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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CGC-20-582158

12 KHALID LAHLOU, individually, on behalf
13 of all others similarly situated, and as a
14 representative aggrieved employee, and
15 DAVINA LIVARES, individually and on
16 behalf of all others similarly situated,
17
18 Plaintiffs,
19
20 v.
21 BOBOQUIVARIS LLC, d/b/a Bobo's
22 Restaurant, aka Bobo's, aka Bobo's
23 Steakhouse, and d/b/a Bobo's Burger Bar;
24 ANDREA FRONCILLO; and DOES 1 to 30,
25
26 Defendants.

Case No:
**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE CALIFORNIA
LABOR CODE, UNFAIR
COMPETITION LAW AND RELATED
CAUSES OF ACTION**

DEMAND FOR JURY TRIAL

BY FAX

23 Plaintiffs Khalid Lahlou and Davina Livares ("Plaintiffs"), individually and on behalf of
24 all others similarly situated, allege as follows:

I. INTRODUCTION

26 1. This is a class action under the California Labor Code for wage and hour
27 violations and a representative action under the California Labor Code Private Attorney General
28 Act of 2004 ("PAGA") brought against Boboquivaris, LLC – doing business as Bobo's

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1 Restaurant, Bobo’s, Bobo’s Steakhouse, and Bobo’s Burger Bar (the “Bobo’s Restaurants”) –
2 and Andrea Froncillo, the owner and operator of the Bobo’s Restaurants, and Does 1 through 30
3 (together, “Defendants”). Froncillo and his company own and operate two related restaurants in
4 San Francisco, Bobo’s (an upscale steakhouse) and Bobo’s Burger Bar. Plaintiff Khalid Lahlou
5 worked as a server at Bobo’s from on or about June 2018 to September 2019 and Plaintiff
6 Davina Livares worked as a hostess at Bobo’s and as a cocktail waitress and server at Bobo’s
7 Burger Bar from on or about August 2018 to August 2019. Plaintiffs bring this action
8 individually, on behalf of all other similarly situated employees employed at Bobo’s
9 Restaurants, and Mr. Lahlou also brings this action as a representative aggrieved employee.

10 2. Defendants did not want to pay premium wages (for missed meal and rest breaks)
11 to the Bobo’s Restaurant employees. But instead of simply permitting their employees to take
12 meal and rest breaks or paying premium pay when they were not able to take those breaks,
13 Defendants achieved their goal by ignoring their employees’ time records and/or forcing them to
14 sign false waivers and assuming that all employees always were able to take their meal and rest
15 breaks when they knew this was not true.

16 3. In addition to denying their employees proper meal and rest breaks, Defendants
17 engaged in numerous other Labor Code violations, including engaging in false recordkeeping
18 practices.

19 4. Plaintiffs allege that Defendants have engaged – and continue to engage – in a
20 pattern of violations of paragraphs 4, 11, and 12 of IWC Wage Order 5-2001 and of numerous
21 Labor Code sections, including 201, 202, 203, 204, 206, 221, 223, 226, 226.7, 512, 558, 1194,
22 and 1198. In addition to damages, Plaintiff Lahlou, as a representative of all current and former
23 aggrieved employees, also seeks civil penalties under PAGA against Defendants for these
24 violations.

25 **II. THE PARTIES**

26 5. Plaintiff Khalid Lahlou is a resident of Novato, California. He was employed by
27 Defendants at Bobo’s in San Francisco as a server from on or about June 2018 to September
28 2019.

1 6. Plaintiff Davina Livares is a resident of San Francisco, California. She was
2 employed by Defendants at Bobo’s as a hostess and Bobo’s Burger Bar as a cocktail waitress
3 and server from on or about August 2018 to August 2019.

4 7. Defendant Boboquivaris LLC, Inc. is, on information and belief, a California
5 limited liability company, which does business in California as Bobo’s, Bobo’s Restaurant,
6 Bobo’s Steakhouse, and Bobo’s Burger Bar.

7 8. Defendant Andrea Froncillo, is, on information and belief, the sole manager,
8 member, and owner of Boboquivaris LLC and a resident of San Francisco, California. On
9 information and belief, Bobo’s and Bobo’s Burger Bar is owned and operated by Andrea
10 Froncillo through Boboquivaris LLC.

11 9. Defendants own and/or operate two restaurants in San Francisco, California:
12 Bobo’s (aka Bobo’s Restaurant or Bobo’s Steakhouse) and Bobo’s Burger Bar (the “Bobo’s
13 Restaurants”). Bobo’s is located at 1450 Lombard Street, San Francisco, California 94123 and
14 Bobo’s Burger Bar is located down the street at 1434 Lombard Street, San Francisco, California
15 94123.

16 10. The true names or capacities, whether individual, corporate, associate, or
17 otherwise of Defendants Does 1 to 30, inclusive, being unknown, Plaintiffs assert their claims
18 against these Defendants under fictitious names pursuant to California Code of Civil Procedure
19 § 474.

20 11. Plaintiffs will amend their Complaint to allege such Doe Defendants’ true names
21 and capacities once they are ascertained.

22 12. Plaintiffs are informed and believes, and thereon alleges, that each Defendant
23 named in this Complaint, and each Doe Defendant, is in some manner responsible for the
24 wrongs and damages alleged below, and in so acting was functioning as the joint employer of
25 Plaintiffs, Class Members, and the aggrieved employees, and/or as the agent, servant, partner,
26 alter ego and/or employee of the other Defendants, and in doing the actions described below,
27 was acting within the course and scope of its authority as such joint employer, agent, servant,
28 partner, and/or employee with the permission and consent of each of the other Defendants.

1 Defendants and all of their subsidiaries, agents, servants, partners, and/or alter egos further
2 comprise a single enterprise. All acts herein alleged were approved of and ratified by the other
3 Defendants.

4 **III. FACTUAL ALLEGATIONS**

5 13. Defendants employ numerous individuals in the Restaurants in hourly, non-
6 exempt positions including (a) servers; (b) cocktail waitresses; (c) hostesses; (d) bartenders; (e)
7 cooks; and (f) bussers.

8 14. Defendant Boboquivaris LLC and Defendant Andrea Froncillo are joint
9 employers of each of the employees of the Restaurants, including Plaintiffs, Class Members, and
10 aggrieved employees. On information and belief, the Restaurants were and are owned, operated,
11 and controlled directly or indirectly by Defendants Boboquivaris LLC and Defendant Andrea
12 Froncillo. Defendants Boboquivaris LLC and Defendant Andrea Froncillo exercise control over
13 the wages, hours and working conditions of all Restaurant employees and suffer or permit them
14 to work there.

15 15. Defendant Boboquivaris LLC and its managing member Andrea Froncillo and
16 the Bobo's and Bobo's Burger Bar Restaurants constitute a single enterprise. For instance,
17 Bobo's website (<https://www.boboquivaris.com/>) links to Bobo's Burger Bar's website
18 (<http://www.bobosburgerbar.com/>) , each website lists the contact email address as
19 reservations@boboquivaris.com, and individuals like Davina Livares who worked for both
20 Restaurants received a paycheck from Boboquivaris LLC no matter the location they worked.

21 **DEFENDANTS' UNLAWFUL POLICY DESIGNED TO AVOID PAYING**

22 **PREMIUM PAY AND OVERTIME**

23 16. Defendants' custom, policy and practice has at all relevant times been not to pay
24 premium pay to its employees when they have not been provided meal and rest periods.

25 17. Under this policy, all non-exempt employees were just assumed to have taken
26 their meal and rest breaks regardless of what their time records actually said or whether they
27 actually were able to take a meal or rest period.
28

1 18. Defendants took no action to actually provide compliant meal breaks, such as to
2 provide scheduling that would allow employees to take compliant meal breaks, and instead
3 required or suffered employees to continue working through what should have been their breaks
4 without paying premium pay.

5 19. Even on the occasions when Plaintiffs and the other Restaurant employees were
6 able to take some sort of break, the breaks were generally not provided within the first five hours
7 of work and were not “off-duty.” Rather, the breaks that were taken were either untimely, not
8 30 minutes long, or were not “off-duty.” Plaintiffs were often required to perform job duties
9 during these purported breaks. On information and belief, some employee time records were
10 altered to reflect that meal breaks were taken, when they were not.

11 20. At all times relevant hereto, rest breaks were not provided to Plaintiffs and the
12 other Restaurant employees. Defendants were aware that employees were, more often than not,
13 too busy with customers to take rest breaks and took no action to provide scheduling that could
14 make it possible for employees to take them.

15 21. In addition, all employees are entitled to compensation for any and all time spent
16 working off-the-clock, for time they were forced to clock in and out for meal breaks they did not
17 take and/or for time which was deducted after the fact to make it appear as if Plaintiffs and Class
18 Members were taking code-compliant meal breaks.

19 22. Defendants failed to pay all earned wages (including premium pay for missed
20 meal and rest breaks, and any time that was deducted for meal breaks which were not taken) at
21 the time of termination or within 72 hours of resignation in violation of Labor Code sections
22 201, 202, 203, and 206. Plaintiffs’, Class Members’, and aggrieved employees’ earned wages
23 were not timely paid in full following their separation from Defendants.

24 23. Defendants failed to pay all earned wages (including premium pay for missed
25 meal and rest breaks, and any time that was deducted for meal breaks which were not taken) at
26 least twice a month in violation of Labor Code section 204.

27 24. Defendants failed to provide accurate, itemized statements of hours worked,
28 wages, and deductions in violation of the Wage Order and Labor Code section 226. Wage

1 statements did not reflect premium pay owed to the employees for missed meal and rest breaks
2 and to the extent time was deducted for missed meal breaks for those hours worked and payment
3 owed, it too was not reflected in employees' wage statements.

4 25. On information and belief, Defendants' practices are ongoing.

5 **IV. FACTS SPECIFIC TO PLAINTIFFS**

6 **Khalid Lahlou**

7 26. Plaintiff Khalid Lahlou was employed by Defendants at Bobo's as a server from
8 on or about June 2018 to September 2019.

9 27. Mr. Lahlou was paid hourly minimum wage plus tips at all relevant times.

10 28. Mr. Lahlou generally worked six- to eight-hour days at Bobo's.

11 29. Mr. Lahlou was never provided a 30-minute, off-duty meal break within his first
12 five hours of work. He was never paid premium pay for his missed, late, or interrupted meal
13 breaks.

14 30. Mr. Lahlou was never provided a 10-minute rest break for each four hours
15 worked, or major fraction thereof. He was never paid premium pay for missed rest breaks.

16 31. When Mr. Lahlou resigned his employment with Defendants, Defendants failed
17 to pay all earned wages (including premium pay for missed meal and rest breaks) within 72
18 hours of resignation in violation of Labor Code sections 201, 202, 203, and 206.

19 32. Defendants failed to pay Mr. Lahlou all earned wages (including premium pay
20 for missed meal and rest breaks) at least twice a month in violation of Labor Code section 204.

21 33. Defendants failed to provide accurate, itemized statements of hours worked,
22 wages, and deductions in violation of Wage Order Paragraph 7 and Labor Code section 226 to
23 Mr. Lahlou. As described above, the wage statements did not reflect premium pay owed to him
24 for missed meal and rest breaks.

25 **Davina Linares**

26 34. Plaintiff Davina Linares was employed by Defendants at Bobo's as a hostess and
27 Bobo's Burger Bar as a cocktail waitress and server from on or about August 2018 to August
28 2019.

1 bartenders; cooks; and bussers (the “Class” or “Class Members”). Plaintiffs reserve the right to
2 name additional class representatives and to identify subclasses as necessary and appropriate.

3 44. The Class Period is defined as the period commencing on the date that is within
4 four (4) years prior to the filing of this complaint and ending at the time this action proceeds to
5 final judgment or settles (the “Class Period”).

6 45. Subject to additional information obtained through further investigation and
7 discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or
8 amended complaint. Defendants, their subsidiaries, their officers, directors, managing agents
9 and members of those persons’ immediate families, the Court, Court personnel, and legal
10 representatives, heirs, successors or assigns of any excluded person or entity are excluded from
11 the Class.

12 46. **Numerosity.** The Class for whose benefit this action is brought is so numerous
13 that joinder of all Class Members is impracticable. While Plaintiffs do not presently know the
14 exact number of Class Members, Plaintiffs are informed and believe that there are over 200
15 Class Members, and that those Class Members can be readily determined and identified through
16 Defendants’ files and, if necessary, appropriate discovery.

17 47. **Typicality.** Plaintiffs’ claims are typical of the claims of the members of the
18 Class. Plaintiffs, like all Class Members, were victims of wage theft by Defendants resulting
19 from the same customs, practices, and policies. Furthermore, the factual bases of Defendants’
20 misconduct are common to all Class Members and represent a common thread of unfair and/or
21 unlawful conduct resulting in injury to all members of the Class.

22 48. **Commonality.** Common questions of law and fact exist as to all members of the
23 Class and predominate over any questions solely affecting individual members. Issues of law
24 and fact common to the Class include:

- 25 (a) Whether Defendants are joint employers of the Class Members;
26 (b) Whether Defendants are the alter ego of one another;
27 (c) Whether Defendants constitute a single enterprise;
28

- 1 (d) Whether Defendants had a common policy of zero tolerance for premium
2 pay;
- 3 (e) Whether Defendants violated the California Labor Code by failing to
4 provide Class Members with timely meal breaks;
- 5 (f) Whether Defendants violated the California Labor Code by failing to
6 provide Class Members with timely rest breaks;
- 7 (g) Whether Defendants violated the California Labor Code by failing to pay
8 Class Members premium pay for non-provided or untimely provided meal breaks or for non-
9 provided rest breaks;
- 10 (h) Whether Defendants violated the California Labor Code by failing to pay
11 for all time worked;
- 12 (i) Whether Defendants violated the California Labor Code by failing to pay
13 all earned wages at the time of Class Members' termination or within 72 hours of their
14 resignation;
- 15 (j) Whether Defendants violated the California Labor Code by failing to pay
16 Class Members all earned wages for the pay period in which the work was done;
- 17 (k) Whether Defendants violated the California Labor Code by failing to keep
18 accurate records of the time worked by Class Members and by failing to provide accurate
19 itemized statements of earnings;
- 20 (l) Whether Defendants by way of the conduct alleged herein, engaged in
21 unfair acts or practices in violation of California unfair competition practices laws including, but
22 not limited to, California Business & Professions Code § 17200 *et seq.*, for which Class
23 Members are entitled to recover;
- 24 (m) Whether Class Members have been damaged by Defendants' actions or
25 conduct; and
- 26 (n) Whether declaratory and injunctive relief are appropriate to curtail
27 Defendants' conduct as alleged herein.
28

1 49. **Adequacy.** Plaintiffs will fairly and adequately represent the interests of the
2 Class and have no interests adverse to or in conflict with other Class Members. Plaintiffs’
3 retained counsel will vigorously prosecute this case, have previously been designated class
4 counsel in cases in the State and Federal courts of California, and are highly experienced in
5 employment law, class and complex, multi-party litigation.

6 50. **Superiority.** A class action is superior to other available methods for the fair and
7 efficient adjudication of this controversy since, among other things, joinder of all Class
8 Members is impracticable and a class action will reduce the risk of inconsistent adjudications or
9 repeated litigation on the same conduct. Further, the expense and burden of individual lawsuits
10 would make it virtually impossible for Class Members, Defendants, or the Court to cost-
11 effectively redress separately the unlawful conduct alleged. Thus, absent a class action,
12 Defendants would unjustly retain the benefits of their wrongdoings. Plaintiffs know of no
13 difficulties to be encountered in the management of this action that would preclude its
14 maintenance as a class action, either with or without subclasses.

15 51. Adequate notice can be given to Class Members directly using information
16 maintained in Defendants’ records, or through notice by publication.

17 52. Accordingly, class certification is appropriate under Code of Civil Procedure §
18 382.

19 **VI. CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL PERIODS**
22 Wage Orders ¶ 11; Cal. Lab. Code §§ 226.7, 512
 (Against All Defendants)

23 53. Plaintiffs incorporate by reference the above allegations as if fully set forth
24 herein, and further allege as follows:

25 54. California Labor Code § 512 provides, in pertinent part, as follows:

26 An employer may not employ an employee for a work period of more
27 than five hours per day without providing the employee with a meal
28 period of not less than 30 minutes, except that if the total work period per

1 day of the employee is no more than six hours, the meal period may be
2 waived by mutual consent of both the employer and employee. An
3 employer may not employ an employee for a work period of more than 10
4 hours per day without providing the employee with a second meal period
5 of not less than 30 minutes, except that if the total hours worked is no
6 more than 12 hours, the second meal period may be waived by mutual
7 consent of the employer and the employee only if the first meal period
8 was not waived.

9 55. Cal. Labor Code § 226.7(a) provides: “An employer shall not require an
10 employee to work during any meal . . . period mandated pursuant to an . . . order of the
11 Industrial Welfare Commission.”

12 56. Paragraph 11(A) of the Wage Order provides, in pertinent part, as follows:
13 “Unless the employee is relieved of all duty during a 30-minute meal period, the meal period
14 shall be considered an ‘on duty’ meal period and counted as time worked.”

15 57. As alleged herein, Plaintiffs and Class Members routinely and uniformly were
16 not provided with meal periods at all or in a timely fashion and instead were required to forego
17 the meal periods required to be provided to them.

18 58. By failing to provide Plaintiffs and Class Members with these meal periods,
19 Defendants, and each of them, violated California Labor Code sections 512 and 226.7, as well as
20 applicable provisions of the Wage Orders.

21 59. As a result of the unlawful acts of Defendants set forth herein, Plaintiffs and each
22 Class Member have been unfairly and illegally deprived of up to two meal periods per day and
23 are entitled to one additional hour of premium pay for each missed meal period.

24
25 **SECOND CAUSE OF ACTION**
26 **FAILURE TO PROVIDE REST PERIODS**
27 **Wage Orders ¶ 12; Cal. Lab. Code §§ 226.7, 512**
28 **(Against All Defendants)**

60. Plaintiffs incorporate by reference the above allegations as if fully set forth
herein, and further allege as follows:

61. Paragraph 12(A) of the Wage Order authorizes employees to take paid rest
periods based on the total hours worked daily at the rate of ten minutes rest per four hours or

1 major fraction thereof. It provides that rest periods “shall be counted as hours worked for which
2 there shall be no deduction from wages.”

3 62. Cal. Labor Code § 226.7(a) provides: “An employer shall not require an
4 employee to work during any . . . rest or recovery period mandated pursuant to an . . . order of
5 the Industrial Welfare Commission.”

6 63. Plaintiffs and Class Members routinely and uniformly were not provided with the
7 rest periods required to be provided to them, which amounted to a total of two to three rest
8 periods per day, depending upon the actual length of their workday.

9 64. By failing to provide Plaintiffs and Class Members with these rest periods,
10 Defendants, and each of them, violated Paragraph 12 of the Wage Orders and California Labor
11 Code section 226.7.

12 65. As a result of the unlawful acts of Defendants set forth herein, Plaintiffs and
13 Class Members have been unfairly and illegally deprived of up to three rest periods per day and
14 are entitled to one additional hour of premium pay for each missed rest period.

15 **THIRD CAUSE OF ACTION**
16 **FAILURE TO PAY FOR ALL HOURS WORKED**
17 **Wage Orders, ¶¶ 4(B), 11; Cal. Lab. Code §§ 221, 223**
(Against All Defendants)

18 66. Plaintiffs incorporate by reference the above allegations as if fully set forth
19 herein, and further allege as follows:

20 67. Paragraph 4(B) of the Wage Orders provides that all employers must “pay to
21 each employee, on the established payday for the period involved, not less than the applicable
22 minimum wage for all hours worked in the payroll period, whether the remuneration is
23 measured by time, piece, commission, or otherwise.”

24 68. On information and belief, Defendants suffered and permitted employees to work
25 off the clock without compensation on occasions in which work was performed while Plaintiffs
26 and Class Members were clocked out for meal breaks.

27
28

1 69. By their conduct described above, Defendants, and each of them, violated, *inter*
2 *alia*, Paragraph 4(B) and 11 of the Wage Orders and are therefore liable to Plaintiff and Class
3 Members for the damages caused.

4 70. As a result of the wrongful and unlawful acts of Defendants alleged herein,
5 Plaintiff and Class Members have been deprived of compensation in amounts to be determined,
6 and are entitled to recover said amounts according to proof, interest thereon, injunctive relief,
7 and attorneys' fees and costs.

8 **FOURTH CAUSE OF ACTION**
9 **FAILURE TO TIMELY PAY ALL EARNED WAGES**
10 **Cal. Lab. Code § 204**
11 **(Against All Defendants)**

12 71. Plaintiffs incorporate by reference the above allegations as if fully set forth
13 herein, and further allege as follows:

14 72. California Labor Code § 204 provides, in pertinent part, as follows: "All wages . .
15 . earned by any person in any employment are due and payable twice during each calendar
16 month. . ."

17 73. As alleged herein, Defendants knowingly and intentionally failed to provide
18 Plaintiffs and Class Members with premium pay for all missed and untimely meal and rest
19 breaks and payment for all hours worked within the time frame mandated by the California
20 Labor Code and thus violated Labor Code § 204.

21 **FIFTH CAUSE OF ACTION**
22 **WAITING TIME PAY**
23 **Cal. Lab. Code §§ 201-203, 206, 558.1**
24 **(Against All Defendants)**

25 74. Plaintiffs incorporate by reference the above allegations as if fully set forth
26 herein, and further allege as follows:

27 75. California Labor Code § 201(a) provides, in pertinent part, as follows: "If an
28 employer discharges an employee, the wages earned and unpaid at the time of discharge are due
and payable immediately."

1 76. California Labor Code § 202(a) provides, in pertinent part, as follows:

2 If an employee not having a written contract for a definite period quits his
3 or her employment, his or her wages shall become due and payable not
4 later than 72 hours thereafter, unless the employee has given 72 hours
5 previous notice of his or her intention to quit, in which case the employee
is entitled to his or her wages at the time of quitting.

6 77. California Labor Code § 206(a) provides, in pertinent part, as follows:

7 In case of a dispute over wages, the employer shall pay, without
8 condition, and within the time set by this article, all wages, or parts
thereof, conceded by him to be due, leaving to the employee all remedies
9 he might otherwise be entitled to as to any balance claimed.

10 78. California Labor Code § 203(a) states:

11 If an employer willfully fails to pay, without abatement or reduction, in
12 accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any
13 wages of an employee who is discharged or who quits, the wages of the
14 employee shall continue as a penalty from the due date thereof at the
same rate until paid or until an action therefor is commenced; but the
15 wages shall not continue for more than 30 days.

16 79. Where an employer willfully fails to pay, without abatement or reduction, in
17 accordance with sections 201 through 203 of the California Labor Code, all wages due to an
18 employee who has been discharged or has quit, California Labor Code section 203 entitles the
19 affected employee to receive from the employer a penalty of up to 30 days wages calculated
from the due date of the wages until the time an action to recover the wages is commenced.

20 80. As alleged herein, Defendants, and each of them, have failed to pay earned wages
21 (including but not limited to overtime compensation, premium pay for missed meal and rest
22 breaks, and uncompensated time) to Plaintiffs and Class Members who are former employees at
23 the time they became due and payable, and have thus violated sections 201, 202 and 206 of the
24 California Labor Code.

25 81. Defendants' failure to pay wages as alleged herein was willful in that Defendants
26 knew that Plaintiffs and Class Members were not receiving all of their earned compensation
27 because, *inter alia*, Defendants knowingly failed to provide Plaintiffs and Class Members with
28 meal and rest breaks and knowingly failed to pay premium pay for those missed meal and rest

1 breaks, failed to pay wages for all hours worked, and did not fully, fairly, and properly
2 compensate Plaintiffs and Class Members for said break periods.

3 82. It has been more than 30 days since the date of termination of Plaintiffs'
4 employment.

5 83. As a result of Defendants' willful and unlawful acts discussed herein, Plaintiffs
6 and Class Members who are no longer employed by Defendants are each entitled to recover,
7 pursuant to California Labor Code § 203, continuing wages as a penalty for a total of up to 30
8 days depending on date of termination of their employment.

9 **SIXTH CAUSE OF ACTION**
10 **STATUTORY PENALTIES FOR VIOLATION OF WAGE STATEMENT AND RECORD**
11 **KEEPING REQUIREMENTS**
12 **California Labor Code §§ 226, 226.3, 432, 558.1, 1198.5; Wage Orders ¶ 7**
13 **(Against All Defendants)**

14 84. Plaintiffs incorporate by reference the above allegations as if fully set forth
15 herein, and further allege as follows:

16 85. California Labor Code § 226(a) provides, in pertinent part, as follows:

17 Every employer shall, semimonthly or at the time of each payment of
18 wages, furnish each of his or her employees, either as a detachable part of
19 the check, draft, or voucher paying the employee's wages, or separately
20 when wages are paid by personal check or cash, an accurate itemized
21 statement in writing showing . . . gross wages earned, . . . total hours
22 worked by the employee . . . all deductions . . . and . . . all applicable
23 hourly rates in effect during the pay period and the corresponding number
24 of hours worked at each hourly rate by the employee.

25 (b) An employer that is required by this code or any regulation adopted
26 pursuant to this code to keep the information required by subdivision (a)
27 shall afford current and former employees the right to inspect or copy
28 records pertaining to their employment, upon reasonable request to the
employer. . .

(c) An employer who receives a written or oral request to inspect or copy
records pursuant to subdivision (b) pertaining to a current or former
employee shall comply with the request as soon as practicable, but no
later than 21 calendar days from the date of the request. A violation of
this subdivision is an infraction. . . .

1 86. California Labor Code § 432 provides: “If an employee or applicant signs any
2 instrument relating to the obtaining or holding of employment, [s]he shall be given a copy of the
3 instrument upon request.”

4 87. California Labor Code § 1198.5 provides, in pertinent part, as follows:

5 (a) Every current and former employee, or his or her representative, has
6 the right to inspect and receive a copy of the personnel records that the
7 employer maintains relating to the employee’s performance or to any
grievance concerning the employee.

8 (b)(1) The employer shall make the contents of those personnel records
9 available for inspection to the current or former employee, or his or her
10 representative, at reasonable intervals and at reasonable times, but not
11 later than 30 calendar days from the date the employer receives a written
request . . .

12 88. Paragraph 7 of the Wage Order provides additionally, in pertinent part, as
13 follows:

14 Every employer shall keep accurate information with respect to each
15 employee including the following:

16 * * *

17 (3) Time records showing when the employee begins and ends each work
18 period. Meal periods, split shift intervals and total daily hours worked
shall also be recorded. ...

19 (5) Total hours worked in the payroll period and applicable rates of pay.

20 * * *

21 Every employer shall semimonthly or at the time of each payment of
22 wages furnish each employee ... an itemized statement in writing
23 showing: (1) all deductions...

24 89. Defendants, and each of them, have violated the above Labor Code section and
25 the Wage Orders with respect to Plaintiffs and Class Members by failing to keep accurate time
26 records showing all hours worked, failing to provide accurate itemized statements of earnings
27 and the amounts lawfully deducted from wages, and failing to provide Plaintiffs’ and Class
28 Members’ personnel and payroll records upon request.

90. California Labor Code § 226(e)(1) provides as follows:

1 An employee suffering injury as a result of a knowing and intentional
2 failure by an employer to comply with subdivision (a) is entitled to
3 recover the greater of all actual damages or fifty dollars (\$50) for the
4 initial pay period in which a violation occurs and one hundred dollars
5 (\$100) per employee for each violation in a subsequent pay period, not to
6 exceed an aggregate penalty of four thousand dollars (\$4,000), and is
7 entitled to an award of costs and reasonable attorney's fees.

6 91. California Labor Code § 226(e)(2)(B) provides that “[a]n employee is deemed to
7 suffer injury for purposes of this subdivision if the employer fails to provide accurate and
8 complete information as required by ... subdivision (a) and the employee cannot promptly and
9 easily determine from the wage statement alone” the amount of gross wages or net wages paid,
10 the total hours worked, all deductions, and/or all applicable hourly rates in effect during the pay
11 period and the corresponding number of hours worked at each hourly rate.

12 92. California Labor Code § 226(h) provides, in pertinent part, as follows: “An
13 employee may also bring an action for injunctive relief to ensure compliance with this section,
14 and is entitled to an award of costs and reasonable attorney’s fees.”

15 93. In addition, Cal. Lab. Code § 226.3 further provides that an employer who
16 violates § 226(a) “shall be subject to a civil penalty in the amount of two hundred and fifty
17 dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)
18 per employee for each violation in a subsequent citation . . . The civil penalties provided for in
19 this section are in addition to any other penalty provided by law.”

20 94. California Labor Code § 1198.5(k) provides: “If an employer fails to permit a
21 current or former employee, or his or her representative, to inspect or copy personnel records
22 within the times specified in this section, or times agreed to by mutual agreement as provided in
23 this section, the current or former employee or the Labor Commissioner may recover a penalty
24 of seven hundred fifty dollars (\$750) from the employer.”

25 95. Defendants’ violations of the Labor Code section and the Wage Orders recited
26 above have been knowing and intentional. Among other things, Defendants knew that Plaintiffs
27 and Class Members were not receiving meal and rest breaks but never paid them premium pay
28 for those missed, late, or interrupted breaks.

1 * * *

2 (f) For all provisions of this code except those for which a civil penalty is
3 specifically provided, there is established a civil penalty for a violation of
4 these provisions, as follows:

5 * * *

6 (2) If, at the time of the alleged violation, the person employs one
7 or more employees, the civil penalty is one hundred dollars (\$100) for
8 each aggrieved employee per pay period for the initial violation and two
9 hundred dollars (\$200) for each aggrieved employee per pay period for
10 each subsequent violation.

11 * * *

12 (g)(1) ... Any employee who prevails in any action shall be entitled to an
13 award of reasonable attorney's fees and costs. Nothing in this part shall
14 operate to limit an employee's right to pursue or recover other remedies
15 available under state or federal law, either separately or concurrently with
16 an action taken under this part.

17 107. California Labor Code § 558 provides in pertinent part, as follows:

18 (a) Any employer or other person acting on behalf of an employer who
19 violates, or causes to be violated, a section of this chapter or any
20 provision regulating hours and days of work in any order of the Industrial
21 Welfare Commission shall be subject to a civil penalty as follows:

22 (1) For any initial violation, fifty dollars (\$50) for each underpaid
23 employee for each pay period for which the employee was underpaid in
24 addition to an amount sufficient to recover underpaid wages.

25 (2) For each subsequent violation, one hundred dollars (\$100) for
26 each underpaid employee for each pay period for which the employee was
27 underpaid in addition to an amount sufficient to recover underpaid wages.

28 . .

* * *

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

108. Plaintiff Lahlou is an aggrieved employee. He was employed by Defendants, and
each of them, and the violations alleged herein were committed against him. Plaintiff Lahlou
brings this action on behalf of himself, the State of California, and all other current and former

1 aggrieved employees. Aggrieved employees include Class Members and all others who suffered
2 at least one violation of the Labor Code.

3 109. At the time of each violation, Defendants employed one or more employees.

4 110. At all times, Defendants established and controlled their scheduling, rest break,
5 meal break, premium pay, payment for all hours worked, overtime, wage statement, waiting
6 time pay, and record keeping practices and policies. Defendants caused the violations alleged in
7 this Complaint, including of Cal. Lab. Code. §§ 201, 202, 203, 204, 206, 221, 223, 224, 226,
8 226.7, 512, 1194 *et seq.*, and 1198, and are liable for civil penalties under Labor Code sections
9 2699, 226.3, and 558.

10 111. As a result of the aforesaid wrongful and illegal conduct of Defendants, and each
11 of them, Plaintiff Lahlou and the aggrieved employees are entitled to civil penalties in an
12 amount to be determined at trial, pre-judgment interest, costs and attorneys' fees.

13 112. Plaintiff Lahlou has complied with all procedural requirements of Labor Code §
14 2699.3 prior to filing this Complaint. By letter dated November 6, 2019, submitted through the
15 Labor and Workforce Development Agency ("LWDA") portal and sent by certified mail,
16 Plaintiff Lahlou through his counsel notified the LWDA and Defendants of the specific
17 provisions of the Labor Code that Defendants have violated. The LWDA did not respond to his
18 notice of the alleged violations within the statutory timeframe, 60 calendar days of the postmark
19 date of the notice letter, and Plaintiff Lahlou has therefore exhausted his administrative
20 remedies. Pursuant to Labor Code § 2699.3, he is permitted to pursue his PAGA claims in this
21 action.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs prays for judgment in their favor and relief against
24 Defendants, and each of them, as follows:

- 25 (a) For injunctive relief restraining further acts of wrongdoing by Defendants;
26 (b) For compensatory damages for Plaintiffs and the Class, including, without
27 limitation, lost wages and premium pay, in an amount to be determined at trial,
28 but at least \$3 million;

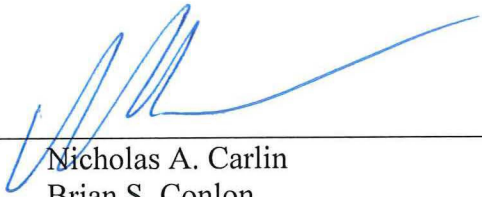
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- (c) For statutory penalties;
- (d) For interest, at the legal rate;
- (e) For restitution of all amounts Class Members have been unlawfully denied as a result of Defendants’ unfair and unlawful business practices;
- (f) For civil penalties under PAGA in an amount to be determined at trial, but at least the jurisdictional amount of this court;
- (g) For pre-judgment interest, at the legal rate;
- (h) For attorneys’ fees and costs; and

For all such other and further relief as the Court may deem just, proper and equitable.

Dated: January 10, 2020

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

By: 

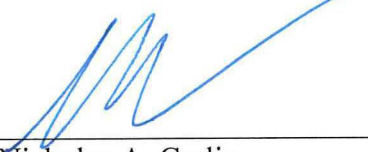
Nicholas A. Carlin
Brian S. Conlon
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby request a trial by jury of all issues so triable.

Dated: January 10, 2020

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

By: 

Nicholas A. Carlin
Brian S. Conlon
Attorneys for Plaintiffs