when it failed to provide a second
10 30-minute uninterrupted, duty-free meal period no later than the start of the eleventh hour of work.

11 62. Labor Code § 226.7(c) and IWC Wage Order § 11(D), provides that the employer shall pay
12 an employee one hour of pay at the employee's regular rate of compensation for each workday that the
13 meal period is not provided. Defendants have not paid the appropriate meal premium wages to Plaintiff
14 and other aggrieved and similarly-situated employees.

15 63. At all material times, Defendants were and/or are Plaintiff's and/or other aggrieved and
16 similarly-situated employees' employers and/or persons acting on behalf of Defendants within the
17 meaning of Labor Code § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter
18 1, of the California Labor Code or any provision regulating hours and days of work in any Order of the
19 Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set
20 forth in Labor Code § 558/558.1 including the payment of the underpaid wages to affected employees.

21 64. Pursuant to California Labor Code § 558.1, Defendants a person acting on behalf of
22 Plaintiff's employer, who violated, or caused to be violated, any provision regulating minimum wages or
23 hours and days of work in the applicable order of the Industrial Welfare Commission, as well as the
24 California Labor Code Sections' 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable as an
25 employer of Plaintiff for such violations pursuant to California Labor Code § 558.1.

26 65. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and
27 continues to suffer substantial losses related to the use and enjoyment of such wages, including lost interest
28 on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their

1 obligation under state law, all to the respective damage in amounts according to proof at trial and within
2 the jurisdictional limitations of this Court.

3 66. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the
4 unpaid wages resulting from Defendants’ meal period violations including interest thereon, reasonable
5 attorney’s fees and costs of suit, and penalties to the fullest extent permissible including those permitted
6 pursuant to Labor Code §§ 226.7, 512, 558, 558.1, and Code of Civil Procedure § 1021.5.

7 WHEREFORE, Plaintiff GUIHER prays for relief as hereinafter requested.

8 **THIRD CAUSE OF ACTION**
9 **FAILURE TO PROVIDE REST PERIODS**

10 (Violation of Labor Code §§ 226.7(b), 1198, 2699 et seq.
11 and the “Rest Period” Section of the Applicable Wage Order)
12 (Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

13 67. Plaintiff GUIHER realleges and incorporates by reference the foregoing allegations, as
14 though set forth herein.

15 68. At all times relevant, Plaintiff is and/or was a “non-exempt” employee of Defendants in
16 California within the meaning of the Labor Code and the applicable Wage Order.

17 69. Labor Code § 1198 makes the employment of any employee under conditions of labor
18 prohibited by a Wage Order unlawful.

19 70. By Order of the Industrial Welfare Commission, every employer shall authorize and permit
20 all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.
21 The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes
22 rest time per four (4) hours or major fraction thereof. Authorized rest period time shall be counted, as
23 hours worked, for which there shall be no deduction from wages as provided in the applicable IWC Wage
24 Order.

25 71. Pursuant to Labor Code § 226.7(c) and the applicable IWC Wage Order, Defendants shall
26 pay Plaintiff one additional hour of pay at the employees’ regular rate of compensation for each day that
27 the rest period is not authorized and permitted.

28 72. Through Defendants’ conduct during the applicable statutory period including the conduct
alleged herein, Defendants violated Labor Code §§ 226.7 and 1198 and the IWC Wage Order when they

1 failed to authorize and permit full 10-minute, uninterrupted, duty-free paid rest periods for every four
2 hours worked (or major fraction thereof) to Plaintiff during the time period each employee worked for
3 Defendants.

4 73. Defendants further have failed to pay to Plaintiff and other aggrieved and similarly-situated
5 employees the rest period wage premiums pursuant to Section 226.7. Defendants' omissions in failing to
6 pay the applicable wages set forth in Section 226.7 are not in good faith, and further, Defendants had no
7 reasonable grounds for believing the omissions are not in violation of the Labor Code relating to an order
8 of the commission.

9 74. At all material times, Defendants were and/or are Plaintiff's employers or persons acting
10 on behalf of their employer, within the meaning of California Labor Code § 558, who violated or caused
11 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
12 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to
13 penalties for each underpaid employee as set for in Labor Code § 558 including the payment of the
14 underpaid wages to affected employees.

15 75. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
16 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who
17 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work
18 in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code
19 Sections 203, 226, 226.7, 1193.6, 1194, and as such, are liable as an employer of Plaintiff for such
20 violations pursuant to California Labor Code § 558.1.

21 76. As a direct result, Plaintiff has suffered and continues to suffer, substantial losses related
22 to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney's
23 fees in seeking to compel Defendants to fully perform their obligation under state law, all to the respective
24 damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

25 77. Pursuant to the Labor Code, Plaintiff seeks to recover in a civil action the unpaid balance
26 of the full amount of the unpaid wages including interest thereon, reasonable attorney's fees and costs of
27 suit to the fullest extent permissible including those permitted pursuant to Labor Code §§ 226.7, 558,
28 558.1, and Code of Civil Procedure § 1021.5.

1 WHEREFORE, Plaintiff GUIHER prays for relief as hereinafter requested.

2 **FOURTH CAUSE OF ACTION**
3 **FAILURE TO PAY REPORTING TIME WAGES**

4 (Violation of Labor Code §§ 1194, 1194.2, 1195, 1197, 1198, 2699 et seq. and the “Reporting
5 time” Section of the Applicable Wage Order)
6 (Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

7 78. Plaintiff GUIHER realleges and incorporates by reference the foregoing allegations, as
8 though set forth herein.

9 79. At all times relevant, Plaintiff is and/or was a “non-exempt” employee of Defendants in
10 California within the meaning of the Labor Code and the applicable Wage Order.

11 80. The applicable reporting time pay requirements for Plaintiff and the similarly situated
12 employees of Defendants are found in Section 5 of IWC Order 5, which states:

13 (a) Each workday an employee is required to report for work and does report, but is not put to
14 work or is furnished less than half said employees usual or scheduled day's work, the employee shall be
15 paid for half the usual or scheduled day's work, but in no event less than two (2) hours nor more than four
16 (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

17 (b) If an employee is required to report to work a second time in any one workday and is
18 furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2)
19 hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

20 81. California Labor Code § 1197, entitled “Payment of Less Than Minimum Wage”, states:

21 The minimum wage for employees fixed by the commission is the minimum wage to be paid to
22 employees, and the payment of a less wage than the minimum so fixed is unlawful.

23 82. The minimum wage provisions of the California Labor Code are enforceable by private
24 civil action pursuant to California Labor Code § 1194(a).

25 83. As described, in California Labor Code Sections 1185 and 1194.2, any such action
26 incorporates the applicable IWC Order. Section 1182.11 and 1182.12 discuss the minimum wage.

27 84. California Labor Code §1194.2 also provides for the following remedies:
28

1 In any action under Section 1193.6 or Section 1194 to recover wages because of the payment of
2 a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled
3 to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

4 85. At all material times, Plaintiff and other similarly-situated employees were entitled to
5 reporting time wages equal to the wages for half their usual workday for any day they were required to
6 report for work but were not put to work.

7 86. Defendant failed to pay Plaintiff and other aggrieved and similarly-situated employees
8 reporting time wages owed to them under the applicable Wage Order. Plaintiff is informed and believes
9 and thereon alleges that at times within the limitations period applicable to this cause of action, Defendants
10 maintained a policy or practice of not paying reporting time wages to terminated employees suspended
11 prior to termination who were not informed of their termination until after they reported back to work.

12 87. At all material times, Defendants were and/or are Plaintiff's employers or persons acting
13 on behalf of their employer, within the meaning of California Labor Code § 558, who violated or caused
14 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
15 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to
16 penalties for each underpaid employee as set for in Labor Code § 558 including the payment of the
17 underpaid wages to affected employees.

18 88. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
19 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who
20 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work
21 in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code
22 Sections 203, 226, 226.7, 1193.6, 1194, and as such, are liable as an employer of Plaintiff for such
23 violations pursuant to California Labor Code § 558.1.

24 89. As a direct result, Plaintiff has suffered and continues to suffer, substantial losses related
25 to the use and enjoyment of all reporting time wages, including lost interest on such monies and expenses
26 and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all
27 to the respective damage in amounts according to proof at trial and within the jurisdictional limitations of
28 this Court.

1 90. Pursuant to the Labor Code, Plaintiff seeks to recover in a civil action the unpaid balance
2 of the full amount of the unpaid wages including interest thereon, reasonable attorney’s fees and costs of
3 suit to the fullest extent permissible including those permitted pursuant to Labor Code §§ 226.7, 558,
4 558.1, and Code of Civil Procedure § 1021.5.

5 WHEREFORE, Plaintiff GUIHER prays for relief as hereinafter requested.

6
7 **FIFTH CAUSE OF ACTION**
8 **UNLAWFUL TIP POOLING**

9 (Violation of Labor Code § 350 et seq, 2699 et seq. and the Applicable Wage Order)
10 (Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

11 91. Plaintiff GUIHER realleges and incorporates by reference the foregoing allegations, as
12 though set forth herein.

13 92. At all times relevant, Plaintiff was an employee of Defendants within the meaning of the
14 Labor Code and the applicable Wage Order.

15 93. At all times relevant, Defendants had a consistent policy of requiring Plaintiff and other
16 aggrieved and similarly-situated employees to contribute all their tips to the tip pool, thereby reducing
17 their wages and requiring Plaintiff and other similarly situated employees to share their tips with
18 employees not entitled to those tips.

19 94. The Labor Code § 350 defines a gratuity, or a tip as: “money, or part thereof that has
20 been paid or given to or left for an employee by a patron of a business over and above the actual amount
21 due the business for services rendered or for goods, food, drink, or articles sold or served to the patron.”

22 95. Under Labor Code § 351 “no employer or agent shall collect, take, or receive any gratuity
23 or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from
24 wages due an employee on account of a gratuity, or require an employee to credit the amount, or any
25 part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every
26 gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid,
27 given, or left for.

28 96. A memorandum on Labor Code § 351 drafted by the Assembly Labor Relations
Committee states: “The basis for this legislation would appear to be that tips or gratuities are given for

1 individual excellence of service above and beyond the basic duties of employment, and as such, the
2 employer has no vested right to consider tips a part of wages.” (*Indus. Welfare Com. v. Superior Court*
3 (1980) 27 Cal.3d 690,730.)

4 97. Despite the legislative intent behind the Labor Code §351, Defendants uses the
5 mandatory sharing tip pool to subsidize and the minimum wages of non-tip-eligible employees. This
6 gives them a competitive edge in hiring and compensating employees, particularly not tipped employees
7 by promise of higher income at the expense of tip-eligible employees.

8 98. Defendants improperly collected and redistributed tips earned by Plaintiff and other
9 aggrieved and similarly-situated employees to other employees not-in-chain of service to subsidize their
10 wages in accordance with Defendants’ own self-interest and priorities and in violation of the California
11 Labor Code.

12 99. Defendants denied Plaintiff and other aggrieved and similarly-situated employees the tip
13 compensation due to them under the law. Consequently, Defendants must reimburse Plaintiff and other
14 aggrieved and similarly-situated employees for all wages owed and the requisite penalties for failure to
15 properly provide the tip compensation

16 100. Labor Code Section 353 states: “Every employer shall keep accurate records of all
17 gratuities received by him, whether received directly from the employee or indirectly by means of
18 deductions from the wages of the employee or otherwise. Such records shall be open to inspection at all
19 reasonable hours by the department.”

20 101. Defendants failed to keep accurate records of all gratuities received by Plaintiff and other
21 aggrieved and similarly-situated employees and did not make such records available to Plaintiff when she
22 requested copies of these records.

23 102. At all material times, Defendants were and/or are Plaintiff’s employers or persons acting
24 on behalf of their employer, within the meaning of California Labor Code § 558, who violated or caused
25 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
26 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to
27 penalties for each underpaid employee as set for in Labor Code § 558 including the payment of the
28 underpaid wages to affected employees.

1 103. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
2 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who
3 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work
4 in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code
5 Sections 203, 226, 226.7, 1193.6, 1194 and as such, are liable as an employer of Plaintiff for such
6 violations pursuant to California Labor Code § 558.1.

7 104. As a direct result, Plaintiff has suffered and continues to suffer, substantial losses related
8 to the use and enjoyment of all reporting time wages, including lost interest on such monies and expenses
9 and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all
10 to the respective damage in amounts according to proof at trial and within the jurisdictional limitations of
11 this Court.

12 105. Pursuant to the Labor Code, Plaintiff seeks to recover in a civil action the unpaid balance
13 of the full amount of the unpaid wages including interest thereon, reasonable attorney's fees and costs of
14 suit to the fullest extent permissible including those permitted pursuant to Labor Code §§ 226.7, 558,
15 558.1, and Code of Civil Procedure § 1021.5.

16 WHEREFORE, Plaintiff GUIHER prays for relief as hereinafter requested.

17 **SIXTH CAUSE OF ACTION**
18 **FAILURE TO PROVIDE AND MAINTAIN ACCURATE**
19 **ITEMIZED WAGE STATEMENTS**

20 (Violation of Labor Code §§ 226(a), 1198, 2699 et seq. and the Applicable Wage Order)
21 (Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

22 106. Plaintiff GUIHER realleges and incorporates by reference the foregoing allegations, as
23 though set forth herein.

24 107. At all times relevant, Plaintiff was an employee of Defendants within the meaning of the
25 Labor Code and the applicable Wage Order.

26 108. Labor Code § 226(a) states in pertinent part "Every employer shall, semimonthly or at the
27 time of each payment of wages, furnish each of his or her employees, either as a detachable part of the
28 check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal
check or cash, an accurate itemized statement in writing showing:

1 (1) Gross wages earned;

2 (2) Total hours worked by the employee, except for any employee whose compensation is
3 solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
4 515 or any applicable order of the Industrial Welfare Commission;

5 (3) The number of piece-rate units earned and any applicable piece rate if the employee is
6 paid on a piece rate basis;

7 (4) All deductions, provided that all deductions made on written orders of the employee
8 may be aggregated and shown as one item;

9 (5) Net wages earned;

10 (6) The inclusive dates of the period for which the employee is paid;

11 (7) The name of the employee and only the last four digits of his or her social security
12 number or an employee identification number other than the social security number;

13 (8) The name and address of the legal entity that is the employer...;

14 (9) All applicable hourly rates in effect during the pay period and the corresponding
15 number of hours worked at each hourly rate by the employee.... The deductions made from payment of
16 wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and
17 year, and a copy of the statement and the record of the deductions shall be kept on file by the employer
18 for at least three years at the place of employment or at a central location within the State of California.”

19 109. Labor Code § 1198 states “The maximum hours of work and the standard conditions of
20 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
21 for employees. The employment of any employee for longer hours than those fixed by the order or under
22 conditions of labor prohibited by the order is unlawful.”

23 110. IWC Wage Order 5-2001§ 7(A) states in relevant part that the employer shall keep accurate
24 information regarding “(3) Time Records showing when the employee begins and ends each work
25 period... (4) Total wages paid each payroll period, including value of board, lodging, or other
26 compensation actually furnished to the employee. (5) Total hours worked in the payroll period and
27 applicable rates of pay.”

28 111. Through Defendants’ conduct during the applicable statutory period including, but not

1 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants failed
2 to provide accurate wage statements. For example, in addition to the derivative violations suffered as a
3 result of the other violations detailed above, Defendants also failed to provide a wage statement that
4 properly identified the total number of hours worked, particularly the reporting time and post-shift time
5 work time.

6 112. Plaintiff suffered injuries as a result of Defendants’ intentional and knowing failure to
7 provide to Plaintiff and maintain the writings required by Labor Code § 226(a) and the IWC Wage Orders.
8 Defendants’ failure to provide and maintain accurate statements left Plaintiff without the ability to know,
9 understand and question the hours worked and wage earned and due. As a direct result, Plaintiff has
10 suffered and continues to suffer substantial injuries, losses and actual damages related to Defendants’
11 violations, including lost wages, lost interest on such wages, and expense and attorney’s fees in seeking
12 to compel Defendants to fully perform their obligations.

13 113. Labor Code § 226(e)(1) states “An employee suffering injury as a result of a knowing and
14 intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all
15 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
16 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate
17 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's
18 fees.” Labor Code §226(e)(2)(B) states “An employee is deemed to suffer injury for purposes of this
19 subdivision if the employer fails to provide accurate and complete information as required by any one or
20 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily
21 determine from the wage statement alone one or more of the following: (i) The amount of gross wages or
22 net wages paid to the employee during the pay period or any other information required to be provided on
23 the itemized wage statement pursuant to items (2) to (4), inclusive, (6) and (9) of subdivision (a)...”
24 Because Plaintiff at times did not receive any wage statements, or the wage statements did not include,
25 among other things, an accurate accounting of gross wages earned or total hours worked she is deemed to
26 have suffered injury.

27 114. Labor Code § 226(h) states “An employee may also bring an action for injunctive relief to
28 ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.”

1 115. At all material times, Defendants were and/or are Plaintiff's and/or other aggrieved and
2 similarly-situated employees' employers and/or persons acting on behalf of Defendants within the
3 meaning of Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1, of the
4 California Labor Code or any provision regulating hours and days of work in any Order of the Industrial
5 Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in
6 Labor Code § 558 including the payment of the underpaid wages to affected employees.

7 116. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
8 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who
9 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work
10 in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code
11 Sections 203, 226, 226.7, 1193.6, and 1194 and as such, are liable as an employer of Plaintiff for such
12 violations pursuant to California Labor Code § 558.1.

13 117. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and
14 continues to suffer injury including substantial losses related to the use and enjoyment of such wages, lost
15 interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform
16 their obligation under state law, all to the respective damage in amounts according to proof at trial and
17 within the jurisdictional limitations of this Court.

18 118. Plaintiff seeks to recover in a civil action all remedies including damages, unpaid wages,
19 penalties, attorney's fees and costs, and injunctive relief to the fullest extent permissible including those
20 permitted pursuant to Labor Code §§ 226(e) and (h), 558, 558.1, and Code of Civil Procedure § 1021.5.

21 WHEREFORE, GUIHER Plaintiff prays for relief as hereinafter requested.

22 **SEVENTH CAUSE OF ACTION**
23 **FAILURE TO TIMELY PAY WAGES DUE**
24 **UPON SEPARATION OF EMPLOYMENT**

25 (Violation of Labor Code §§ 201(a) and 202(a), 2699 et seq.)
26 (Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

27 119. Plaintiff GUIHER realleges and incorporates by reference the foregoing allegations, as
28 though set forth herein.

1 120. Plaintiff and members of the Class are/were “non-exempt” employees of Defendants within
2 the meaning of the Labor Code and the applicable Wage Order.

3 121. Labor Code § 201(a) states “If an employer discharges an employee, the wages earned and
4 unpaid at the time of discharge are due and payable immediately.”

5 122. Labor Code § 202(a) states “If an employee not having a written contract for a definite
6 period quits his or her employment, his or her wages shall become due and payable not later than 72 hours
7 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which
8 case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other
9 provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive
10 payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall
11 constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the
12 notice of quitting.”

13 123. Defendants did not provide Plaintiff his final paycheck containing all of her wages earned
14 and due on the date of this termination. Additionally, through Defendants’ conduct during the applicable
15 statutory period including, but not limited to, the conduct alleged herein, including that alleged on
16 information and belief, Defendants willfully failed to provide all Plaintiff and other aggrieved and
17 similarly-situated employees with all wages due and owing, including minimum wages, overtime wages,
18 regular wages, by the time specified by Labor Code §§ 201(a) and 202(a), as applicable.

19 124. Labor Code § 203(a) states, in relevant part, “If an employer willfully fails to pay, without
20 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an
21 employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the
22 due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall
23 not continue for more than 30 days.”

24 125. At all material times, Defendants were and/or are Plaintiff’s and/or other aggrieved and
25 similarly-situated employees’ employers and/or persons acting on behalf of Defendants within the
26 meaning of Labor Code § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter
27 1, of the California Labor Code or any provision regulating hours and days of work in any Order of the
28

1 Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set
2 forth in Labor Code § 558/558.1 including the payment of the underpaid wages to affected employees.

3 126. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
4 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who
5 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work
6 in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code
7 Sections 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiff for
8 such violations pursuant to California Labor Code § 558.1.

9 127. As a direct result of Defendants' violations alleged herein, Plaintiff and members of the
10 Class have suffered and continue to suffer substantial losses related to the use and enjoyment of such
11 wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel
12 Defendants to fully perform their obligation under state law, all to their respective damage in amounts
13 according to proof at trial and within the jurisdictional limitations of this Court.

14 128. Plaintiff seeks to recover in a civil action all remedies to the fullest extent permissible
15 including those permitted pursuant to Labor Code § 203.

16 WHEREFORE, Plaintiff GUIHER prays for relief as hereinafter requested.

17 **EIGHT CAUSE OF ACTION**

18 **RETALIATION**

19 (Violation of Labor Code §§ 98.6, 233, 246.5, 350, 353, 1102.5, 2699 et seq.)

20 (Alleged by Plaintiff Individually)

21 129. Plaintiff GUIHER realleges and incorporates by reference the foregoing allegations, as
22 though set forth herein.

23 130. At all times herein mentioned, Labor Code § 98.6 was in full force and effect, and was
24 binding upon Defendants. Said section prohibits employers from discriminating or retaliating against
25 employees who complain to the Labor Commissioner regarding an employer's violations of wage and hour
26 laws.

27 131. At all times herein mentioned, Labor Code § 1102.5 was in full force and effect, and was
28 binding upon Defendants. Said section provides that an employer may not retaliate against an employee

1 for reporting or refusing to participate in an activity that would result in a violation of a state or federal
2 statute, rule or regulation.

3 132. Plaintiff requested Defendants provide her with copies of timecards to verify whether her
4 hours worked were accurately recorded. Plaintiff further intended to compare her timecards with her
5 paychecks to confirm she was properly paid for all hours worked. In addition, Plaintiff complained to her
6 supervisors about the tip pooling policies implemented by Defendants. She questioned whether
7 Defendants' tip pooling policy is in accordance with the applicable California wage and hour regulations.
8 A day after Plaintiff made her request for timecards and complained about the tip pooling policy and
9 requested copies of documents showing the tipping records required to be maintained and provided for
10 inspection by Defendants pursuant to Labor Code §353, Defendants retaliated against Plaintiff by
11 terminating her.

12 133. Plaintiff is informed and believes that her employment was terminated because she
13 complained to Defendants about the violations of wage and hours.

14 134. To the extent that Defendants retaliated against Plaintiff for complaining to about
15 violations of wage and hour laws, said conduct constitutes unlawful retaliation in violation of Labor Code
16 §§ 98.6, 233, 234, 246.5 and 1102.5. Likewise, Plaintiff's attempts to enforce her rights guaranteed under
17 California law are protected as public policy. Defendants discharged Plaintiff for attempting to enforce
18 her protected rights. Therefore, Defendants' termination of Plaintiff was a wrongful termination in
19 violation of public policy. Said violation caused substantial injury and damage to Plaintiff including, but
20 not limited to, lost wages, benefits and emotional distress in amounts to be determined at trial according
21 to proof.

22 135. As a result of Defendants' wrongful conduct, Plaintiff is entitled to all damages and
23 penalties allowed by law in amounts to be determined at trial according to proof. Plaintiff also seeks all
24 interest, attorney's fees, and costs allowed by law, including but not limited to, common law and Labor
25 Code §§ 98.6, 233, 234, 246.5, 1102.5, and 2699.

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2 **NINTH CAUSE OF ACTION**
3 **PRIVATE ATTORNEY GENERAL ACT (PAGA)**

4 (Violation of Labor Code § 2699, *et seq.*)
5 (Alleged by Plaintiff Individually and On Behalf of all current and former Aggrieved Employees
6 Against All Defendants)

7 136. Plaintiff GUIHER realleges and incorporates by reference the foregoing allegations, as
8 though set forth herein.

9 137. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides for a civil
10 penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions,
11 boards, agencies or employees for violation of the code may, as an alternative, be recovered through a
12 civil action brought by an aggrieved employee on behalf of herself or herself and other current or former
13 employees pursuant to the procedures specified in Labor Code § 2699.3.

14 138. Plaintiff GUIHER is an “aggrieved employee” because she was employed by the alleged
15 violator and had one or more of the alleged violations committed against her, and therefore is properly
16 suited to represent the interests of other current and former aggrieved employees of Defendants.

17 139. On October 12, 2018 pursuant to Labor Code § 2698, *et seq.*, Plaintiff GUIHER served via
18 certified mail, return receipt requested, the LWDA, and PUNCH BOWL SANDIEGO, LLC. On
19 December 5, 2018 pursuant to Labor Code § 2698, *et seq.*, Plaintiff GUIHER served via certified mail,
20 return receipt requested, the LWDA and PBS BRAND CO., LLC with her claims for wage and hour
21 violations and penalties. The statutory period expired, and the LWDA did not serve Plaintiff with a notice
22 of intent to assume jurisdiction over the applicable penalty claims. Therefore, Plaintiff has satisfied and
23 exhausted the procedural notice requirement to pursue penalties against Defendants pursuant to Labor
24 Code §2698, *et seq.*

25 140. Labor Code § 1198 states “The maximum hours of work and the standard conditions of
26 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
27 for employees. The employment of any employee for longer hours than those fixed by the order or under
28 conditions of labor prohibited by the order is unlawful.”

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1 141. Section 7 of the applicable IWC Wage Order obligates an employer to keep accurate
2 information with respect to each one of its employees’ meal periods. Section 7(A)(3) of the applicable
3 IWC Wage Order states in pertinent part “Every employer shall keep accurate information with respect to
4 each employee including the following: ...“(3) Time records showing when the employee begins and ends
5 each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded...;
6 (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually
7 furnished to the employee; (5) Total hours worked in the payroll period and applicable rates of pay.”

8 142. Cal. Labor Code § 1174 states, “ Keep, at a central location in the state or at the plants or
9 establishments at which employees are employed, payroll records showing the hours worked daily by and
10 the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
11 employees employed at the respective plants or establishments. These records shall be kept in accordance
12 with rules established for this purpose by the commission, but in any case, shall be kept on file for not less
13 than three years. An employer shall not prohibit an employee from maintaining a personal record of hours
14 worked, or, if paid on a piece-rate basis, piece-rate units earned.”

15 143. Through Defendants’ conduct during the applicable statutory period including, but not
16 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants
17 violated Labor Code § 1198 and the applicable Wage Order when they failed to keep accurate information
18 and record each employees’ meal periods, and accurate records reflecting all hours worked.

19 144. As a direct result of Defendants’ violations alleged herein, Plaintiff and aggrieved
20 employees have suffered and continue to suffer substantial losses related to Defendants’ failure to record
21 and maintain records of Class members’ time records, including expenses and attorney’s fees in seeking
22 to compel Defendants to fully perform their obligation under state law, all to their respective damage in
23 amounts according to proof at trial and within the jurisdictional limitations of this Court.

24 145. Labor Code § 204(a) states in pertinent part, “All wages . . . earned by any person in any
25 employment are due and payable twice during each calendar month, on days designated in advance by the
26 employer as the regular paydays.”

27 146. Section 4 of the applicable IWC Wage Order states “Every employer shall pay to each
28 employee, on the established payday for the period involved, not less than the applicable minimum wage

1 for all hours worked in the payroll period, whether the remuneration is measured by time, piece,
2 commission or otherwise.”

3 147. Through Defendants’ conduct during the applicable statutory period including, but not
4 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants failed
5 to pay Plaintiff and members of the Classes (i) all wages due and owing and (ii) all wages due and owing
6 by the time set forth pursuant to Labor Code § 204(a) and section 4 of the applicable IWC Wage Order,
7 including, but not limited to, not paying all regular, minimum wages, and rest premium wages.

8 148. As set forth herein, Defendants violated Labor Code sections 201, 202, 203, 204, 223, 226,
9 226.7, 256, 350, 351, 353, 512, 1174, 1197, 1198, and Labor Code § 2699, *et seq.*, imposes upon
10 Defendants, and each of them, penalties for violating the Labor Code, including those penalties set forth
11 in 210, 226.3, 256, 354, 558, 1174.5, 1197.1, 1194.2 and 2698, *et seq.*

12 149. Pursuant to Labor Code § 2699, Plaintiff GUIHER seeks to recover civil penalties on behalf
13 of herself and other current and former aggrieved employees of Defendants who suffered one or more the
14 labor code violations described herein. The exact amount of the applicable penalty is all in an amount to
15 be shown according to proof at trial.

16 150. For bringing this action, Plaintiff GUIHER is entitled to attorney’s fees and costs incurred
17 herein.

18 WHEREFORE, Plaintiff GUIHER prays for relief as hereinafter requested.

19 **TENTH CAUSE OF ACTION**

20 **VIOLATION OF BUSINESS & PROFESSIONS CODE §§ 17200, ET SEQ.**

21 (Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

22 151. Plaintiff GUIHER realleges and incorporates by reference the foregoing allegations, as
23 though set forth herein.

24 152. Business & Professions Code § 17200 states “As used in this chapter, unfair competition
25 shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive,
26 untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500)
27 of Part 3 of Division 7 of the Business and Professions Code.”

28 153. Through Defendants’ conduct during the applicable statutory period including, but not
limited to, the conduct alleged herein, including that alleged on information and belief, Defendants have

1 engaged in business practices in California by practicing, employing, and utilizing, the employment
2 practices outlined in the preceding paragraphs all in violation of California law and the Industrial Welfare
3 Commission Wage Orders. Defendants' use of such practices constitutes an unfair business practice,
4 unfair competition, and provides an unfair advantage over Defendants' competitors doing business in the
5 State of California that comply with their obligations to properly provide employment conditions in
6 compliance with the law and pay employees for all earned wages and compensation as required by law.

7 154. Defendants' violations of the Labor Code and the Industrial Welfare Commission Wage
8 Orders and their scheme to lower payroll costs as alleged herein constitute unlawful business practices
9 because these actions were done in a systematic manner over a period of time to the detriment of Plaintiff
10 and the Class. The acts complained of herein occurred within the last four (4) years preceding the filing
11 of this complaint and include, but are not limited to, failure to (i) pay proper minimum and regular wages,
12 including reporting time pay, (ii) failure to provide required rest and meal breaks and pay one (1) hour in
13 lieu thereof, (iii) failure to pay timely wages during and upon separation of employment; (iv) failure to
14 maintain accurate records and provide and maintain accurate itemized wage statements; (v) unlawful tip
15 pool sharing practices.

16 155. Plaintiff is informed and believes and on that basis alleges that, at all times herein
17 mentioned, Defendants have engaged in the above-mentioned acts of unlawful, deceptive, and unfair
18 business practices prohibited by California Business and Professions Code §§ 17200, *et seq.*, including
19 those set forth in the preceding paragraph, thereby depriving Plaintiff and the Class the minimum working
20 condition standards and conditions due, including those under California Labor Code and Wage Order of
21 the Industrial Welfare Commission.

22 156. As a result of Defendants' unfair competition as alleged herein, Plaintiff has suffered injury
23 in fact and lost money or property. Plaintiff has been deprived of the rights to wages and benefits due as
24 alleged herein.

25 157. Pursuant to California Business & Professions Code § 17203, Plaintiff is entitled to seek
26 restitution of all wages and other monies owed on behalf of herself and the represented employees
27 belonging to them, including interest thereon, which Defendants wrongfully withheld from them and
28 retained for themselves by means of its unlawful and unfair business practices.

1 158. Plaintiff is entitled to an injunction and other declaratory and equitable relief against such
2 practices to prevent future damage for which there is no adequate remedy at law, and to avoid a multiplicity
3 of lawsuits.

4 159. Plaintiff is informed and believes, and on that basis, alleges, that the illegal conduct alleged
5 herein is continuing and there is no indication that Defendants will not continue such activity into the
6 future. Plaintiff alleges that if Defendants are not enjoined from the conduct set forth in this Complaint,
7 they will continue to fail to pay the wage and compensation required to be paid and will fail to comply
8 with other requirements of the California Labor Code and Wage Order of the Industrial Welfare
9 Commission.

10 160. As a direct and proximate result of Defendants' conduct, Defendants have received and
11 will continue to receive monies that rightfully belong to members of the general public who have been
12 adversely affected by Defendants' conduct, as well as to Plaintiff by virtue of unpaid wages and other
13 monies.

14 161. Plaintiff is entitled and seeks any and all available remedies including restitution and
15 recovery of reasonable attorney's fees pursuant to California Code of Civil Procedure §1021.5, Business
16 and Professions Code § 17200, *et seq.*, the substantial benefit doctrine, and/or the common fund doctrine.

17 WHEREFORE, Plaintiff GUIHER prays for relief as hereinafter requested.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff GUIHER prays for damages for judgment against Defendants, jointly
20 and severally, as applicable, as follows:

- 21 a. For injunctive relief as provided by the Labor Code and to the extent permitted by law
22 including, but not limited to, pursuant to § 226(h) and Business and Professions Code
23 §17200, *et seq.* and including injunctive relief to compel Defendants to produce all records
24 as required by § 226(h) and the "Records" section of the applicable IWC wage order;
- 25 b. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- 26 c. For an order requiring Defendants to restore and disgorge all funds to each affected
27 person acquired by means of any act or practice declare by this Court to be unlawful,
28

1 unfair or fraudulent and, therefore, constituting unfair competition under Business and
2 Professions Code §§ 17200, *et seq.*;

3 d. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial
4 Welfare Commission including, but not limited to, waiting time penalties under Labor
5 Code § 203, penalties under Labor Code §§ 226(e), 226.3, 210, 226.8, 256, 558, 1174.5,
6 and PAGA penalties pursuant to Labor Code §2698 *et seq.*

7 e. For an award of unpaid wages, including regular wages, minimum and overtime wages,
8 to the extent permissible by law to each affected person;

9 f. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial
10 Welfare Commission including, but not limited to, waiting time penalties under Labor
11 Code § 203, penalties under Labor Code §§ 226(e), and 558.1 penalties;

12 g. For an award of actual damages to the extent permissible by the Labor Code including
13 Labor Code § 226(e);

14 h. For an award of liquidated damages to the extent permissible by Labor Code §1194.2;

15 i. For pre- and post-judgment interest to the extent permitted by law including, but not
16 limited to, Labor Code §§ 218.6 and 1194;

17 j. For reasonable attorney's fees and cost of suit and, to the extent permitted by law,
18 including pursuant to Labor Code §§ 218.5, 226, 1194, 2698 *et seq* and Code of Civil
19 Procedure § 1021.5; and

20 k. An award of such other and further relief as this Court deems proper and just.

21
22 Dated: February 12, 2019

ShortLegal, APC

23
24 By: *Dorota James*
25 BRIAN R. SHORT
26 DOROTA A. JAMES
27 Attorneys for Plaintiff BRIANNA GUIHER
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury to the extent authorized by law.

Dated: February 12, 2019

ShortLegal, APC

By: *Dorota James*
BRIAN R. SHORT
DOROTA A. JAMES
Attorneys for Plaintiff BRIANNA GUIHER

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