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Superior Court of California,
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6 Attorneys for Plaintiffs KYLE COOKSON and
EDGAR VILLALOBOS, on behalf of themselves
7 and all others similarly situated

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10
11 KYLE COOKSON and
EDGAR VILLALOBOS, on behalf
12 of themselves and all others similarly
situated,

13
14 Plaintiff,

v.

15 P. F. CHANG'S CHINA BISTRO, INC.,
16 a Delaware Corporation, and DOES 1-50,
inclusive,

17 Defendants.
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Case No. 37-2022-00045709-CU-OE-CTL

Assigned for All Purposes To:
Hon. Eddie Sturgeon
Dept.: C-67

FIRST AMENDED COMPLAINT FOR DAMAGES FOR:

- 1) **Failure to Pay Minimum Wages;**
- 2) **Failure to Pay Overtime Owed;**
- 3) **Failure to Pay Reporting Time Pay;**
- 4) **Failure to Provide Lawful Meal Periods;**
- 5) **Failure to Authorize and Permit Rest Periods;**
- 6) **Failure to Timely Pay Wages During Employment;**
- 7) **Failure to Timely Pay Wages Owed Upon Separation From Employment;**
- 8) **Failure to Reimburse Necessary Expenses;**
- 9) **Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions;**
- 10) **Violation of the Unfair Competition Law**

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11) Civil Penalties Pursuant to Private Attorneys' General Act, Labor Code section 2698 et seq

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiffs KYLE COOKSON and EDGAR VILLALOBOS (“Plaintiffs”), individually and on behalf of others similarly situated, and asserts claims against defendants P. F. CHANG'S CHINA BISTRO, INC., a Delaware Corporation, and DOES 1-50, inclusive (collectively “Defendants” or “P. F. Chang’s”) as follows:

INTRODUCTION

1. The purpose of this amendment is to clarify the allegations in the complaint and to assert claims under Labor Code section 2698 et seq. within the context of the above-entitled action.

2. This is a Class Action, pursuant to California Code of Civil Procedure section 382, on behalf of Plaintiffs and any and all persons who are or were employed by Defendants, either directly or indirectly, at restaurants in the State of California at any time from four years prior to the filing of this Complaint through resolution or trial of the matter. (“Class Members” or “Non-Exempt Employees”.)

3. The Aggrieved Employees are a subset of the Class Members or Non-Exempt Employees.

4. Defendants implemented uniform policies and practices that deprived Plaintiffs and Class Members of earned wages, including minimum wages; straight time wages; overtime wages; premium wages; reporting time wages, lawful meal and/or rest breaks; reimbursement for necessary expenses; and timely payment of wages.

5. Such actions and policies, as described above and further herein, were and continue to be in violation of the California Labor Code. Plaintiffs, on behalf of themselves and all Class members, bring this action pursuant to the California Labor Code, including sections 201, 202, 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 245-249, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198, 2802, applicable IWC California Wage Orders and California Code of

1 Regulations, Title 8, section 11000 *et seq.*, seeking unpaid wages, unpaid meal and rest period
2 compensation, unreimbursed expenses, penalties, liquidated damages, and reasonable attorneys'
3 fees and costs.

4 6. Plaintiffs, on behalf of themselves and others similarly situated, pursuant to
5 Business and Professions Code sections 17200-17208, also seek restitution from Defendants for
6 their failure to pay to Plaintiffs and Class Members all of their wages, including overtime and
7 premium wages.

8 7. Plaintiffs also bring an action pursuant to the PAGA on a representative basis on
9 behalf of all non-exempt employees, however titled, employed by Defendants in the State of
10 California (the "Aggrieved Employees") from one year prior to the filing of the PAGA notice to
11 the conclusion of this action. Plaintiffs seek to recover civil penalties and address Defendants'
12 violations of the California Labor Code and the IWC Wage Orders under PAGA. The Aggrieved
13 Employees are a subgroup of the Class Members or Non-Exempt Employees.

14 8. Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an
15 employee who brings a representative action and was affected by at least one of the violations
16 alleged in the complaint has standing to pursue penalties on behalf of the state and not only for that
17 violation, but for violations affecting other employees as well. Accordingly, Plaintiffs have
18 standing to pursue penalties on behalf of the state of violations affecting all aggrieved employees
19 of Defendants, regardless of their classification, job title, or locations in California.

20 9. In this case, Defendants violated various provisions of the California Labor Code
21 and IWC Wage Orders. Defendants' violations include: (1) failure to pay minimum wages;
22 (2) failure to pay overtime wages; 3) failure to pay reporting time pay; (4) failure to provide meal
23 periods; (5) failure to authorize and permit rest periods; (6) failure to timely pay wages owed during
24 employment; (7) failure to timely pay wages owed upon separation from employment; (8) failure
25 to reimburse necessary expenses; (9) knowing and intentional failure to comply with itemized wage
26 statement provisions; (10) violation of the unfair competition law; (11) failure to keep accurate
27 records; and (12) failure to pay sick leave.

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JURISDICTION AND VENUE

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2 10. This action is brought as a Class Action on behalf of Plaintiffs and similarly situated
3 employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The monetary
4 damages and restitution sought by Plaintiffs exceeds the minimum jurisdiction limits of the
5 California Superior Court and will be established according to proof at trial.

6 11. This Court has jurisdiction over this action pursuant to the California Constitution
7 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
8 those given by statute to other courts. The statutes under which this action is brought do not give
9 jurisdiction to any other court.

10 12. This Court has jurisdiction over this Action pursuant to California Code of Civil
11 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

12 13. This Court has jurisdiction over Defendants because, upon information and belief,
13 each Defendant is either a resident of California, has sufficient minimum contacts in California, or
14 otherwise intentionally avails itself of the California market so as to render the exercise of
15 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
16 substantial justice. Defendants have done and are doing business throughout California and San
17 Diego County.

18 14. The unlawful acts alleged herein have a direct effect on Plaintiffs and the other
19 similarly situated Non-Exempt Employees within San Diego County and it is believed that
20 Defendants have employed hundreds of Class Members as Non-Exempt Employees in San Diego
21 County.

22 15. The California Superior Court also has jurisdiction in this matter because the
23 individual claims of the Class Members described herein are presently believed to be under the
24 seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the
25 aggregate potential damages and recovery by all of the claims of the Plaintiffs' Class, including
26 attorneys' fees, placed in controversy by Plaintiffs' class-wide claims, is presently believed to be
27 under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005.
28 Further, there is no federal question at issue, as the issues herein are based solely on California

1 statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil
2 Procedure, the California Civil Code, and the California Business and Professions Code.

3 16. Venue is proper in this Court because one or more of the Defendants reside, transact
4 business, or have offices in this County, Plaintiff Cookson is a resident of this County, and the acts
5 or omissions alleged herein took place in this County.

6 **PARTIES**

7 17. Defendant P. F. Chang's China Bistro, Inc. a Delaware Corporation doing business
8 in the state of California. It is based at 8377 E. Hartford Dr., Ste 200, Scottsdale, AZ 85255.

9 18. Upon information and belief, P. F. Chang's employs Non-Exempt Employees, like
10 Plaintiffs, throughout the State of California.

11 19. Plaintiff Kyle Cookson is and during the liability period has been, a resident of
12 California. He was employed in an hourly, non-exempt position by Defendants during the relevant
13 time period.

14 20. Plaintiff Edgar Villalobos is and during the liability period has been, a resident of
15 California. He was employed in an hourly, non-exempt position by Defendants during the relevant
16 time period.

17 21. Plaintiffs and the members of the putative class were employed as hourly paid
18 employees employed by Defendants, either directly or indirectly, at restaurants in the State of
19 California at any time from four years prior to the filing of the original complaint commencing the
20 action.

21 22. Whenever in this complaint reference is made to any act, deed, or conduct of
22 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through
23 one or more of Defendants' officers, directors, agents, employees, or representatives, who was
24 actively engaged in the management, direction, control, or transaction of the ordinary business and
25 affairs of Defendants.

26 23. The true names and capacities of Defendants, whether individual, corporate,
27 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
28 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure

1 § 474. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
2 capacities of the Defendants designated hereinafter as DOES when such identities become known.

3 24. Plaintiffs are informed and believe, and thereon allege, that the Doe Defendants are
4 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
5 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
6 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
7 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
8 liability of the Defendants as alleged herein.

9 25. Plaintiffs are further informed and believe, and thereon allege, that at all times
10 material herein, each Defendant was completely dominated and controlled by its co-Defendants
11 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint
12 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed
13 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
14 Whenever and wherever reference is made to individuals who are not named as Defendants in this
15 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times
16 acted on behalf of Defendants named in this complaint within the scope of their respective
17 employments.

18 **FACTUAL ALLEGATIONS**

19 26. During the relevant time frame, Defendants compensated Plaintiffs and the Non-
20 Exempt Employees based upon an hourly wage.

21 27. Plaintiffs and the Class Members were, and at all times pertinent hereto, have been
22 non-exempt employees within the meaning of the California Labor Code, and the implementing
23 rules and regulations of the IWC California Wage Orders. They are subject to the protections of
24 the IWC Wage Orders and the Labor Code.

25 28. During the relevant time, Plaintiffs were employed by Defendants in hourly, non-
26 exempt positions. Plaintiff Cookson worked as a Server in Defendants' restaurants approximately
27 5 days per week, 30+ hours per week. Plaintiff Villalobos worked as Pantry Chef in Defendants'

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1 restaurants approximately 5 days per week, 40+ hours per week.

2 29. Plaintiffs are informed and believe, and thereon allege, that Defendants are and were
3 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
4 requirements of California's wage and employment laws.

5 30. All Class Members are similarly situated in that they are all subject to Defendants'
6 uniform policies and systemic practices as specified herein.

7 31. Plaintiffs and the Class Members were required to clock in at the beginning of their
8 shifts, clock out for lunch, in at the end of their lunch periods and out at the end of their shifts.
9 Plaintiffs and the Class Members were not paid for all hours worked because employees were
10 required to work off the clock such that Plaintiffs and the Class Members were not paid for all
11 hours worked.

12 32. Off the clock work included, but was not limited to, to pre-shift and post-shift
13 activities, waiting to clock in, work related communications on personal cell phones. Plaintiff
14 Villalobos, and, upon information and belief, Class Members were also required to review training
15 materials, such as videos and tutorials outside of work hours, but were not compensated for the
16 hours spent reviewing said materials.

17 33. In addition, Plaintiff Villalobos and the Class Members worked in excess of eight
18 (8) hours in day and/or over forty (40) hours in a workweek, but were not properly paid for such
19 time at a rate of time and one-half the employee's regular rate of pay per hour.

20 34. Upon information and belief, Defendants failed to incorporate all forms of non-
21 discretionary compensation into the regular rate, including differentials and incentives.

22 35. Moreover, Plaintiffs and the Class Members were not paid reporting time pay. By
23 way of example, Plaintiff Cookson worked for less than 2 hours of his shifts without receiving
24 reporting time wage.

25 36. In addition, Plaintiffs and the Class Members were regularly required to work shifts
26 in excess of five hours without being provided a lawful meal period and, on occasion, over ten
27 hours in a day without being provided a second lawful meal period as required by law.

28 37. Indeed, during the relevant time, as a consequence of Defendants' scheduling
practices, work demands, and Defendants' policies and practices, Defendants frequently failed to
provide Plaintiffs and the Class Members timely, legally complaint uninterrupted 30-minute meal
periods as required by law. Not only were Plaintiffs' and the Class Members' first meal breaks

1 frequently not provided, untimely or short, but also Plaintiff Villalobos and the Class Members
2 were not provided a second meal period when working shifts in excess of 10 hours.

3 38. On information and belief, Plaintiff and Class Members did not waive their rights
4 to a second meal period.

5 39. Despite the above-mentioned meal period violations, Defendants failed to
6 compensate Plaintiffs, and on information and belief, failed to compensate Class Members, one
7 additional hour of pay at their regular rate as required by California law when meal periods were
8 not timely or lawfully provided in a compliant manner.

9 40. Plaintiffs are informed and believe, and thereon allege, that Defendants know,
10 should know, knew, and/or should have known that Plaintiffs and the other Class Members were
11 entitled to receive accurate premium wages under Labor Code §226.7 but were not receiving
12 accurately calculated compensation.

13 41. In addition, during the relevant time frame, Plaintiffs and the Non-Exempt
14 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
15 period for every four hours worked or major fraction thereof, which is a violation of the Labor Code
16 and IWC Wage Orders.

17 42. Defendants maintained and enforced scheduling practices, policies, and imposed
18 work demands that frequently required Plaintiffs and Class Members to forego their lawful, paid
19 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
20 requisite rest periods were not timely authorized and permitted.

21 43. Despite the above-mentioned rest period violations, Defendants did not compensate
22 Plaintiff, and on information and belief, did not pay Class Members one additional hour of pay at
23 their regular rate as required by California law, including Labor Code section 226.7 and the
24 applicable IWC Wage Orders, for each day on which lawful rest periods were not authorized and
25 permitted.

26 44. Plaintiffs and the Class Members were also required to use their personal cellular
27 phones for work related purposes throughout the working day and off the clock. Further, Plaintiffs
28 and the Class Members were required to download certain cellular phone applications to use for

1 work-related purposes.

2 45. Moreover, Plaintiffs and the Class Members were required to incur necessary
3 expenses in the discharge of their duties, but were not reimbursed for such necessary expenses.
4 They included, by way of example, cell phone expenses. By way of further example, Plaintiff
5 Villalobos and, on information and belief, the Class Members, were required to pay for the
6 laundering and maintenance of their uniforms.

7 46. Defendants also failed to provide accurate, lawful itemized wage statements to
8 Plaintiffs and the Class Members in part because of the above specified violations.

9 47. Defendants have also made it difficult to determine applicable rates of pay and
10 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-
11 exempt Employees, including Plaintiffs, during the liability period because they did not implement
12 and preserve a lawful record-keeping method to record all hours worked, and non-provided rest
13 and meal periods owed to employees as required for non-exempt employees by 29 U.S.C. section
14 211(c), California Labor Code section 226, and applicable California Wage Orders.

15 48. Plaintiffs are informed and believe, and thereon allege, that at all times herein
16 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
17 thereof for resignations without prior notice as the case may be) they had a duty to accurately
18 compensate Plaintiffs and Class Members for all wages owed including straight time, overtime,
19 meal and rest period premiums, and that Defendants had the financial ability to pay such
20 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
21 because of the above-specified violations.

22 49. Plaintiffs and the Class Members are covered by applicable California IWC Wage
23 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
24 section 11000 *et seq.*

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1 **CLASS ACTION ALLEGATIONS**

2 50. Plaintiffs bring this action on their own behalf, as well as on behalf of each and
3 every other person similarly situated, and thus, seek class certification under California Code of
4 Civil Procedure §382.

5 51. All claims alleged herein arise under California law for which Plaintiffs seek relief
6 as authorized by California law.

7 52. The proposed class is comprised of and defined as: **all persons who are or were**
8 **employed by the Defendants as hourly paid, non-exempt workers at restaurants in the State**
9 **of California at any time from four years prior to the initial filing of this action through**
10 **resolution or trial of the matter.** (hereinafter collectively referred to as the “Class” or “Class
11 Members”).

12 53. Plaintiffs also seek to represent Subclasses included in the Plaintiffs’ Class, which
13 are composed of Class Members satisfying the following definitions:

14 a. All Class Members who were not paid at least minimum wage for all hours
15 worked hereinafter collectively referred to “**Minimum Wage Subclass**”);

16 b. All Class Members who were not paid reporting time wages (hereinafter
17 collectively referred to “**Reporting Time Subclass**”)

18 c. All Class Members who were not accurately paid overtime for hours worked
19 over eight in a day or over forty in a workweek (hereinafter collectively referred to “**Overtime**
20 **Subclass**”);

21 d. All Class Members who worked more than five (5) hours in a workday and
22 were not provided with a timely, uninterrupted lawful meal period of net thirty (30) minutes, and
23 were not paid compensation of one hour premium wages at the employee’s regular rate in lieu
24 thereof (hereinafter collectively referred to as the “**First Meal Period Subclass**”);

25 e. All Class Members who worked more than ten hours in a workday and were
26 not provided with a timely, uninterrupted lawful second meal period of thirty (30) minutes, and
27 were not paid compensation of one hour premium wages at the employee’s regular rate in lieu
28 thereof (hereinafter collectively referred to as the “**Second Meal Period Subclass**”);

1 f. All Class Members who worked more than three and a half hours in a
2 workday and were not authorized and permitted to take a net 10-minute rest period for every four
3 (4) hours or major fraction thereof worked per day and were not paid compensation of one hour
4 premium wages at the employee's regular rate in lieu thereof (hereinafter collectively referred to
5 as the "**Rest Period Subclass**");

6 g. All Class Members who were not reimbursed for all necessary expenditures
7 (hereinafter collectively referred to "**Indemnification Subclass**");

8 h. All Class Members who did not receive all owed wages at time of separation
9 or within 72 hours in the case of resignation (hereinafter collectively referred to as the "**Waiting**
10 **Time Subclass**");

11 i. All Class Members who were not provided with accurate and complete
12 itemized wage statements (hereinafter collectively referred to as the "**Inaccurate Wage Statement**
13 **Subclass**");

14 j. All Class Members who were employed by Defendants and subject to
15 Defendant's Unfair Business Practices (hereinafter collectively referred to as the "**Unfair Business**
16 **Practices Subclass**").

17 54. Plaintiffs reserve the right, under Rule 3.765, California Rules of Court, to amend
18 or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate,
19 or if it should be deemed necessary by the Court or to further divide the Class Members into
20 additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the
21 Class Members or the Plaintiffs' Class includes the members of each of the Subclasses.

22 55. As set forth in further detail below, this action has been brought and may properly
23 be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure
24 because there is a well-defined community of interest in the litigation, and the proposed Class and
25 Subclasses are easily ascertainable through Defendants' records.

26 a. Numerosity: The members of the Class and Subclasses are so numerous that
27 joinder of all members of the Class and Subclasses would be unfeasible and impractical. The
28 membership of the entire Class and Subclasses is unknown to Plaintiffs at this time, however, the

1 Class is estimated to be hundreds of individuals. Accounting for employee turnover during the
2 relevant periods necessarily increases this number substantially. Plaintiffs allege Defendants'
3 employment records would provide information as to the number and location of all Class
4 Members. Joinder of all members of the proposed Class is not practicable.

5 b. The proposed class is easily ascertainable. The number and identity of the
6 class members are determinable from Defendants' payroll records and time records for each class
7 member.

8 c. Commonality: There are common questions of law and fact as to the Class
9 and Subclasses that predominate over questions affecting only individual Class Members. These
10 common questions of law and fact include, without limitation:

- 11 1. Whether Defendants accurately paid Class Members for all hours
12 worked;
- 13 2. Whether Defendants knew or should have known that Class Members
14 were required to perform work off the clock;
- 15 3. Whether Defendants were required to pay reporting time pay;
- 16 4. Whether Defendants accurately calculated and paid all Class Members
17 overtime premiums for the hours which Plaintiffs and Class Members
18 worked in excess of eight (8) hours per day and/or forty (40) hours per
19 week;
- 20 5. Whether Defendants had a policy and practice of providing lawful,
21 timely meal periods in accordance with Labor Code § 512, as well as the
22 applicable Industrial Welfare Commission ("IWC") Wage Orders;
- 23 6. Whether Defendants had a policy and practice of complying with Labor
24 Code section 226.7 and IWC Wage Order on each instance that a lawful,
25 timely 30-minute uninterrupted meal period was not provided;
- 26 7. Whether Defendants failed to authorize and permit a lawful, net 10-
27 minute rest period to the Class Members for every four (4) hours or major
28 fraction thereof worked;

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- 8. Whether Defendants had a policy and practice of complying with Labor Code section 226.7 and the IWC Wage Orders on each instance that a lawful rest period was not provided;
- 9. Whether Defendants failed to timely pay all wages upon separation in accordance with Labor Code sections 201-202;
- 10. Whether Defendants failed to timely pay all wages during employment in accordance with Labor Code sections 204;
- 11. Whether Defendants failed to reimburse employees for necessary expenses in accordance with Labor Code section 2802;
- 12. Whether Defendants omitted required information from itemized wage statements;
- 13. Whether Defendants failed to maintain accurate records of Class Members' earned wages, work periods and meal periods;
- 14. Whether Defendants engaged in unfair competition in violation of section 17200 et seq. of the Business and Professions Code;
- 15. Whether Defendants' conduct was willful and/or reckless;
- 16. Whether Defendants failed to provide accurate itemized wage statements in violation of Labor Code § 226; and
- 17. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violations of California law.

d. Typicality: Plaintiffs are qualified to and will fairly and adequately protect the interests of each member of the Class and Subclasses with whom they have a well-defined community of interest. Plaintiffs' claims herein alleged are typical of those claims which could be alleged by any member of the Class and/or Subclasses, and the relief sought is typical of the relief which would be sought by each member of the Class and/or Subclasses in separate actions. All members of the Class and/or Subclasses have been similarly harmed by Defendants' failure to provide lawful meal and rest periods, failure to reimburse expenses, failure to provide accurate wage statements, failure to timely pay wages at termination, failure to pay minimum wages, and

1 failure to accurately pay all wages earned including all owed premium, reporting time and overtime
2 wages, all due to Defendants' policies and practices that affected each member of the Class and/or
3 Subclasses similarly. Further, Defendants benefited from the same type of unfair and/or wrongful
4 acts as to each member of the Class and/or Subclasses.

5 e. Adequacy: Plaintiffs are qualified to and will fairly and adequately protect
6 the interests of each member of the Class and/or Subclasses with whom they have a well-defined
7 community of interest and typicality of claims, as demonstrated herein. Plaintiffs acknowledge that
8 they have an obligation to make known to the Court any relationships, conflicts, or differences with
9 any member of the Class and/or Subclasses, and no such relationships or conflicts are currently
10 known to exist. Plaintiffs' attorneys and the proposed counsel for the Class and Subclasses are
11 versed in the rules governing class action discovery, certification, litigation, and settlement and
12 experienced in handling such matters. Other former and current employees of Defendants may also
13 serve as representatives of the Class and Subclasses if needed.

14 f. Superiority: The nature of this action makes the use of class action
15 adjudication superior to other methods. A class action will achieve economies of time, effort,
16 judicial resources, and expense, which would not be achieved with separate lawsuits. The
17 prosecution of separate actions by individual members of the Class and/or Subclasses would create
18 a risk of inconsistent and/or varying adjudications with respect to the individual members of the
19 Class and/or Subclasses, establishing incompatible standards of conduct for the Defendants, and
20 resulting in the impairment of the rights of the members of the Class and/or Subclasses and the
21 disposition of their interests through actions to which they were not parties. Thus, a class action is
22 superior to other available means for the fair and efficient adjudication of this controversy because
23 individual joinder of all Class Members is not practicable, and questions of law and fact common
24 to the Class predominate over any questions affecting only individual Class Members. Each
25 member of the Class has been damaged and is entitled to recovery by reason of Defendants'
26 unlawful policies and practices that affected each member of the Class and/or Subclasses similarly.
27 Class action treatment will allow those similarly situated persons to litigate their claims in the
28 manner that is most efficient and economical for both parties and the judicial system. Plaintiffs are

1 unaware of any difficulties that are likely to be encountered in the management of this action that
2 would preclude its maintenance as a class action.

3 g. Public Policy Considerations: Employers in the state of California violate
4 employment and labor laws every day. However, current employees are often afraid to assert their
5 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
6 because they believe their former employers may damage their future endeavors through negative
7 references and/or other means. The nature of this action allows for the protection of current and
8 former employees' rights without fear of retaliation or damage. Additionally, the citizens of
9 California have a significant interest in ensuring employers comply with California's labor laws
10 and in ensuring those employers who do not are prevented from taking further advantage of their
11 employees.

12 **CLASS ACTION CLAIMS**

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY MINIMUM WAGES**

15 **(By Plaintiffs and the Class Against All Defendants)**

16 56. Plaintiffs incorporate each and every allegation set forth in all of the foregoing
17 paragraphs as if fully set forth herein.

18 57. Labor Code section 204 establishes the fundamental right of all employees in the
19 State of California to be paid wages, including minimum wage, straight time and overtime, in a
20 timely fashion for their work.

21 58. Labor Code section 1194(a) provides that notwithstanding any agreement to work
22 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
23 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
24 of the full amount of this minimum wage or overtime compensation, including interest thereon,
25 reasonable attorney's fees, and costs of suit.

26 59. Labor Code section 1197 provides: The minimum wage for employees fixed by the
27 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
28 and the payment of a lower wage than the minimum so fixed is unlawful.

1 60. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
2 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
3 Wage Order(s).

4 61. The applicable Wage Orders and California Labor Code sections 1197 and 1182.12
5 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by
6 state law.

7 62. Labor Code sections 1194(a) and 1194.2(a) provide that an employee who has not
8 been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid
9 balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount
10 equal to the unpaid wages and interest accrued thereon.

11 63. During all relevant periods, the California Labor Code and Wage Orders required
12 that Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due
13 for all hours worked.

14 64. The IWC Wage Orders define "hours worked" as "the time during which an
15 employee is subject to the control of an employer, and includes all the time the employee is suffered
16 or permitted to work, whether or not required to do so."

17 65. At all times relevant, Plaintiffs and Class Members consistently worked hours for
18 which they were not paid because Defendants frequently required Plaintiffs and the Class Members
19 to work off the clock.

20 66. By way of example, Plaintiffs and Class Members were required to do pre- and/or
21 post-shift activities while off the clock. These activities included but were not limited to waiting
22 to clock in, using cell phones for work related communications and reviewing training materials.
23 Defendants did not compensate Plaintiffs and Class Members for this time spent off the clock.

24 67. Plaintiffs are informed and believe that Defendants were aware that Plaintiffs and
25 the Class Members were working off the clock and that they should have been paid for this time.

26 68. Defendant's policy and practice of not paying all minimum wages violates
27 California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the
28 applicable Wage Order 5-2001.

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THIRD CAUSE OF ACTION
FAILURE TO PAY OVERTIME OWED

(By Plaintiffs and the Class Against All Defendants)

77. Plaintiffs incorporate each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

78. During all relevant periods, Defendant required Plaintiffs and the Class members to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours per workweek.

79. During all relevant periods, both the California Labor Code sections 1194, 1197, 510, 1198, and the pertinent Wage Order 5-2001 required that all work performed by an employee in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in excess of forty (40) hours in any workweek be compensated at one and one-half (1.5) times the employee's regular rate of pay. Any work in excess of twelve (12) hours in one (1) day is required to be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh (7th) day of a workweek is required to be compensated at the rate of no less than twice the regular rate of pay of an employee.

80. During all relevant periods, Defendants had a uniform policy of requiring Plaintiffs and the Class members to work in excess of eight (8) hours in a workday and/or in excess of forty (40) hours in a workweek without compensating them at a rate of one and one-half (1.5) times their regular rate of pay. Upon information and belief, Defendants also failed to properly compensate Plaintiffs and the Class Members for hours worked in excess of twelve (12) hours in one (1) day, or eight (8) hours on the seventh (7th) day of a workweek.

81. The IWC Wage Orders define "hours worked" as "the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

82. At all times relevant, Plaintiffs and Class Members consistently worked hours for which they were not paid because Plaintiffs and the Class Members were required to work off the

1 clock—some of these hours were over eight (8) hours in one (1) workday or in excess of forty
2 (40) hours in a workweek and should have been paid at the overtime rate.

3 83. Plaintiffs are informed and believe that Defendants were aware that Plaintiffs and
4 the Class Members were working off the clock and that they should have been paid for this time.

5 84. By way of example, Plaintiffs and Class Members were required to do pre- and/or
6 post-shift activities while off the clock. These activities included but were not limited to waiting
7 to clock in, using cell phones for work related communications and reviewing training materials.
8 Defendants did not compensate Plaintiffs and Class Members for this time spent off the clock.

9 85. In addition, upon information and belief, Defendants failed to incorporate all forms
10 of compensation, including without limitation differentials and incentives, into the regular rate for
11 overtime purposes.

12 86. As a result, Defendants failed to pay Plaintiffs and the Class members earned
13 overtime wages and such employees suffered damages as a result.

14 87. Defendants knew or should have known Plaintiffs and the Class Members were
15 undercompensated as a result of these practices.

16 88. Due to Defendant's violations of the California Labor Code, Plaintiffs and the Class
17 members are entitled to recover from Defendants their unpaid overtime wages, reasonable
18 attorneys' fees and costs in this action, and pre-judgment and post-judgment interest, statutory
19 penalties, and liquidated damages.

20 **FOURTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE LAWFUL MEAL PERIODS**

22 **(By Plaintiffs and the Meal Period Subclasses Against All Defendants)**

23 89. Plaintiffs incorporate by reference and reallege each and every allegation contained
24 above, as though fully set forth herein.

25 90. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
26 period of more than five (5) hours without providing a meal break of not less than thirty (30)
27 minutes in which the employee is relieved of all of his or her duties, except that when a work period
28 of not more than six (6) hours will complete the day's work the meal period may be waived by

1 mutual consent of the employer and employee.

2 91. For the four (4) years preceding the filing of this lawsuit Defendants failed to
3 provide Plaintiffs and Class Members timely and uninterrupted first meal periods of not less than
4 thirty (30) minutes within the first five hours of a shift.

5 92. As a consequence of Defendants' policies and practices, requirements, demands,
6 coverage and staffing, Plaintiffs and the Class Members were often required to forego such meal
7 periods, take shortened meal periods, and/or commence their meal periods into and beyond the
8 sixth hour of their shifts.

9 93. Upon information and belief, Plaintiffs and the Class Members were not paid one
10 hour of pay at their regular rate for each day that a meal period was not lawfully provided.

11 94. Moreover, as a matter of policy and practice, upon information and belief, the Class
12 members were also not provided second meal periods on days when shifts exceeded ten hours (and
13 twelve hours), nor were they provided premium wages in lieu of a second meal period. On
14 information and belief, Plaintiffs and the Class Members did not waive their rights to a second meal
15 period on shifts in excess of ten hours.

16 95. As a proximate result of the aforementioned violations, Plaintiffs and the Class
17 Members have been damaged in an amount according to proof at time of trial.

18 96. Pursuant to Labor Code § 226.7, Plaintiffs and Class Members are entitled to recover
19 one (1) hour of premium pay for each day in which a meal period violation occurred. They are also
20 entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

21 97. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to
22 represent have been deprived of premium wages in amounts to be determined at trial, and are
23 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
24 under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code
25 section 3287.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS**

3 **(By Plaintiffs and the Rest Period Subclasses Against All Defendants)**

4 98. Plaintiffs incorporate by reference and reallege each and every allegation contained
5 above, as though fully set forth herein.

6 99. Pursuant to the IWC Wage Orders applicable to Plaintiffs' and Class Members'
7 employment by Defendants, "Every employer shall authorize and permit all employees to take rest
8 periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized
9 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
10 rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall
11 be counted as hours worked, for which there shall be no deduction from wages."

12 100. Labor Code §226.7(a) prohibits an employer from requiring any employee to work
13 during any rest period mandated by an applicable order of the IWC.

14 101. Defendants were required to authorize and permit employees such as Plaintiffs and
15 Class Members to take rest periods during shifts in excess of 3.5 hours, based upon the total hours
16 worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof,
17 with no deduction from wages.

18 102. Despite said requirements of the IWC wage orders applicable to Plaintiffs' and Class
19 Member's employment with Defendants, Defendants failed and refused to authorize and permit
20 Plaintiffs and Class Members to take lawful, net ten (10) minute rest periods for every four (4)
21 hours worked, or major fraction thereof. Such rest breaks, when provided, were frequently
22 untimely or less than net ten minutes because of the work requirements imposed by Defendants.

23 103. Defendants did not pay Plaintiffs one additional hour of pay at his regular rate of
24 pay for each day that a rest period violation occurred. On information and belief, the other members
25 of the Class endured similar violations as a result of Defendants' rest period policies and practices
26 and Defendant did not pay said Class Members premium pay as required by law.

27 104. By their failure to authorize and permit Plaintiffs and the Class Members to take a
28 lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction

1 thereof worked, including failure to provide two (2) total rest periods on six to ten hour shifts and
2 three (3) total ten (10) minute rest periods on days on which Plaintiffs and the other Class Members
3 work(ed) work a third rest period for shifts in excess of ten (10) hours, and by their failure to provide
4 compensation for such unprovided rest periods as alleged herein, Defendants willfully violated the
5 provisions of Labor Code sections 226.7 and the applicable IWC Wage Order(s).

6 105. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to
7 represent have been deprived of premium wages in amounts to be determined at trial, and are
8 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
9 under Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil Code 3287.

10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING**
12 **EMPLOYMENT**

13 **(By Plaintiffs and the Class Against All Defendants)**

14 106. Plaintiffs incorporate by reference and reallege each and every allegation contained
15 above, as though fully set forth herein.

16 107. Labor Code section 204 requires that all wages are due and payable twice in each
17 calendar month.

18 108. The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became
19 due and payable to each employee in each month that he or she was not provided with a meal period
20 or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.

21 109. Defendants violated Labor Code § 204 by systematically refusing to pay wages due
22 under the Labor Code.

23 110. Labor Code section 210 (a) provides that “In addition to, and entirely independent
24 and apart from, any other penalty provided in this article, every person who fails to pay the wages
25 of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
26 1197.5, shall be subject to a penalty as follow:

- 27 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
28 employee.

1 (2) For each subsequent violation, or any willful or intentional violation, two hundred
2 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
3 unlawfully withheld.

4 103. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to
5 represent have been deprived of wages in amounts to be determined at trial, and are entitled to
6 recovery of such amounts, penalties, plus interest thereon, attorneys fees, and costs, pursuant to
7 Labor Code § 210, 218.5, 218.6, 510, 1194.

8 SEVENTH CAUSE OF ACTION

9 FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION

10 (By Plaintiffs and the Waiting Time Subclass Against All Defendants)

11 111. Plaintiffs incorporate by reference and reallege each and every allegation contained
12 above, as though fully set forth herein.

13 112. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
14 due within seventy-two (72) hours of separation of employment.

15 113. Section 203 of the Labor Code provides that if an employer willfully fails to timely
16 pay such wages the employer must, as a penalty, continue to pay the subject employee's wages
17 until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30
18 days of wages.

19 114. Plaintiffs and Class Members are entitled to compensation for all forms of wages
20 earned, including but not limited to minimum wages, overtime, and premium meal and rest period
21 compensation, but to date have not received such compensation, therefore entitling them to Labor
22 Code § 203 penalties.

23 115. In addition, irrespective of any derivative violation, Defendants failed to timely pay
24 Plaintiffs and, upon information and belief, other Class Members earned compensation at the time
25 of termination despite their obligations under Labor Code 201 and 202.

26 116. More than thirty (30) days have passed since affected Waiting Time Subclass
27 Members have left Defendants' employ, and on information and belief, they have not received
28 payment pursuant to Labor Code § 203.

1 117. Plaintiffs and Waiting Time Subclass Members are thus entitled to 30 days' wages
2 as a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

3 **EIGHTH CAUSE OF ACTION**

4 **FAILURE TO REIMBURSE NECESSARY EXPENSES**

5 **(By Plaintiffs and the Indemnification Subclass Against All Defendants)**

6 118. Plaintiffs incorporate by reference and reallege each and every allegation contained
7 above, as though fully set forth herein.

8 119. Labor Code § 2802 requires Defendants to indemnify Plaintiffs and Class Members
9 for necessary expenditures incurred in direct consequence of the discharge of his or her duties.

10 120. Plaintiffs and the members of the Indemnification Class were required to incur
11 expenses in the performance of their assigned job duties, including but not limited to personal cell
12 phone expenses and laundering of uniforms.

13 121. Upon information and belief, the Defendants did not reimburse Plaintiffs or the
14 Plaintiffs' subclass for such expenses.

15 122. As a result of the unlawful acts of Defendants, Plaintiffs and the Plaintiffs' Subclass
16 Members have been deprived of un-reimbursed sums in amounts to be determined at trial, and are
17 entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
18 costs, pursuant to Labor Code §2802.

19 **NINTH CAUSE OF ACTION**

20 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**

21 **EMPLOYEE WAGE STATEMENT PROVISIONS**

22 **By Plaintiffs and Wage Statement Subclass Against Defendants**

23 123. Plaintiffs repeat and incorporate herein by reference each and every allegation set
24 forth above, as though fully set forth herein.

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

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

7 125. Further, the IWC Wage Orders require in pertinent part: Every employer shall keep
8 accurate information with respect to each employee including the following: (3) Time records
9 showing when the employee begins and ends each work period. Meal periods, split shift intervals,
10 and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period
11 and applicable rates of pay....”

12 126. Labor Code section 1174 of the California also requires Defendants to maintain and
13 preserve, in a centralized location, among other items, records showing the names and addresses of
14 all employees employed and payroll records showing the hours worked daily by, and the wages
15 paid to, its employees. On information and belief and based thereon, Defendants have knowingly
16 and intentionally failed to comply with Labor Code section 1174, including by implementing the
17 policies and procedures and committing the violations alleged in the preceding causes of action and
18 herein. Defendants’ failure to comply with Labor Code section 1174 is unlawful pursuant to Labor
19 Code section 1175.

20 127. Defendants have failed to record many of the items delineated in applicable
21 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section 1174,
22 including by virtue of the fact that each wage statement which failed to accurately compensate
23 Plaintiffs and Class Members for all hours worked and for missed and non-provided meal and rest
24 periods, or which failed to include compensation for all minimum wages earned or overtime hours
25 worked, was an inaccurate wage statement. In addition, the wage statements inaccurately stated
26 totals hours worked and hours worked at each hourly wage rate.

27 128. On information and belief, Defendants failed to implement and preserve a lawful
28 record-keeping method to record all non-provided meal and rest periods owed to employees or all

1 hours worked, as required for Non-Exempt Employees under California Labor Code section 226
2 and applicable California Wage Orders. In order to determine if they had been paid the correct
3 amount and rate for all hours worked, Plaintiffs and Class Members have been, would have been,
4 and are compelled to try to discover the required information missing from their wage statements
5 and to perform complex calculations in light of the inaccuracies and incompleteness of the wage
6 statements Defendants provided to them.

7 129. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
8 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage
9 Statement Class with an accurate itemized statement in writing accurately reflecting all of the
10 required information. Here, Plaintiffs asserts the Defendant omitted required information, failed to
11 accurately include all applicable hourly rates on the wage statements and the corresponding number
12 of hours worked at such rates or hours paid at such rates. In addition, Defendants have failed to
13 provide accurate itemized wage statements as a consequence of the above-specified violations for
14 failure to accurately pay all wages owed, accurately record all hours worked, and failure to pay
15 meal and rest period premiums as required by law.

16 130. Moreover, upon information and belief, as a pattern and practice, in violation of
17 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
18 accurate records pertaining to the total hours worked for Defendants by the members of the Wage
19 Statement Class, including but not limited to, beginning and ending of each work period, meal
20 period and split shift interval, the total daily hours worked, and the total hours worked per pay
21 period and applicable rates of pay.

22 131. Plaintiffs and the members of the Wage Statement Class have suffered injury as a
23 result of Defendants' failure to maintain accurate records for the members of the Wage Statement
24 Class in that the members of the Wage Statement Class were not timely provided written accurate
25 itemized statements showing all requisite information, such that the members of the Wage
26 Statement Class were misled by Defendants as to the correct information regarding various items,
27 including but not limited to total hours worked by the employee, net wages earned and all applicable
28 hourly rates in effect during the pay period and the corresponding number of hours worked at each

1 hourly rate.

2 132. Pursuant to Labor Code section 226, and in light of Defendants' violations addressed
3 above, Plaintiffs and the Wage Statement Class Members are each entitled to recover up to a
4 maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

5 **TENTH CAUSE OF ACTION**

6 **VIOLATION OF THE UNFAIR COMPETITION LAW**

7 **(By Plaintiffs and Class Against All Defendants)**

8 133. Plaintiffs incorporate by reference and reallege each and every allegation contained
9 above, as though fully set forth herein.

10 134. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
11 unfair, unlawful, and harmful to Plaintiffs and Class Members, Defendants' competitors, and the
12 general public. Plaintiffs also seek to enforce important rights affecting the public interest within
13 the meaning of the California Code of Civil Procedure § 1021.5.

14 135. Defendants' policies, activities, and actions as alleged herein are violations of
15 California law and constitute unlawful business acts and practices in violation of California
16 Business and Professions Code §§ 17200, *et seq.*

17 136. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be
18 predicated on the violation of any state or federal law.

19 137. The state law violations, including violations of the relevant IWC Wage Order,
20 detailed herein above are the predicate violations for this cause of action. By way of example only,
21 in the instant case Defendants' policy of failing to lawfully provide Plaintiffs and the Class with
22 timely meal and rest periods or pay one (1) hour of premium pay when a meal or rest period was
23 not lawfully provided violates Labor Code § 512, and § 226.7, and the IWC Wage Orders.
24 Defendants further violated the law through their policies of failing to fully and accurately
25 compensate Plaintiffs and the Class Members for all hours worked, including minimum wages and
26 overtime, and failing to reimburse for necessary expenses, as well as failing to provide accurate
27 itemized wage statement as specified above.

28 138. Plaintiffs and the Class Members have been personally aggrieved by Defendants'

1 unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

2 139. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiffs
3 and the Class Members are entitled to restitution of the wages withheld and retained by Defendants
4 during a period that commences four (4) years prior to the filing of this complaint; an award of
5 attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of
6 costs.

7 **ELEVENTH CAUSE OF ACTION**

8 **PENALTIES UNDER PRIVATE ATTORNEYS' GENERAL ACT, LABOR CODE**

9 **SECTION 2698 ET SEQ.**

10 **(By Plaintiffs and Aggrieved Employees Against All Defendants)**

11 140. Plaintiffs incorporate by reference and reallege each and every allegation contained
12 above, as though fully set forth herein.

13 141. Plaintiffs gave timely written notice by online submission to the LWDA and by
14 certified mail to Defendants of Defendants' violations of numerous provisions of the California
15 Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were paid as required
16 by statute.

17 142. Plaintiffs are "aggrieved employee" as defined in Labor Code Section 2699(a), as
18 they were employed by Defendants during the statutory period and suffered one or more of the
19 Labor Code violations set forth herein. They seek to recover on behalf of themselves and all other
20 current and former aggrieved employees of Defendants the civil penalties provided by PAGA, plus
21 reasonable attorneys' fees and costs.

22 143. 65 days have passed, and no response has been received from the LWDA.
23 Accordingly, the LWDA has permitted Plaintiffs to proceed in a representative capacity.

24 144. Plaintiffs have exhausted all administrative procedures required of them under the
25 Labor Code §§2698, 2699, 2699.3, and as a result, are justified as a matter of right in bringing
26 forward this cause of action.

27 145. Pursuant to Labor Code section 2699(a) Plaintiffs seek to recover civil penalties for
28 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint.

1 146. Plaintiffs seek to recover the PAGA civil penalties through a representative action
2 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th
3 969. Class certification of the PAGA claims is not required.

4 147. Pursuant to Labor Code section 2698 et seq. and 2699(a), Plaintiffs seek to recover
5 civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order
6 violations as set forth in this Complaint.

7 148. Specifically, Plaintiffs, on behalf of themselves and the Aggrieved Employees, seek
8 penalties, under Labor Code §2699, for, without limitation, the claims set forth herein, including:

- 9 a. Defendants' failure to comply with the requirement of Labor Code §1182.12, 1194,
10 1197, 1198, and Wage Orders to pay at least minimum wage for every hour worked;
- 11 b. Defendants' failure to comply with the requirement of Labor Code §510, 1194,
12 1197, 1198, and Wage Orders to accurately pay all wages earned including overtime
13 and reporting time wages;
- 14 c. Defendants' failure to comply with the requirement of Labor Code §216 to pay
15 wages after demand was made;
- 16 d. Defendants' failure to comply with the requirement of Labor Code §§204, and 210
17 to pay, without condition and within the time set by the applicable article, all wages,
18 or parts thereof;
- 19 e. Defendants' failure to comply with the requirement of Labor Code §225.5 to pay
20 wages due;
- 21 f. Defendants' failure to comply with the requirement of Labor Code §§201 and 202
22 to pay wages due to former employees;
- 23 g. Defendants' failure to comply with the requirement of Labor Code §203 to pay
24 waiting time penalties to former employees;
- 25 h. Defendants' failure to comply with the requirement of Labor Code §226.7, 512,
26 1198, and IWC Wage Orders to provide timely, uninterrupted 30 minute off-duty
27 meal periods;

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- i. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each lawful meal break that was not provided;
- j. Defendants' failure to comply with the requirement of Labor Code §226.7, 512, 1198, and IWC Wage Orders to provide timely, uninterrupted net 10 minute rest periods;
- k. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each lawful rest break that was not provided;
- l. Defendants' failure to maintain accurate required records in violation of Labor Code §226, 1174, and Wage Orders;
- m. Defendants' failure to pay sick leave at the proper rate of pay under Labor Code section 246;
- n. Defendants' failure to provide accurate compliant wage statements under Labor Code section 226;

149. Plaintiffs seek civil penalties for Defendants' violation of Labor Code provisions for which a civil penalty is specifically provided, including but not limited to the following:

- a. Pursuant to Labor Code §210, for violations of Labor Code §204, Defendants are subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred (\$200) per employee for violations in subsequent pay periods plus 25% of the amount unlawfully withheld.
- b. Pursuant to Labor Code §226.3, for violations of Labor Code §226 (a) Defendants are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period where a violation occurs and one thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay period.

- 1 c. Pursuant to Labor Code §558(a), “[a]ny employer or other person acting on behalf
2 of an employer who violated, or causes to be violated, a section of this chapter or
3 any provisions regulating hours and days of work in any order of the Industrial
4 Welfare Commission,” including Labor Code §§510 and 512, shall be subject to a
5 civil penalty, in addition to any other penalty provided by law, of fifty dollars (\$50)
6 for initial violations for each underpaid employee for each pay period for which the
7 employee was underpaid and one hundred dollars (\$100) for each subsequent
8 violation for each underpaid employee for each pay period for which the employee
9 was underpaid.
- 10 d. Pursuant to Labor Code §1174.5, for violations of Labor Code §1174(d), Defendants
11 are subject to a civil penalty of five hundred dollars (\$500).
- 12 e. Pursuant to Labor Code §1197.1, an employer who pays or causes to be paid to any
13 employee a wage less than the minimum fixed by an order of the commission, shall
14 be subject to a civil penalty as follows: for any initial violation that is intentionally
15 committed, one hundred dollars (\$100) for each underpaid employee for each pay
16 period for which the employee is underpaid; and for each subsequent violation of
17 the same offense, two hundred fifty dollars (\$250) for each underpaid employee for
18 each pay period for which the employee is underpaid regardless of whether the
19 initial violation was intentionally committed.

20 150. Further, as a result of the acts alleged hereinabove, Plaintiffs seek penalties under
21 Labor Code §§2698 et seq. and 2699 because of Defendants’ violation of numerous provisions of
22 the California Labor Code and IWC Wage Orders.

23 151. Under Labor Code §2699, Plaintiffs and Aggrieved Employees are entitled to \$100
24 for any initial violation and \$200 for all subsequent violations of the above-mentioned provisions
25 of the California Labor Code.

26 152. Under Labor Code §2699, Plaintiffs and Aggrieved Employees should be awarded
27 twenty-five percent (25%) of all penalties due under California law, interest, attorneys’ fees and
28 costs.

1 interest thereon,

- 2 2. Penalties according to statute,
- 3 3. Liquidated damages,
- 4 4. Reasonable attorneys' fees, and costs of suit;
- 5 5. For interest and
- 6 6. For such other and further relief as the Court deems proper.

7 **On the Fourth Cause of Action**

8 (Failure to Provide Lawful Meal Periods)

- 9 1. For one (1) hour of premium pay for each day in which a required meal period was
10 not lawfully provided;
- 11 2. For reasonable attorneys' fees and costs pursuant to statute; and
- 12 3. For such other and further relief as the Court deems proper.

13 **On the Fifth Cause of Action**

14 (Failure to Authorize and Permit Lawful Rest Periods)

- 15 1. For one (1) hour of premium pay for each day in which a required rest period was
16 not lawfully authorized and permitted; and
- 17 2. For reasonable attorneys' fees and costs pursuant to statute; and
- 18 3. For such other and further relief as the Court deems proper.

19 **On the Sixth Cause of Action**

20 (Failure to Timely Pay Wages Due and Payable During Employment)

- 21 1. For unpaid wages;
- 22 2. For penalties pursuant to Labor Code § 210 and 25% of the amount of wages
23 unlawfully withheld;
- 24 3. For interest;
- 25 4. For reasonable attorneys' fees and costs pursuant to statute; and
- 26 5. For such other and further relief as the Court deems proper.

27 **On the Seventh Cause of Action**

28 (Failure to Timely Pay Wages At Separation)

- 1 1. For unpaid wages;
- 2 2. For penalties pursuant to Labor Code § 203;
- 3 3. For interest;
- 4 4. For reasonable attorneys' fees and costs pursuant to statute; and
- 5 5. For such other and further relief as the Court deems proper.

6 **On the Eighth Cause of Action**

7 (Failure to Reimburse Necessary Expenses)

- 8 1. For unreimbursed sums;
- 9 2. For reasonable attorneys' fees and costs pursuant to statute;
- 10 3. For interest; and
- 11 4. For such other and further relief as the Court deems proper.

12 **On the Ninth Cause of Action**

13 (Failure to Provide Accurate Itemized Wage Statements)

- 14 1. For statutory penalties, including penalties pursuant to Labor Code section 226;
- 15 2. For reasonable attorneys' fees and costs; and
- 16 3. For such other and further relief as the Court deems proper;

17 **On the Tenth Cause of Action**

18 (Violation of the Unfair Competition Law)

- 19 1. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of
20 sums to Plaintiffs and Class Members for the Defendants' past failure to pay minimum, overtime
21 and regular wages, for Defendants' past failure to reimburse necessary expenses, and for premium
22 wages for meal and rest periods that were not provided to Plaintiffs and Class Members over the
23 last four (4) years in an amount according to proof;
- 24 2. For reasonable attorneys' fees that Plaintiffs and Class Members are entitled to
25 recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194, 1197,
26 1198 ;
- 27 3. For pre-judgment interest on any unpaid minimum, regular and overtime wages due
28 from the day that such amounts were due;

1 4. For costs of suit incurred herein that Plaintiffs and Class Members are entitled to
2 recover under the Labor Code; and

3 5. For such other and further relief as the Court deems proper.

4 **On the Eleventh Cause of Action**

5 (Penalties Under the Private Attorney Generals Act, Labor Code section 2698 et seq.)

6 1. For penalties according to proof, pursuant to Labor Code §§2698 et seq. for the
7 violations specified above;

8 2. For penalties under Labor Code sections 210, 226.3, 1174.5, 1197.1, and 2699(a)
9 and (f);

10 3. For interest at the legal rate pursuant to Labor Code §§218.6, 1194, California Civil
11 Code §§3287, 3288, and/or any other applicable provision providing for pre-judgment interest;

12 4. For reasonable attorneys' fees, expenses, and costs under Labor Code §§1194, 226,
13 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable provisions providing
14 for attorneys' fees and costs; and

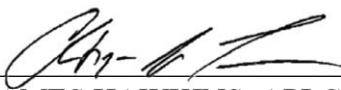
15 5. For such other and further relief as the Court deems proper.

16
17 **DEMAND FOR JURY TRIAL**

18 Plaintiffs, on behalf of the Class and Subclasses, respectfully demand a jury trial in this
19 matter to the fullest extent available under the law.

20
21 Respectfully submitted,

22
23 Dated: January 18, 2023

24 
25 JAMES HAWKINS, APLC
James R. Hawkins, Esq.
Christina M. Lucio, Esq.

26 Attorneys for KYLE COOKSON and
27 EDGAR VILLALOBOS, on behalf of themselves and all
28 others similarly situated

1 **PROOF OF SERVICE, COUNTY OF ORANGE**

2 I am a resident of the State of California, County of Orange. I am over the age of eighteen
3 years and not a party to the within action. My business address is 9880 Research Drive., Suite
4 200, Irvine, California 92618.

5 On January 18, 2023, I served on the interested parties in this action the following document(s)
6 entitled:

7 **FIRST AMENDED COMPLAINT**

8 **[XX] BY PERSONAL SERVICE:** I delivered to an authorized courier or driver authorized by
9 First Legal Network located at 600 W. Santa Ana Blvd., Suite 101, Santa Ana, California 92701;
10 Phone: 714.541.1110 to receive documents to be delivered on the recipients identified on the
11 service list below on the same date. A proof of service signed by the authorized courier will be
12 filed with the court upon request.

13 **SERVICE LIST**

14 Agent for Service of Process for
15 P.F. CHANG'S CHINA BISTRO, INC.:
16 CT Corporation
17 330 N Brand Blvd.
18 Glendale, CA 91203

19 **[X] STATE:** I declare under penalty of perjury, under the laws of the State of California, that the
20 above is true and correct.

21 Executed on January 18, 2023, at Irvine, California.

22 
23 _____
24 NAOMI ADAMS
25
26
27
28