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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF SACRAMENTO**

18 RANDY KUNSMAN, BRIANNA GUIHER,
19 on behalf of themselves, the general public,
20 and all "aggrieved employees" pursuant to
Labor Code § 2698 *et seq.*

21 Plaintiffs,

22 v.

23 PUNCH BOWL SACRAMENTO, LLC, a
Delaware limited liability company; PUNCH
24 BOWL RANCHO CUCAMONGA, LLC, a
Delaware limited liability company; PUNCH
25 BOWL SANDIEGO, LLC, a Delaware limited
liability company, PBS BRAND CO., LLC, a
26 Delaware limited liability company, and
DOES 1 through 10, inclusive,

27 Defendants.
28

Case No. 34-2018-00243175

*Assigned for All Purposes To Judge Kevin R.
Culhane, Dept. 23*

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. **FAILURE TO PAY ALL WAGES AND
GRATUITIES (LABOR CODE §§ 351,
510, 558, 1194, 1194.2, 1195, 1197 AND
1198)**
2. **FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7, 512,
558 AND 1198; IWC WAGE ORDER 5-
2001)**

1 3. FAILURE TO PROVIDE REST
2 PERIODS OR COMPENSATION IN LIEU
3 THEREOF (LABOR CODE §§ 226.7, 558
4 AND 1198; IWC WAGE ORDER 5-2001)

5 4. KNOWING AND INTENTIONAL
6 FAILURE TO COMPLY WITH
7 ITEMIZED EMPLOYEE WAGE
8 STATEMENT PROVISIONS (LABOR
9 CODE § 226(a), (e))

10 5. FAILURE TO PAY WAGES DUE AT
11 SEPARATION OF EMPLOYMENT
12 (LABOR CODE §§ 201-203)

13 6. VIOLATION OF BUSINESS AND
14 PROFESSIONS CODE § 17200

15 7. PENALTIES PURSUANT TO LABOR
16 CODE § 2699(f) FOR VIOLATIONS OF
17 LABOR CODE §§ 201-204, 226(a), 226.7,
18 257, 350, 351, 353, 510, 512, 1174, 1194,
19 1194.2, 1195, 1197 AND 1198 AND
20 PENALTIES PURSUANT TO LABOR
21 CODE § 2699(a) FOR VIOLATIONS OF
22 LABOR CODE § 558

23 **DEMAND FOR JURY TRIAL**

24 *Complaint Filed: October 23, 2018*

25 Plaintiffs RANDY KUNSMAN (“Kunsmann”) and BRIANNA GUIHER (“Guiher”)
26 (collectively, Kunsmann and Guiher are referred to as, “Plaintiffs”) on behalf of themselves and all
27 others similarly situated (the “Class”), on behalf of the general public, and as “aggrieved employees”
28 under the Labor Code Private Attorneys General Act of 2004, codified at Labor Code § 2698 *et seq.*,
complain of Defendants as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class and Representative Action, pursuant to Code of Civil Procedure § 382
and Labor Code § 2698 *et seq.*, on behalf of Plaintiffs and other individuals who currently work or
formerly worked for PUNCH BOWL SACRAMENTO, LLC, a Delaware limited liability company;
PUNCH BOWL RANCHO CUCAMONGA, LLC, a Delaware limited liability company; PUNCH

1 BOWL SANDIEGO, LLC, a Delaware limited liability company, and/or PBS BRAND CO., LLC, a
2 Delaware limited liability company (collectively, "Defendants"), within the State of California.

3 2. For at least four (4) years prior to the filing of this action and continuing to the present
4 (the "liability period") Defendants have had a consistent policy of failing to: pay all wages to non-
5 exempt California employees during the course of employment and upon separation of employment,
6 including all gratuities (based on the implementation of an unlawful tip-pooling and sharing
7 practices), minimum and overtime wages, and reporting time wages; to provide meal and rest periods
8 to its non-exempt California employees; and issue accurately itemized wage statements to its non-
9 exempt California employees.

10 3. Plaintiffs, on behalf of themselves and members of the Class bring this action pursuant
11 to Labor Code §§ 201-204, 210, 218, 218.5, 218.6, 223, 226(a), 226.7, 233, 246.5, 351, 353-354, 510,
12 512, 558, 1102.5, 1174.5, 1182.12, 1185, 1194, 1194.2, 1195, 1197, 1197.1, and 1198, and provisions
13 of IWC Wage Order 5-2001, seeking wages, liquidated damages, penalties, interest and attorneys'
14 fees and costs.

15 4. Plaintiffs, on behalf of themselves and members of the Class, pursuant to Business &
16 Professions Code §§ 17200-17208, also seek injunctive relief, restitution, and disgorgement of all
17 benefits Defendants enjoyed from its failure to all wages due.

18 5. Plaintiffs, on behalf of themselves and all other aggrieved employees, pursuant to
19 Labor Code §§ 2698 *et seq.*, seek penalties and other relief for Defendants' violations of the California
20 Labor Code.

21 6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
22 Some of the Labor Code violations alleged against Defendants herein arose in Sacramento County,
23 California.

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III.

PARTIES

A. Plaintiffs

7. Plaintiff KUNSMAN was employed by Defendants between November 2017 through July 2018 as a non-exempt employee in Sacramento County, State of California.

8. Plaintiff GUIHER was employed by Defendants between May 2018 through August 2018 as a non-exempt employee in San Diego County, State of California.

9. During their employment, Plaintiffs were:

a. Denied the payment of all wages during the course of employment, including all gratuities, minimum wages and reporting time wages, in violation of Labor Code §§ 510, 558, 1194, 1194.2, 1195, 1197 and 1198;

b. Denied the payment of premium wages in lieu of meal periods, in violation of Labor Code §§ 226.7, 512, 558 and 1198;

c. Denied the payment of premium wages in lieu of rest period, in violation of Labor Code §§ 226.7, 558 and 1198;

f. Denied accurately itemized wage statements, in violation of Labor Code §§ 226(a) and 1198;

g. Denied the payment of all wages during employment and upon separation of employment, in violation of Labor Code §§ 201-204; and

h. Denied the payment of all gratuities due, in violation of Labor Code § 350, et seq.

B. Defendants

10. Defendants PUNCH BOWL SACRAMENTO, LLC, a Delaware limited liability company that operates in California, including Sacramento County. Defendants PUNCH BOWL SACRAMENTO, LLC, employed Plaintiffs and/or similarly situated employees within California.

11. Defendants PUNCH BOWL RANCHO CUCAMONGA, LLC, is a Delaware limited liability company that operates in California, including Sacramento County. Defendants PUNCH

1 BOWL RANCHO CUCAMONGA, LLC, employed Plaintiffs and/or similarly situated employees
2 within California.

3 12. Defendants PUNCH BOWL SANDIEGO, LLC, is a Delaware limited liability
4 company that operates in California, including Sacramento County. Defendants PUNCH BOWL
5 SANDIEGO, LLC, employed Plaintiffs and/or similarly situated employees within California.

6 13. Defendants PBS BRAND CO., LLC, is a Delaware limited liability company that
7 operates in California, including Sacramento County. Defendants PBS BRAND CO., LLC, employed
8 Plaintiffs and/or similarly situated employees within California.

9 14. The true names and capacities, whether individual, corporate, associate, or otherwise,
10 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiffs, who
11 therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs
12 are informed and believe, and based thereon allege, that each of the Defendants designated herein as
13 a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will
14 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
15 designated hereinafter as DOES when such identities become known.

16 15. Plaintiffs are informed and believe, and based thereon allege, that each Defendants
17 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
18 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants are
19 legally attributable to the other Defendants.

20 16. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
21 on behalf of, or acting jointly with, Defendant, who violated, or caused to be violated, one or more
22 provisions of the California Labor Code as alleged herein.

23 IV.

24 CLASS ACTION ALLEGATIONS

25 17. Plaintiffs bring this action on behalf of themselves and all others similarly situated as
26 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiffs seek to represent a class
27 composed of and defined as follows:

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THE CLASS

All persons employed by Defendants Punch Bowl San Diego, LLC, Punch Bowl Rancho Cucamonga, LLC, Punch Bowl Sacramento, LLC, and/or PBS Brand Co., LLC, in California as a non-exempt employee from October 23, 2014 through and including July 4, 2019.

18. Plaintiffs reserve the right under Rule 3.765, California Rules of Court, to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

19. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity

20. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of the Class has not been ascertained at this time, Plaintiffs are informed and believe, and based thereon allege, that Defendants currently employs, and during the relevant time periods employed, over 75 persons in the State of California who fall within the class definition.

21. Accounting for employee turnover during the relevant periods necessarily increases this number. Plaintiffs allege Defendants' employment records would provide information as to the number and location of members of the Class. Joinder of the members of the Class is not practicable.

B. Commonality

22. There are questions of law and fact common to the Class that predominate over any questions affecting only individual class members. These common questions of law and fact include, without limitation:

- a. Whether Plaintiffs and the Class were denied the payment of all wages during the course of employment, in violation of Labor Code §§ 351, 510, 558, 1194, 1194.2, 1195, 1197 and 1198;

- 1 b. Whether Defendants violated the applicable Wage Order by failing to
2 compensate Plaintiffs and the Class for reporting time pay;
- 3 c. Whether Plaintiffs and the Class were denied the payment of premium wages
4 in lieu of meal periods, in violation of Labor Code §§ 226.7, 512, 558 and
5 1198;
- 6 d. Whether Plaintiffs and the Class were denied the payment of premium wages
7 in lieu of rest period, in violation of Labor §§ 226.7, 558 and 1198;
- 8 e. Whether Plaintiffs and the Class were denied accurately itemized wage
9 statements, in violation of Labor Code §§ 226(a) and 1198;
- 10 f. Whether Plaintiffs and the Class were denied the payment of all wages upon
11 separation of employment, in violation of Labor Code §§ 201-203;
- 12 g. Whether Defendants violated Labor Code §§ 350 et seq. by implementing
13 unlawful tip pooling;
- 14 h. Whether Defendants violated Labor Code § 1174 by not maintaining required
15 personnel records; and
- 16 i. Whether Plaintiffs and the Class are entitled to equitable and injunctive relief
17 pursuant to Business & Professions Code § 17200 *et seq.*

18 **C. Typicality**

19 22. The claims of the named Plaintiffs are typical of the claims of members of the Class.
20 Plaintiffs and members of the Class sustained injuries and damages arising out of and caused by
21 Defendants' common course of conduct in violation of laws, regulations that have the force and effect
22 of law, and statutes as alleged herein.

23 **D. Adequacy of Representation**

24 23. Plaintiffs will fairly and adequately represent and protect the interests of members of
25 the Class. Counsel who represents Plaintiffs are competent and experienced in litigating large
26 employment class actions.

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1 **E. Superiority of Class Action**

2 24. A class action is superior to other available means for the fair and efficient adjudication
3 of this controversy. Individual joinder of all proposed members of the Class is not practicable, and
4 questions of law and fact common to each proposed Class predominate over any questions affecting
5 only individual members of each proposed Class. Each member of the proposed Class has been
6 damaged and is entitled to recovery by reason of Defendants' illegal policies and practices.

7 25. Class action treatment will allow those similarly situated persons to litigate their
8 claims in the manner that is most efficient and economical for the parties and the judicial system.
9 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this
10 action that would preclude its maintenance as a class action.

11 **V.**

12 **CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION**

14 **PLAINTIFFS AND THE CLASS AGAINST DEFENDANT**

15 **FAILURE TO PAY ALL WAGES AND GRATUITIES**

16 **(LABOR CODE §§ 350 et seq., 510, 558, 1194, 1194.2, 1195, 1197 AND 1198, and the**
17 **“Reporting Time” Section of the Applicable Wage Order)**

18 26. Plaintiffs incorporate paragraphs 1 through 25 of this Complaint as though fully set
19 forth herein.

20 27. Defendants failed to pay Plaintiffs and Class Members all minimum wages, reporting
21 wages and gratuities due, in violation of Labor Code §§ 351, 510, 558, 1194, 1194.2, 1195, 1197 and
22 1198.

23 28. During the liability period, Defendants have failed to pay all minimum wages,
24 reporting time wages, and gratuities due to Plaintiffs and Class members, in violation of Labor Code
25 §§ 351, 510, 558, 1194 and 1194.2. Plaintiffs and Class members were forced to share their tips with
26 Defendant, in violation of Labor Code § 351, which states, in pertinent part, that “[n]o employer or
27 agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an
28 employee by a patron, or deduct any amount from wages due an employee on account of a gratuity,

1 or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of
2 the wages due the employee from the employer.”

3 29. Further, Plaintiffs and other non-exempt California employees are routinely required
4 to clock out for their shift at their scheduled shift end time and forced to continue working until their
5 work is complete. This off-the-clock work was uncompensated and also violates Labor Code §§ 510,
6 558, 1194, and 1194.2.

7 30. Moreover, Plaintiffs and Class members were entitled to reporting time wages equal
8 to the wages for half their usual workday for any day they were required to report for work but were
9 not put to work or cut shortly after starting work. Defendants, however, failed to pay Plaintiffs and
10 Class members reporting time wages owed to them under IWC Wage Order 5-2001. Plaintiffs are
11 informed and believe and thereon allege that at times within the limitations period applicable to this
12 cause of action, Defendants maintained a policy or practice of not paying reporting time wages to
13 terminated employees suspended prior to termination who were not informed of their termination
14 until after they reported back to work.

15 31. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due,
16 Plaintiffs and Class members have been deprived of wages in amounts to be determined at trial, and
17 are entitled to restitution and recovery of such amounts, liquidated damages, plus interests thereon,
18 attorneys’ fees, and costs pursuant to Labor Code §§ 351, 1194 and 1194.2.

19 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

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1 VI.

2 SECOND CAUSE OF ACTION

3 PLAINTIFFS AND THE CLASS AGAINST DEFENDANT

4 FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

5 (LABOR CODE §§ 226.7, 512, 558 AND 1198; IWC WAGE ORDER 5-2001)

6 32. Plaintiffs incorporate paragraphs 1 through 31 of this Complaint as though fully set
7 forth herein.

8 33. Plaintiffs and Class members are entitled to one hour of pay for each day that
9 Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7,
10 512, 558 and 1198 and IWC Wage Order 5-2001.

11 34. Defendants failed to pay premium wages to Plaintiffs and Class members who were
12 denied proper meal periods. Due to their workload, Plaintiffs and Class members were routinely
13 denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period for every shift
14 worked of five or more hours in duration, and were not provided with second 30-minute meal periods
15 on shifts worked of ten or more hours in duration, but such Class members were not paid premium
16 wages of one hour's pay for each missed meal period. They were too busy working to take their meal
17 periods. This violates Labor Code §§ 226.7, 512, 558 and 1198.

18 35. Pursuant to Labor Code §§ 226.7, 512, 558 and 1198, Plaintiffs seek the payment of
19 all meal period compensation which Plaintiffs and Class members are owed for four years preceding
20 the filing of this Action, according to proof.

21 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

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VII.

THIRD CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST DEFENDANT

FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE §§ 226.7, 558 AND 1198; IWC WAGE ORDER 5-2001)

36. Plaintiffs incorporate paragraphs 1 through 35 of this Complaint as though fully set forth herein.

37. Plaintiffs and members of the Class are entitled to one hour of pay for each day that Defendants failed to properly provide or authorize one or more rest periods, as set forth in Labor Code §§ 226.7, 558 and 1198 and IWC Wage Order 5-2001.

38. Due to their workload, Plaintiffs and Class Members were denied, and therefore unable to take, 10-minute on-the-clock rest periods for every four hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed, denied and unauthorized rest period.

39. Pursuant to Labor Code §§ 226.7, 558 and 1198 and IWC Wage Order 5-2001, Plaintiffs seek the payment of all rest period compensation which they and members of the Class are owed for four years preceding the filing of this complaint, according to proof.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

VIII.

FOURTH CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST DEFENDANT

KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE §§ 226(a), (e) AND 1198)

40. Plaintiffs incorporate paragraphs 1 through 39 of this Complaint as though fully set forth herein.

41. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must accurately set forth, among other things, total net and gross wages earned, total hours worked, the inclusive dates of the pay

1 period, the address of the legal entity that is the employer, and all applicable pay rates in effect during
2 the pay period, for Plaintiffs and members of the Class. Defendants have knowingly and intentionally
3 failed to comply with Labor Code § 226(a) and (e).

4 42. Specifically, as Defendants fail to properly compensate Plaintiffs and Class Members
5 for all wages due, including gratuities, minimum wages, reporting time wages, and premium wages
6 for missed and denied meal and rest periods, as detailed above, their wage statements fail to accurately
7 set forth gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation
8 of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all
9 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
10 at each hourly rate, in violation of Labor Code § 226(a)(9).

11 43. As a consequence of Defendants' willful conduct in failing to provide Plaintiffs and
12 Class members with accurate itemized wage statements, Plaintiffs and members of the Class have
13 been injured because they have not been paid all wages due. As a result, they are entitled to penalties
14 pursuant to Labor Code § 226(e) to recover the greater of all actual damages or \$50 for the initial pay
15 period in which a violation occurs and \$100 per employee for each violation in a subsequent pay
16 period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled to an award of
17 costs and reasonable attorneys' fees, and injunctive relief pursuant to Labor Code § 226(h).

18 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

19 **IX.**

20 **FIFTH CAUSE OF ACTION**

21 **PLAINTIFFS AND THE CLASS AGAINST DEFENDANTS**

22 **FAILURE TO TIMELY PAY WAGES DUE AT SEPARATION OF EMPLOYMENT**

23 **(LABOR CODE §§ 201-203)**

24 44. Plaintiffs incorporate paragraphs 1 through 43 of this Complaint as though fully set
25 forth herein.

26 45. California Labor Code § 201 and § 202 require Defendants to pay employees all wages
27 due within 72 hours after resignation of employment or the day of termination of employment. Labor
28 Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must,

1 as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full
2 or an action is commenced. The penalty cannot exceed 30 days of wages.

3 46. Defendants paid Plaintiffs and members of the Class their final wages beyond the time
4 frames set forth in Labor Code §§ 201 and 202. Defendants failed to issue them their final wages
5 within 72 hours of their resignation or on the date of their termination.

6 47. As a consequence of Defendants' willful conduct in not paying wages owed timely
7 upon separation of employment, Plaintiffs and members of the Class are entitled to up to 30 days
8 wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages.

9 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

10 **X.**

11 **SIXTH CAUSE OF ACTION**

12 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

13 **UNFAIR COMPETITION PURSUANT TO**

14 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

15 48. Plaintiffs incorporate paragraphs 1 through 47 of this Complaint as though fully set
16 forth herein.

17 49. This is a Representative Private Attorney General Action and Class Action for Unfair
18 Business Practices. Plaintiffs, on their own behalf and on behalf of the general public, and on behalf
19 of others similarly situated, bring this claim pursuant to Business & Professions Code § 17200 *et seq.*
20 The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful,
21 and harmful to Plaintiffs, the general public, and members of the Class. Plaintiffs seek to enforce
22 important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

23 50. Plaintiffs are "persons" within the meaning of Business & Professions Code § 17204,
24 and therefore have standing to bring this cause of action for injunctive relief, restitution, and other
25 appropriate equitable relief.

26 51. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
27 practices.

1 52. Wage and hour laws express fundamental public policies. Properly providing
2 employees with all wages due is a fundamental public policy of this State and of the United States.
3 Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor
4 standards, to ensure that employees are not required or permitted to work under substandard and
5 unlawful conditions, and to protect law-abiding employers and its employees from competitors who
6 lower its costs by failing to comply with minimum labor standards.

7 53. Defendants have violated statutes and public policies. Through the conduct alleged in
8 this Complaint, Defendants have acted contrary to these public policies, have violated specific
9 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
10 violation of Business & Professions Code § 17200, *et seq.* depriving Plaintiffs, and all persons
11 similarly situated, and all interested persons of rights, benefits, and privileges guaranteed to all
12 employees under law.

13 54. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
14 §17200 *et seq.* of the Business & Professions Code.

15 55. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
16 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
17 17200 *et seq.* of the Business & Professions Code.

18 56. As a proximate result of the above-mentioned acts of Defendants, Plaintiffs and others
19 similarly situated have been damaged in a sum as may be proven.

20 57. Unless restrained by this Court, Defendants will continue to engage in the unlawful
21 conduct as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court should
22 make such orders or judgments, including the appointment of a receiver, as may be necessary to
23 prevent the use or employment, by Defendant, its agents, or employees, of any unlawful or deceptive
24 practice prohibited by the Business & Professions Code, and/or, including but not limited to,
25 disgorgement of profits which may be necessary to restore Plaintiffs and members of the Class to the
26 money Defendants have unlawfully failed to pay.

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1 XI.

2 SEVENTH CAUSE OF ACTION

3 **PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST DEFENDANTS**
4 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR**
5 **CODE §§ 201-204, 226(a), 226.7, 351, 510, 512, 1194, 1194.2, 1195, 1197 AND 1198 AND**
6 **PENALTIES PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR**
7 **CODE § 558**

8 57. Plaintiffs incorporate paragraphs 1 through 57 of this Complaint as though fully set
9 forth herein.

10 58. As a result of the acts alleged above, including the Labor Code violations set forth
11 above, Plaintiffs seek penalties and wages pursuant to Labor Code §§ 2698, *et seq.*

12 59. For each such violation, Plaintiffs and all other aggrieved employees are entitled to
13 penalties and wages in an amount to be shown at the time of trial subject to the following formula:

14 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
15 each subsequent violation of Labor Code §§ 201-204, 226(a), 226.7, 351, 510,
16 512, 1174.5, 1194, 1194.2, 1195, 1197, 1197.1 and 1198; and

17 b. Pursuant to Labor Code § 2699(a), the penalties and wages as authorized by
18 Labor Code § 558.

19 60. Penalties recovered will be allocated 75% to the Labor and Workforce Development
20 Agency, and 25% to the affected employees; wages will be allocated 100% to the affected employees.

21 61. On August 16, 2018 and October 12, 2018, Plaintiffs sent letters by online submission
22 to the LWDA and by certified mail, return receipt requested, to Defendants, setting forth the facts and
23 theories of the violations alleged against Defendants, as proscribed by Labor Code §§ 2698, *et seq.*
24 Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiffs from the LWDA
25 within sixty-five (65) calendar days of August 16, 2018 and October 12, 2018. Plaintiffs may
26 therefore commence this action to seek penalties pursuant to Labor Code § 2698 *et seq.*

27 Wherefore, Plaintiffs and all aggrieved employees request relief as described below.
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XII.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for the following relief:

1. For compensatory damages pursuant to Labor Code §§ 351, 1194 and 1194.2 in the amount of all unpaid minimum and reporting time wages and gratuities due to Plaintiffs and Class members;
2. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiffs and Class members pursuant to Labor Code § 226.7;
3. For penalties pursuant to Labor Code § 226(e) for Plaintiffs and members of the Class;
4. For penalties pursuant to Labor Code § 203 for Plaintiffs and members of the Class who are no longer employed by Defendants;
5. For an award of prejudgment and post-judgment interest;
6. For penalties and other relief pursuant to Labor Code § 2698 *et seq.* for Plaintiffs and all other aggrieved employees;
7. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiffs and Class members;
8. An award providing for payment of costs of suit;
9. An award of attorneys' fees; and
10. Such other and further relief as this Court may deem just and proper.

Dated: August 6, 2019

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: 

DANIEL F. GAINES
EVAN S. GAINES
Attorneys for Plaintiffs


DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by law.

Dated: August 6, 2019

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: 

DANIEL F. GAINES
EVAN S. GAINES
Attorneys for Plaintiffs

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1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of LOS ANGELES, State of California. I am over the age of 18 and not a party
3 to the within action; my business address is 27200 Agoura Road, Suite 101, Calabasas, CA 91301

4 _____ (For messenger) my business address is:

5 On August 6, 2019, I served the foregoing document described as **FIRST AMENDED CLASS AND**
6 **REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action by placing a true copy thereof
7 enclosed in sealed envelopes addressed as follows:

8 **John P. Lecrone, Esq.**
9 **Paul Rodriguez, Esq.**
10 **DAVIS WRIGHT TREMAINE LLP**
11 **865 South Figueroa Street, 24th Floor**
12 **Los Angeles, California 90017**

13 **Jaime D. Walter, Esq.**
14 **DAVIS WRIGHT TREMAINE LLP**
15 **505 Montgomery Street, Suite 800**
16 **San Francisco, California 94111**

17 **Brian R. Short, Esq.**
18 **Dorota A. James, Esq.**
19 **SHORTLEGAL APC**
20 **350 10th Ave., Suite 1000**
21 **San Diego, California 92101**

22 ✓ (BY U.S. MAIL/ BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was
23 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection
24 and processing correspondence for mailing. It is deposited with United States postal service on that same
25 day in the ordinary course of business. I am aware that on motion of party served, service is presumed
26 invalid if postal cancellation date or postage meter date is more that one day after date of deposit for
27 mailing in affidavit.

28 _____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or
other facility regularly maintained by the express service carrier or delivered the sealed envelope to an
authorized carrier or driver authorized by the express carrier to receive documents.

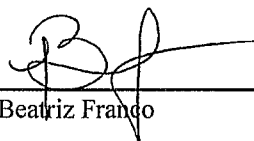
_____ (BY FACSIMILE TRANSMISSION) On _____, at _____ a.m./p.m., at Calabasas, California, I served
the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule
2008 of the California Rules of Court. The telephone number of the sending facsimile machine was
(818)703-8984 and the telephone number(s) of the receiving facsimile machine was (____) ____-____. A
transmission report was properly issued by the sending facsimile machine, and the transmission was
reported as complete and without error. Copies of the facsimile transmission cover sheet and the
transmission report are attached to this proof of service.

_____ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-
delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

_____ (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

_____ (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic
transmission of File & ServeXpress on the counsel of record listed above.

I certify that the above document was printed on recycled paper.
I declare under penalty of perjury that the foregoing is true and correct.
Executed on August 6, 2019, at Calabasas, California.

27 
28 _____
Beatriz Franco