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Case #1-15-CV-282195 Filing #G-77854

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

UNLIMITED JURISDICTION

ADRIANA MAYELA ELIAS,

Plaintiff, on behalf of herself and all
others similarly situated,

vs.

PEDRO'S RESTAURANT AND
CANTINA; GOLDEN STATE
RESTAURANTS, INC.; and DOES 1
through 100, inclusive,

Defendants.

Case No. 1-15-CV-282195

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) FAILURE TO PAY OVERTIME;
- (2) BREACH OF CONTRACT;
- (3) WITHHOLDING OF WAGES;
- (4) MEAL PERIOD VIOLATIONS;
- (5) REST PERIOD VIOLATIONS;
- (6) WAITING TIME PENALTIES;
- (7) RECORD-KEEPING
VIOLATIONS; and
- (8) UNLAWFUL BUSINESS
PRACTICES

INDIVIDUAL COMPLAINT FOR:

- (9) TERMINATION IN VIOLATION
OF PUBLIC POLICY

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (10) PRIVATE ATTORNEY GENERAL
ACT (PAGA)

DEMAND FOR JURY TRIAL

1 On behalf of herself and all others similarly situated, individual and representative Plaintiff
2 Adriana Elias, by her undersigned attorneys, alleges against Defendants Pedro's Restaurant and
3 Cantina and Golden State Restaurants, Inc., and DOES 1-100 (collectively referred to as
4 "Pedro's" and "Defendants"), as follows:

5
6 **NATURE OF THE CASE**

7 1. This class action is brought on behalf of the following proposed class: all persons
8 who, at any time during the previous four years, worked in California for Pedro's as hourly
9 employees who earned part of their compensation in tips.

10 2. Plaintiff Elias also brings this case as a representative action under the Private
11 Attorney General Act (PAGA), California Labor Code §§ 2698-2699, on behalf of current and
12 former Pedro's hourly employees to recover civil penalties for the wage-and-hour violations
13 alleged herein.

14 3. Defendant Pedro's Restaurant and Cantina is a small chain of restaurants, with
15 locations in Santa Clara and Los Gatos, California. On information and belief, Plaintiff alleges
16 that Defendant Golden State Restaurants, Inc., is a California Corporation with its principal place
17 of business in Santa Clara, California, that owns and operates Pedro's Restaurant and Cantina.
18 These Defendants are collectively referred to in this Complaint as "Pedro's."

19 4. For at least the past four years, Pedro's has refused to pay its hourly employees
20 premium pay for all overtime hours that they work. In addition, when these employees received
21 tips, Pedro's would retain a portion of their tips, although the full amount of their tips was listed
22 as part of their earnings. In other words, these employees' W-2 income would list the full amount
23 of their tips, but they would be required to pay a portion of their tips back to Pedro's. As a result,
24 Plaintiff and proposed Class Members would pay taxes on wages that they never received and
25 would not receive the full amount of their tips. In addition, Plaintiff and proposed Class
26 Members would not receive the meal and rest breaks required by California law. Plaintiff and
27 proposed Class Members regularly work through part or all of their meal breaks and have done so
28 for at least the last four years.

1 California's wage and hour laws as described more fully below, have been ongoing for at least the
2 four years prior to the filing of the complaint in this action.

3 10. During the Class Period, Defendants have had a consistent policy of permitting,
4 encouraging, and/or requiring Plaintiff and proposed Class Members to work more than eight
5 hours in a day and 40 hours in a week without fully compensating them for the time they spent
6 working as required by California state wage and hour laws and common law. In addition,
7 Defendants failed to provide legally mandated meal and rest breaks to these hourly employees as
8 required by California law.

9 11. Defendants also had a policy of collecting or retaining a portion of Plaintiff's and
10 Class Members' tips while Defendants reported to the tax authorities that all tips were received by
11 employees.

12 **JURISDICTION AND VENUE**

13 12. This Court has jurisdiction over all causes of action asserted herein pursuant to the
14 California Constitution, Article VI, §10, which grants the Superior Court original jurisdiction in
15 all cases except those given to other trial courts. Plaintiff seeks damages in this case in an amount
16 exceeding the jurisdictional minimum of this Court. The Court also has jurisdiction over certain
17 causes of action pursuant to Business & Professions Code §§ 17203 and 17204, which provide for
18 exclusive jurisdiction for enforcement of this statute in any court of competent jurisdiction.

19 13. Venue in Santa Clara County is proper under Business & Professions Code §
20 17203 and California Code of Civil Procedure § 395.5 because Defendants' unlawful conduct
21 occurred in this County, Defendants conduct substantial business in this County, a substantial part
22 of the transactions at issue took place in this County, and Defendants' liability arose in this
23 County.

24 **PARTIES**

25 14. Plaintiff Adriana Elias is an individual who resides in Sunnyvale, California and
26 who was employed by Pedro's at the Santa Clara, California, location as a waiter and server. As
27 a waiter/server, Ms. Elias provided customer service to Pedro's customers and performed "side
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1 work” as required by Pedro’s (including, but not limited to, cleaning and setting her tables at the
2 beginning and end of her shift). Ms. Elias was employed by Pedro’s from on or around May 16,
3 2013 until on or around September 3, 2014.

4 15. Defendant Pedro’s Restaurant and Cantina is a small chain of restaurants, with
5 locations in Santa Clara and Los Gatos, California. On information and belief, Plaintiff alleges
6 that Defendant Golden State Restaurants, Inc., is a California Corporation with its principal place
7 of business in Santa Clara, California, that owns and operates Pedro’s Restaurant and Cantina.
8 Pedro’s is, and at all relevant times was, an employer subject to California state wage-and-hour
9 laws.

10 **CLASS ACTION ALLEGATIONS**

11 16. Plaintiff brings this action individually and as a class action on behalf of a class
12 defined as follows: All persons who, at any time during the previous four years, worked in
13 California for Pedro’s as an hourly employee who earned part of their compensation in tips.

14 17. This action is brought, and may properly be maintained, as a class action pursuant
15 to California Code of Civil Procedure § 382 because there is a well-defined community of interest
16 in the litigation and the proposed class is easily ascertainable. This action presents questions of
17 common interest and satisfies the numerosity, commonality, typicality, adequacy, predominance,
18 and superiority requirements of this provision.

19 **Numerosity:**

20 18. The Class is so numerous that the individual joinder of all of its members is
21 impracticable. While the exact number and identities of Class Members are unknown to Plaintiff
22 at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and
23 believes that the Class includes at least 45 persons.

24 19. A class action is the only available method for the fair and efficient adjudication of
25 this controversy. The members of the Class are so numerous that joinder of all members is
26 impractical, if not impossible, insofar as the Plaintiff is informed and believes. The identity of
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1 Class Members can be determined upon analysis of, *inter alia*, employee and payroll records
2 maintained by Pedro's.

3 **Commonality:**

4 20. Common questions of fact and law exist as to all members of the Class that
5 predominate over any questions affecting only individual Class Members. These common legal
6 and factual questions, which do not vary from Class Member to Class Member and which may be
7 determined without reference to the individual circumstances of any Class Member include, but
8 are not limited to, the following:

9 (a) whether Defendants failed to pay Class Members all overtime wages for
10 time worked in excess of 40 hours per week or eight hours per day;

11 (b) whether Defendants, in violation of California Labor Code §§ 510, 351,
12 1194, § 226.7, IWC Wage Order No. 5, and California common law, failed to pay Plaintiff and
13 Class Members for all gratuities and wages owed, thus breaching the implied contract with their
14 employees to pay them for all hours worked;

15 (c) whether Defendants, in violation of Cal. Labor Code § 226.7 failed to
16 provide proper meal and rest breaks to Plaintiff and Class Members as required under IWC Wage
17 Order No. 5;

18 (d) whether Defendants' collection and deduction of gratuity violated
19 California Labor Code § 221 and IWC Wage Order 5;

20 (e) whether Plaintiff and other former-employee Class Members are entitled to
21 "waiting time" penalties pursuant to Cal. Labor Code § 203;

22 (f) whether Defendants, in violation of Cal. Labor Code §§ 201-203, failed to
23 timely pay Plaintiff and Class Members all wages due upon termination or resignation;

24 (g) whether Defendants, in violation of Cal. Labor Code §§ 226 and 1174,
25 systematically failed to keep and provide accurate records of all of the hours worked by Plaintiff
26 and Class Members and their applicable hourly rates;

1 (h) whether Defendants' failures (1) to pay Class Members overtime
2 compensation, (2) to provide Class Members with adequate off-duty meal periods and meal
3 period compensation, rest periods, and rest period compensation, (3) to fully pay Class Members
4 for all gratuities earned, (4) to provide Class Members with accurate itemized wage statements,
5 (5) to maintain documentation of the actual hours worked each day, constitute unlawful, unfair,
6 and/or fraudulent business practices under Cal. Business & Professions Code §17200, *et seq.*;

7 (i) what amounts Plaintiff and Class Members are entitled to receive in
8 interest on unpaid compensation due and owing to them.

9 **Typicality:**

10 21. Plaintiff's claims are typical of the claims of the Class. Plaintiff and all Class
11 Members sustained injuries and damages arising out of and caused by Defendants' common
12 course of conduct in violation of law as alleged herein.

13 **Adequacy of Representation:**

14 22. Plaintiff is an adequate representative of the Class in that her claims are typical of
15 those of the Class. Plaintiff has the same interests in the litigation of this case as the Class
16 Members; she is committed to vigorous prosecution of this case and has retained competent
17 counsel experienced in class action and wage and hour litigation of this nature. Plaintiff is not
18 subject to any individual defenses unique from those conceivably applicable to the Class as a
19 whole and anticipates no management difficulties in this litigation.

20 **Predominance:**

21 23. Defendants have engaged in a common course of wage-and-hour abuse toward
22 Plaintiff and Class Members. The common issues arising from this conduct that affect Plaintiff
23 and Class Members predominate over any individual issues. Adjudication of these common
24 issues in a single action has important and desirable advantages of judicial economy.

25 **Superiority of Class Action:**

26 24. A class action is superior to other available methods for the fair and efficient
27 adjudication of this controversy because individual litigation of the claims of all Class Members
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1 is impracticable. It would be unduly burdensome to the courts in which individual litigation of
2 numerous cases would proceed. Individualized litigation would also present the potential for
3 varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all
4 parties and to the court system resulting from multiple trials of the same complex factual issues.
5 Moreover, individual actions by Class Members may establish inconsistent standards of conduct
6 for Defendants. By contrast, the conduct of this action as a class action, with respect to some or
7 all of the issues presented herein, presents fewer management difficulties, conserves the resources
8 of the parties and the court system, and protects the rights of each Class Member.

9 25. Defendants have acted or refused to act in respects generally applicable to the
10 Class, thereby making appropriate relief with regard to the members of the Class as a whole, as
11 requested herein.

12 **FIRST CAUSE OF ACTION**
13 **FAILURE TO PAY CALIFORNIA OVERTIME COMPENSATION**
14 **(CALIFORNIA LABOR CODE §§ 510, 1194, IWC WAGE ORDER NO. 5)**
15 **(ON BEHALF OF PLAINTIFF AND CLASS MEMBERS)**

16 26. The allegations of each of the preceding paragraphs are re-alleged and
17 incorporated herein by reference, and Plaintiff alleges as follows a claim of relief on behalf of
18 herself and all Class Members.

19 27. During the Class Period, Plaintiff and the Class Members worked on many
20 occasions in excess of eight hours in a workday and/or 40 hours in a work week without being
21 paid full, proper overtime compensation in violation of California Labor Code §§ 510, 1194 and
22 IWC Wage Order No. 5, § 3. The precise number of unpaid overtime hours will be proven at
23 trial.

24 28. Defendants' actions were willful, in bad faith, and in knowing violation of the
25 California Labor Code.

26 29. As a direct and proximate result of Defendants' unlawful conduct as set forth
27 herein, Plaintiff and Class Members have sustained damages, including loss of earnings for hours
28 of overtime work, in an amount to be determined at trial. Pursuant to California Labor Code §
1194(a), Plaintiff and Class Members are entitled to recover their unpaid overtime and double

1 time compensation, including interest thereon. Plaintiff and Class Members are also entitled to
2 recover reasonable attorneys' fees and costs.

3 **SECOND CAUSE OF ACTION**
4 **BREACH OF CONTRACT FOR FAILURE TO PAY ALL COMPENSATION**
5 **(ON BEHALF OF PLAINTIFF AND CLASS MEMBERS)**

6 30. Plaintiff, individually and on behalf of herself and all employees similarly situated,
7 refers to and hereby incorporates by reference the preceding paragraphs as though fully set forth
8 herein.

9 31. At all times herein relevant, IWC Wage Order No. 5 and California Labor Code §
10 351 have applied and continue to apply to Plaintiff and the Class Members' employment with
11 Defendants.

12 32. California Labor Code § 351 states as follows: "No employer or agent shall
13 collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee
14 by a patron, or deduct any amount from wages due an employee on account of a gratuity, or
15 require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of
16 the wages due the employee from the employer. Every gratuity is hereby declared to be the sole
17 property of the employee or employees to whom it was paid, given, or left for."

18 33. Defendants routinely collected and withheld a portion of Plaintiff and Class
19 Members' tips while representing that they had fully compensated Plaintiff and Class Members
20 for the gratuities that customers paid.

21 34. As alleged herein, Defendants have also refused to pay its hourly employees
22 premium pay for all overtime hours that they worked as required by California Labor Code §§
23 510, 1194 and IWC Wage Order No. 5, § 3.

24 35. Plaintiff and Class Members have also regularly worked in excess of five hours a
25 day without being afforded at least a half-hour meal period in which they were relieved of all
26 duties, as required by California Labor Code §§ 226.7 and 512 and IWC Wage Order No. 5, § 11.
27 Plaintiff is informed and believes, and on that basis alleges, that Defendants have never paid the
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1 one hour of compensation as a premium payment to any Class Member pursuant to California
2 Labor Code § 226.7 for not providing proper meal periods.

3 36. Defendants had an implied contract with Plaintiff and Class Members to remit to
4 them the total proceeds of all gratuities and wages owed.

5 37. By the conduct alleged above, Defendants breached an implied agreement with
6 Plaintiff and Class Members to pay them their agreed-upon contract rate for all hours worked as
7 understood and required under California state laws. Defendants' failure to perform its part of the
8 contract by collecting and receiving a portion of Plaintiff and Class Members' tips is unjustified
9 and constitutes a breach of contract.

10 38. As a direct and proximate result of Defendants' unlawful conduct, as set forth
11 herein, Plaintiff and the Class Members have sustained damages, including loss of earnings paid
12 at the agreed-upon rate for hours worked on behalf of Defendants, in an amount to be established
13 at trial, plus prejudgment interest pursuant to statute.

14 **THIRD CAUSE OF ACTION**
15 **UNLAWFUL WITHHOLDING AND RECEIPT OF EARNED WAGES**
16 **(CALIFORNIA LABOR CODE § 221 AND WAGE ORDER NO. 5)**
17 **(ON BEHALF OF PLAINTIFF AND CLASS MEMBERS)**

18 39. The allegations of each of the preceding paragraphs are re-alleged and
19 incorporated herein by reference, and Plaintiff alleges as follows a claim of relief on behalf of
20 herself and all Class Members.

21 40. California Labor Code § 221 makes it unlawful for an employer to collect or
22 receive from an employee any part of wages paid to the employee.

23 41. IWC Wage Order No. 5, § 8 states that no employer shall make any deduction
24 from the wage or require any reimbursement from an employee for any cash shortage, breakage,
25 or loss of equipment, unless it can be show that the shortage, breakage, or loss is caused by
26 dishonest or willful act, or by the gross negligence of the employee.

27 42. Defendants' policy and practice of collecting fees and/or and deducting from
28 Plaintiff's and Class Members' compensation a portion of their tips violates the sections of the
California Labor Code and applicable Wage Order referenced above.

43. As a result, Plaintiff and Class Members are entitled to a return of the monies paid as well as interest that has accrued, reasonable attorneys' fees, and costs.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(CALIFORNIA LABOR CODE §§ 226.7, 512, IWC WAGE ORDER NO. 5)
(ON BEHALF OF PLAINTIFF AND CLASS MEMBERS)

44. The allegations of each of the preceding paragraphs are re-alleged and incorporated herein by reference, and Plaintiff alleges as follows a claim of relief on behalf of herself and all Class Members.

45. Plaintiff and Class Members have regularly worked in excess of five hours a day without being afforded at least a half-hour meal period in which they were relived of all duties, as required by California Labor Code §§ 226.7 and 512 and IWC Wage Order No. 5, § 11.

46. By failing to consistently provide Plaintiff and Class Members an uninterrupted, thirty-minute meal period within the first five hours of work each day, Defendants violated the California Labor Code and applicable IWC Wage Order provisions.

47. Plaintiff is informed and believes, and on that basis alleges, that Defendants have never paid the one hour of compensation as a premium payment to any Class Member pursuant to California Labor Code § 226.7 for not providing proper meal periods. As a direct and proximate result of Defendants' unlawful conduct as set forth herein, Plaintiff and Class Members have sustained damages, including loss of compensation resulting from missed meal periods, in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
(CALIFORNIA LABOR CODE §§ 226.7, IWC WAGE ORDER NO. 5)
(ON BEHALF OF PLAINTIFF AND CLASS MEMBERS)

48. The allegations of each of the preceding paragraphs are re-alleged and incorporated herein by reference, and Plaintiff alleges as follows a claim of relief on behalf of themselves and all proposed Class Members.

1 49. At all relevant times, Defendant was aware of, and under a duty to comply with,
2 California Labor Code § 226.7.

3 50. At all times herein relevant, California Labor Code § 226.7 has applied and
4 continues to apply to Plaintiff's and Class Members' employment with Defendant. California
5 Labor Code § 226.7 states "no employer shall require any employee to work during any meal or
6 rest period mandated by an applicable order of the Industrial Welfare Commission."

7 51. Section 12 of Wage Order No. 5-2001 provides in relevant part that:

8 (A) Every employer shall authorize and permit all employees to take rest periods,
9 which insofar as practicable shall be in the middle of each work period. The
10 authorized rest period time shall be based on the total hours worked daily at the
11 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
12 However, a rest period need not be authorized for employees whose total daily
work time is less than three and one-half (3 ½) hours. Authorized rest period time
shall be counted, as hours worked, for which there shall be no deduction from
wages.

13 52. If an employer fails to provide an employee a rest period in accordance with the
14 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
15 employee's regular rate of compensation for each work day that the rest period is not provided.

16 53. Defendant did not authorize or permit Plaintiff and other Class Members to take
17 rest breaks as required by California law. Plaintiffs and California Class Members regularly
18 worked a full work day but were denied a rest period every four hours or major fraction thereof.

19 54. Defendant failed to authorize and permit Plaintiff and Class Members to take
20 adequate rest periods as required by law. Plaintiffs and California Class Members are therefore
21 entitled to payment of additional wages as provided by law.

22 **SIXTH CAUSE OF ACTION**
23 **WAITING TIME PENALTIES**
24 **(CALIFORNIA LABOR CODE §§ 201, 202, 203)**
25 **(ON BEHALF OF PLAINTIFF AND CLASS MEMBERS WHO HAVE TERMINATED**
26 **EMPLOYMENT WITH DEFENDANTS)**

27 55. The allegations of each of the preceding paragraphs are re-alleged and
28 incorporated herein by reference, and Plaintiff alleges as follows a claim of relief on behalf of
herself and all Class Members who have terminated employment with Defendants.

1 56. California Labor Code § 201 states that an employer is required to provide an
2 employee who is terminated all accrued wages and compensation at the time of termination.

3 57. California Labor Code § 202 states that an employer is required to provide an
4 employee who resigns all unpaid wages within 72 hours of their resignation, or upon resignation
5 if the employee has provided at least 72 hours' notice.

6 58. California Labor Code § 203 states that if an employer willfully fails to pay
7 compensation promptly upon discharge, as required by § 201 and § 202, then the employer is
8 liable for waiting time penalties equivalent to the employee's daily wage, for a maximum of 30
9 days.

10 59. Plaintiff and numerous Class Members who were employed by Defendants during
11 the Class Period have resigned or were terminated. Upon resignation or termination, however,
12 they were not paid all wages due within the statutory time period. Defendants willfully failed and
13 refused to pay timely compensation and wages for, among other things, unpaid overtime, unpaid
14 meal periods, and unpaid tips.

15 60. As a direct and proximate result of Defendants' willful conduct in failing to pay
16 Plaintiff and former employee Class Members for all hours worked, Plaintiff and affected
17 members of the Class are entitled to recover "waiting time" penalties of up to thirty (30) days'
18 wages pursuant to § 203, with interest thereon, and reasonable attorneys' fees and costs.

19 **SEVENTH CAUSE OF ACTION**
20 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**
21 **(CALIFORNIA LABOR CODE § 226 & IWC WAGE ORDER NO. 5)**
 (ON BEHALF OF PLAINTIFF AND CLASS MEMBERS)

22 61. The allegations of each of the preceding paragraphs are re-alleged and
23 incorporated herein by reference, and Plaintiff alleges as follows a claim of relief on behalf of
24 herself and all Class Members.

25 62. Pursuant to California Labor Code § 226(a) and IWC Wage Order No. 5,
26 Defendants have at all relevant times been required, semimonthly or at the time of each payment
27 of wages, to furnish Plaintiff and Class Members accurate, itemized written statements containing
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1 all the information described in § 226 and Wage Order No. 5, § 7, including, but not limited to,
2 the total hours worked by the employees.

3 63. Defendants have knowingly and intentionally failed to comply with § 226 by
4 knowingly and intentionally failing to furnish Plaintiff and Class Members with accurate,
5 itemized written statements showing their actual and total hours worked, including all overtime
6 hours.

7 64. Defendants failed to accurately show the amount of tip income that was paid to
8 Plaintiff and Class Members and, as a result, failed to show the proper amount of taxes that
9 should have been withheld from Plaintiff's and Class Members' compensation.

10 65. Defendants also failed to accurately record meal periods as detailed above, to pay
11 meal and rest period premium wages for missed meal and rest periods, and to report those meal
12 period premium payments on wage statements.

13 66. Under California Labor Code § 226(e), an employee suffering injury as a result of
14 knowing and intentional failure of an employer to comply with § 226(a) is entitled to recover the
15 greater of all actual damages or fifty (\$50) for the initial pay period in which a violation occurs
16 and one hundred dollars (\$100) for each violation in a subsequent pay period, up to a maximum
17 amount of \$4,000.

18 67. In addition, upon information and belief, and in violation of IWC Wage Order No.
19 5, Defendants failed to keep the required payroll records showing the actual hours worked each
20 day by Plaintiff and Class Members. As a direct and proximate result of Defendants' actions,
21 Plaintiff and Class Members have suffered economic harm as they have been precluded from
22 accurately monitoring the number of hours worked and thus seeking all accrued overtime pay.

23 68. As a direct and proximate result of Defendants' unlawful conduct as set forth
24 herein, Plaintiff and Class Members have been injured by not receiving the information required
25 by California Labor Code § 226(a), not being paid their overtime hours, not having records
26 showing their total hours worked, not being able to ascertain from their wage statements whether
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1 or how they have been lawfully compensated for all hours worked, among other things, in an
2 amount to be determined at trial.

3 69. Plaintiff and Class Members may recover damages and penalties provided for
4 under California Labor Code § 226(e), plus interest thereon, reasonable attorneys' fees, and costs.

5 **EIGHTH CAUSE OF ACTION**
6 **VIOLATIONS OF THE UNFAIR COMPETITION LAW (UCL)**
7 **(CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200-09)**
8 **(ON BEHALF OF PLAINTIFF AND CLASS MEMBERS)**

9 70. The allegations of each of the preceding paragraphs are re-alleged and
10 incorporated herein by reference, and Plaintiff alleges as follows a claim of relief on behalf of
11 herself and all Class Members.

12 71. California Business & Professions Code § 17200, *et seq.* ("UCL") prohibits
13 "unfair competition" in the form of any unlawful, unfair, or fraudulent business act or practice.

14 72. Beginning at an exact date unknown to Plaintiff but within four years preceding
15 the filing of this action, Defendants have engaged in unfair competition as defined by the UCL
16 by, and as further described above: (1) failing to pay overtime compensation to Plaintiff and
17 similarly situated Class Members in violation of California Labor Code §§ 510, 1194 *et seq.*, and
18 IWC Wage Order No. 5, § 3; (2) unlawfully collecting or receiving wages from Plaintiff and
19 Class Members in violation of Labor Code § 221 and IWC Wage Order No. 5; (3) failing and
20 refusing to provide meal and rest periods to Plaintiff and similarly situated Class Members in
21 violation of California Labor Code §§ 226.7 and 512 and IWC Wage Order No. 5; and (4) failing
22 to provide complete and accurate itemized wage statements in violation of California Labor Code
23 §§ 226 & 1174 and IWC Wage Order No. 5.

24 73. California Labor Code Section § 351 states as follows: "No employer or agent
25 shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an
26 employee by a patron, or deduct any amount from wages due an employee on account of a
27 gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and
28 as a part of the wages due the employee from the employer."

1 74. Beginning at an exact date unknown to Plaintiff but within four years preceding
2 the filing of this action, Defendants has engaged in unfair competition as defined by the UCL by
3 unlawfully collecting and receiving a portion of Plaintiff and Class Members' gratuity.

4 75. Defendants' knowing failure to adopt policies in accordance with and/or to adhere
5 to these laws, all of which are binding upon and burdensome to its competitors, engenders an
6 unfair competitive advantage to Defendants thereby constituting an unfair business practice under
7 California Business & Professions Code §§ 17200-17208. Plaintiff and Class Members have
8 suffered injury in fact and have lost money as a direct and proximate result of Defendants' unfair
9 competition, including, but not limited to, money due to them as overtime compensation,
10 unlawful collection or receipt of wages, compensation for missed meal periods, and waiting time
11 penalties, which money has been acquired by Defendants by means of their unfair competition
12 within the meaning of the UCL.

13 76. Pursuant to California Business & Professions Code §§ 17200 *et seq.*, Plaintiff and
14 Class Members are entitled to (i) restitution of all wages and compensation alleged herein that
15 Defendants withheld and retained during the period commencing four years preceding the filing
16 of this action, (ii) an award of reasonable attorneys' fees pursuant to Cal. Civ. Proc. Code §
17 1021.5 and other applicable law, and (iii) an award of costs. All remedies are cumulative
18 pursuant to California Business & Professions Code § 17205.

19 **NINTH CAUSE OF ACTION**
20 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
21 **(ON BEHALF OF PLAINTIFF)**

22 77. The allegations of each of the preceding paragraphs are re-alleged and
23 incorporated herein by reference, and Plaintiff alleges as follows a claim of relief on behalf of
24 herself.

25 78. On information and belief, Defendants terminated Plaintiff because she
26 complained about Defendants' unlawful nonpayment of all overtime wages and unlawful
27 withholding and reporting of tips.
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1 79. Plaintiff's objection to Defendants' nonpayment of all overtime wages and
2 improper reporting of her tips—which Plaintiff reasonably and in good faith believed was
3 unlawful—motivated in whole or in part the decision to terminate Plaintiff's employment. As
4 such, the termination was in retaliation for Plaintiff complaints and contravened fundamental
5 public policy.

6 80. In taking these actions, Defendants acted with malice, fraud, and oppression, and
7 in reckless disregard of Plaintiff's rights.

8 81. As a direct and proximate result of the unlawful conduct by Defendants, Plaintiff
9 suffered damages and continues to suffer damages, including but not limited to economic injury
10 and loss, emotional distress, and the loss of her employment and the damages she incurred as a
11 result. Plaintiff seeks relief from Defendants as set forth below in her prayer for relief.

12 **TENTH CAUSE OF ACTION**
13 **CIVIL PENALTIES UNDER LABOR CODE PRIVATE ATTORNEY**
14 **GENERAL ACT**
 (CALIFORNIA LABOR CODE §2698 ET SEQ.)
 (ON BEHALF OF PLAINTIFF AS A REPRESENTATIVE ACTION)

15 82. The allegations of each of the preceding paragraphs are re-alleged and
16 incorporated herein by reference, and Plaintiff alleges as follows a claim of relief on behalf of
17 herself and all similarly aggrieved employees.

18 83. Plaintiff Elias, as an aggrieved employee, brings a claim under California Labor
19 Code §§ 2698-2699 in a representative capacity on behalf of current and former hourly
20 employees of Defendants subjected to the unlawful wage and hour practices alleged herein.

21 84. The California Labor Code Private Attorneys General Act of 2004 ("PAGA"),
22 California Labor Code § 2698 *et seq.*, grants California employees the right to bring a civil action
23 for the violation of any provision of the Labor Code on behalf of themselves and other current or
24 former employees in order to recover civil penalties. PAGA is intended to assist in the
25 achievement of maximum compliance with state labor laws by empowering aggrieved employees
26 to act as private attorneys general in order to recover civil penalties for Labor Code violations that
27 would otherwise be prosecuted by the state. *See Arias v. Super. Ct.* (2009) 46 Cal. 4th 969, 980.
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1 85. PAGA permits an aggrieved employee to collect the civil penalty authorized by
2 law and normally collectible by the California Labor and Workforce Development Agency. To
3 address violations for which no penalty has been established, § 2699(f) creates a private right of
4 action for aggrieved employees and a default penalty in the amount of \$100 for each aggrieved
5 employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay
6 period for each subsequent violation. *See* Cal. Lab. Code § 2699(f).

7 86. Plaintiff Elias hereby seeks to collect these civil penalties for the Labor Code
8 violations described above, including:

9 87. Under California Labor Code § 558, civil penalties of fifty dollars (\$50) for
10 Plaintiff and each aggrieved employee per pay period for the initial violation of Labor Code § 558
11 where Plaintiff and aggrieved employees were not paid appropriate overtime premiums under
12 Labor Code §§ 510, 1194 and IWC Wage Order No. 5, § 3, as alleged herein, in addition to an
13 amount sufficient to recover underpaid wages; and for each subsequent violation, one hundred
14 dollars (\$100) for each underpaid aggrieved employee for each pay period for which the
15 employee was underpaid under §§ 510, 1194 and IWC Wage Order No. 5, § 3.

16 88. Under California Labor Code § 2699(f)(2), a civil penalty of one hundred dollars
17 (\$100) for Plaintiff and each aggrieved employee per pay period for the initial violation of Labor
18 Code § 226.7, 512, and IWC Wage Order No. 5, §§11 and 12, for failing to provide meal and rest
19 periods, and two hundred dollars (\$200) for Plaintiff and each aggrieved employee per pay period
20 for each subsequent violation of Labor Code § 226.7 for failing to provide meal and rest periods,
21 as alleged herein.

22 89. Under California Labor Code § 226.3, which provides for civil penalties for
23 violations of California Labor Code § 226(a), a civil penalty of two hundred fifty dollars (\$250)
24 for Plaintiff and each aggrieved employee for the first violation, and one thousand dollars
25 (\$1,000) for Plaintiff and each aggrieved employee for each subsequent violation of Labor Code §
26 226(a) for failure to provide timely, accurate, itemized wage statements, as alleged herein.

1 C. That Defendants are found to have breached their implied contracts with
2 Plaintiff and the Class by failing to pay them at the agreed-upon contract rate for all of their hours
3 worked;

4 D. That Defendants are found to have violated the record-keeping provisions
5 of California Labor Code §§ 1174(d) and 226 as to Plaintiff and the Class Members;

6 E. That Defendants are found to have violated California Labor Code § 221 &
7 IWC Wage Order No. 5 by unlawfully collecting and deducting wages from Plaintiff and Class
8 Members;

9 F. That Defendants are found to have violated California Labor Code § 226.7
10 by not authorizing and providing adequate meal and rest breaks to Plaintiff and the Class;

11 G. That Defendants are found to have violated California's Business and
12 Professions Code § 17200 as to Plaintiff and the Class by failing to pay Plaintiff and members of
13 the California Class for all hours worked, failing to keep timely, accurate, itemized records of all
14 hours worked, collecting and receiving Plaintiff and Class Members' gratuity, and failing to
15 provide and authorize adequate meal and rest breaks to Plaintiff and the Class;

16 H. That Plaintiff and the Class be awarded damages for the amount of unpaid
17 compensation, including interest thereon, liquidated damages, and all penalties to which Plaintiff
18 and Class Members are entitled, subject to proof at trial;

19 I. An award to Plaintiff and the Class Members of reasonable attorneys' fees
20 and costs, pursuant to California Code of Civil Procedure § 1021.5, California Labor Code §§
21 226(e), 1194, 2699(g) and/or other applicable law;

22 J. That Defendants be ordered to pay restitution to Plaintiff and the Class due
23 to Defendants' unlawful activities, pursuant to California's Business and Professions Code
24 §§ 17200-05;

25 K. An award to Plaintiff of PAGA civil penalties under Labor Code § 2699, *et*
26 *seq.*, subject to proof;

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1 L. An award of general damages, including emotional distress; special
2 damages, including lost wages and benefits of employment, and other economic and incidental
3 damages; and an award of punitive damages for Defendants' violation of public policy for
4 terminating Plaintiff for reporting Defendants' unlawful activity;

5 M. An award of such other and further relief as this Court may deem
6 appropriate.

7
8 Dated: October 23, 2015

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18 *Attorneys for Plaintiff and the Proposed Class*

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff, on behalf of herself and all others similarly situated, hereby requests a jury trial
21 on the claims so triable.

1 Dated: October 23, 2015

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2
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