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Superior Court of California
County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk of Court
By: Brigitte De La Rosa, Deputy

7 Attorneys for Plaintiff SHAWN PARIKH,
on behalf of himself and all others similarly situated
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES
11

12 SHAWN PARIKH, an individual, on behalf of
himself and all others similarly situated,

Case No. _____

19STCV10787
CLASS ACTION COMPLAINT

13 Plaintiff,

14 vs.

15 KNIGHT'S RESTAURANT GROUP, INC., a
16 California Corporation, MARKS
INTERNATIONAL WINES, INC. dba THE
17 WINE HOUSE, a California Corporation, DOES
18 1 through 25, inclusive,

19 Defendants.
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1. Failure To Provide Meal Periods;
2. Failure To Authorize And Permit Rest Breaks;
3. Failure To Pay Overtime;
4. Failure To Pay Minimum Wages;
5. Failure To Timely Pay All Wages;
6. Failure To Pay Timely Wages Due At Termination/Waiting Time Penalties;
7. Failure To Maintain Required Records;
8. Failure To Furnish Accurate Itemized Wage Statements;
9. Failure To Provide Written Notice Of Paid Sick Leave;
10. Unfair And Unlawful Business Practices

DEMAND FOR JURY TRIAL.

1 Plaintiff SHAWN PARIKH (“PLAINTIFF”), an individual, on behalf of himself and all other
2 persons similarly situated, hereby alleges against Defendants KNIGHT’S RESTAURANT GROUP,
3 INC. (“KNIGHT’S”) and MARKS INTERNATIONAL WINES, INC. dba THE WINE HOUSE
4 (“THE WINE HOUSE”) (KNIGHT’S and THE WINE HOUSE are referred to collectively as
5 “DEFENDANTS”) and DOES 1 through 25 as follows:

6 **JURISDICTION AND VENUE**

7 1. This class action is brought pursuant to California Code of Civil Procedure section
8 382. The monetary damages, penalties, and restitution sought by PLAINTIFF exceed the minimal
9 jurisdiction limits of the Superior Court and will be established according to proof at trial.

10 2. The Superior Court of the State of California has jurisdiction in this matter because
11 PLAINTIFF is a resident of the State of California. Moreover, upon information and belief, two-
12 thirds or more of the class members and DEFENDANTS are citizens in California, the alleged wage
13 and hour violations occurred in California, and significant relief is sought against DEFENDANTS
14 whose violations of California wage and hour laws form a significant basis for PLAINTIFF’S claims.
15 Further, no federal question is at issue because the claims are based solely on California law and
16 DEFENDANTS are residents of, and/or regularly conducts business in, the State of California.

17 3. Venue is proper in this judicial district and the County of Los Angeles, California
18 because PLAINTIFF, and other persons similarly situated, performed work for DEFENDANTS in
19 the County of Los Angeles, DEFENDANTS maintain offices and facilities and transact business in
20 the County of Los Angeles, and DEFENDANTS’ illegal practices, which are the subject of this
21 action, were applied, at least in part, to PLAINTIFF, and other persons similarly situated, in the
22 County of Los Angeles. Thus, a substantial portion of the transactions and occurrences related to
23 this action occurred in this county. Cal. Civ. Proc. Code § 395

24 **PLAINTIFF**

25 4. PLAINTIFF is a former non-exempt employee who worked as a Bartender for
26 DEFENDANTS at the restaurant Upstairs 2 for approximately five years. PLAINTIFF was
27 terminated when Upstairs 2 closed on or about November 8, 2018. At the end of his employment
28 with DEFENDANTS, PLAINTIFF earned a wage of \$12.00 per hour. PLAINTIFF is a resident of

1 California.

2 5. As a Bartender, PLAINTIFF'S duties included making and serving drinks to clientele
3 at Upstairs 2, serving guests at the restaurant's bar and, occasionally, at tables as well. PLAINTIFF
4 secured wine for serving guests at Upstairs 2 from THE WINE HOUSE, and received instructions
5 and directions from management at THE WINE HOUSE, including regarding his work schedule and,
6 as discussed below, a meal period policy introduced in October 2018. PLAINTIFF typically worked
7 Wednesday through Saturday, from 4:00 p.m. until 10:30-11:00 p.m., though PLAINTIFF
8 occasionally worked until midnight or later. PLAINTIFF consistently received outstanding reviews
9 from guests of Upstairs 2.

10 6. During his employment, PLAINTIFF periodically worked more than eight (8) hours
11 in a workday. This occurred when, for example, DEFENDANTS required PLAINTIFF to remain at
12 work after the restaurant closed, to make drinks for DEFENDANTS' owner and his son.
13 DEFENDANTS failed to compensate PLAINTIFF for such off-the-clock work, including any
14 minimum wages and overtime pay owed.

15 7. Throughout most of PLAINTIFF'S employment with DEFENDANTS,
16 DEFENDANTS failed to maintain a policy or practice of providing lawful meal periods or rest
17 breaks in accordance with California law. DEFENDANTS only informed PLAINTIFF and other
18 non-exempt employees of their right to meal periods and rest breaks in or about late October 2018,
19 shortly before Upstairs 2 closed. Yet, even if DEFENDANTS had maintained a meal period and rest
20 break policy, PLAINTIFF and other non-exempt employees still would have been prevented from
21 taking timely, uninterrupted meal periods or rest breaks due to DEFENDANTS' understaffing.
22 Moreover, until late October 2018, DEFENDANTS also failed to pay PLAINTIFF or, on information
23 and belief, any other non-exempt employees, penalties for DEFENDANTS' meal period and/or rest
24 break violations during the relevant period.

25 8. During his employment, PLAINTIFF periodically reported to work for a scheduled
26 shift, only to be sent home because he was not needed or had been taken off the schedule without
27 notice. DEFENDANTS failed to pay PLAINTIFF for such reporting time in accordance with
28 California law.

1 9. Throughout PLAINTIFF’S employment, DEFENDANTS required PLAINTIFF and
2 other front-of-the-house employees at Upstairs 2 to share tips they received from guests. As part of
3 this requirement, DEFENDANTS required PLAINTIFF and other front-of-the-house employees to
4 share their tips with DEFENDANTS’ manager, in violation of the California Labor Code.

5 10. Throughout PLAINTIFF’S employment, in violation of Labor Code Section 246(i),
6 DEFENDANTS failed to provide PLAINTIFF, or other employees at Upstairs 2, with written notice
7 setting forth the amount of paid sick leave available, or paid time off provided in lieu of sick leave.

8 11. At the time of PLAINTIFF’S separation from DEFENDANTS, DEFENDANTS
9 failed to pay PLAINTIFF all of his outstanding wages, including minimum wages, overtime wages,
10 and meal period and rest break premium wages.

11 **THE CLASS**

12 12. PLAINTIFF brings this action on behalf of himself and all similarly situated
13 individuals (“CLASS MEMBERS” or “THE CLASS”) pursuant to California Code of Civil
14 Procedure section 382. THE CLASS is defined as follows: All current and former non-exempt
15 employees of DEFENDANTS at any time within the period beginning four (4) years prior to the
16 filing of this action and ending at the time this action settles or proceeds to final judgment (the
17 “CLASS PERIOD”).

18 13. PLAINTIFF also seeks to represent a “FORMER EMPLOYEE SUBCLASS,” which
19 is defined as all former employees of DEFENDANTS in the State of California at any time within
20 the CLASS PERIOD.

21 14. PLAINTIFF reserves the right to redefine the definitions of THE CLASS or
22 FORMER EMPLOYEE SUBCLASS as appropriate based on further investigation, discovery, and
23 specific theories of liability.

24 **DEFENDANTS**

25 15. At all times relevant herein, KNIGHT’S was, and is, a corporation organized under
26 the laws of the State of California, which owned and operated Upstairs 2, a restaurant and wine bar
27 located at 2311 Cotner Avenue, Los Angeles, California 90064.

28 16. At all times relevant herein, MARKS INTERNATIONAL, INC. dba THE WINE

1 HOUSE was, and is, a corporation organized under the laws of the State of California, which is
2 engaged in the business of selling wine and spirits through its retail location at 2311 Cotner Avenue,
3 Los Angeles, California 90064.

4 17. Upon information and belief, DEFENDANTS maintain joint corporate offices and
5 facilities, and conduct business at the same address; specifically, 2311 Cotner Avenue, Los Angeles,
6 California 90064.

7 18. The true names and capacities of DOES 1 through 25, inclusive (“DOES”), are
8 unknown to PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE Defendants under
9 fictitious names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant
10 designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and
11 that PLAINTIFF and CLASS MEMBERS’ injuries and damages, as alleged herein, were
12 proximately caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the
13 court to amend this complaint to allege the true names and capacities of such DOE Defendants when
14 ascertained.

15 19. PLAINTIFF is informed and believes, and based thereon alleges, that
16 DEFENDANTS acted in all respects pertinent to this action as the agents of each other, carried out
17 a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of DEFENDANTS
18 are legally attributable to each other.

19 20. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS both
20 employed PLAINTIFF and THE CLASS, in that they exercised control over PLAINTIFF and THE
21 CLASS’ wages, hours or working conditions, suffered and permitted PLAINTIFF and THE CLASS
22 to work, and/or engaged PLAINTIFF and THE CLASS to work. *See Martinez v. Combs*, 49 Cal.4th
23 35, 64 (2010). Any of the three is sufficient to create an employment relationship.

24 21. To the extent one of the DEFENDANTS did not directly hire, fire, or supervise
25 PLAINTIFF, PLAINTIFF further alleges that, upon information and belief, that Defendant
26 controlled the business enterprises of the other Defendant, thereby creating an employment
27 relationship with PLAINTIFF and THE CLASS. *See Castaneda v. Ensign Group, Inc.*, 229
28 Cal.App.4th 1015, 1017-1018 (2014); *Guerrero v. Super. Ct.*, 213 Cal.App.4th 912, 950 (2013).

1 22. As a direct and proximate result of DEFENDANTS' unlawful actions, PLAINTIFF
 2 and CLASS MEMBERS have suffered from loss of earnings in amounts as yet unascertained, but
 3 subject to proof at trial, and within the jurisdiction of this Court.

4 **CLASS ACTION ALLEGATIONS**

5 23. DEFENDANTS employed, and continue to employ, employees in California during
 6 the last four (4) years.

7 24. Based on information and belief, PLAINTIFF believes that other members of THE
 8 CLASS were subject to the same policies, practices and conduct that resulted in the following:

- 9 a. Failure to provide meal periods and/or rest breaks, and failure to pay all penalties
 10 owed for such violations;
- 11 b. Failure to pay for off-the-clock work, including minimum wages and overtime;
- 12 c. Failure to pay reporting time pay;
- 13 d. Unlawful collection of employees' tips;
- 14 e. Furnishing of inaccurate wage statements;
- 15 f. Failure to provide adequate written notice of paid sick leave; and
- 16 g. Failure to timely pay all compensation owed at the time of separation.

17 25. DEFENDANTS acted pursuant to common policies and practices regarding the
 18 failure to provide meal periods and/or rest breaks, or compensation in lieu thereof; the practice of
 19 requiring employees to work off-the-clock; scheduling employees for work; payroll and wage
 20 payments to employees, including the provision of wage statements; collection of employees' tips;
 21 time and pay recordkeeping; and notice of paid sick leave balances.

22 26. On information and belief, PLAINTIFF and CLASS MEMBERS received and/or
 23 were subject to the same standardized documents and/or written policies. Upon information and
 24 belief, DEFENDANTS created uniform policies and procedures that they implemented regardless of
 25 the employees' positions or duties.

26 27. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew
 27 or should have known that PLAINTIFF and CLASS MEMBERS were entitled to meal periods in
 28 accordance with the Labor Code or payment of one (1) additional hour of pay at the regular rate

1 when PLAINTIFF and CLASS MEMBERS were not provided with timely, uninterrupted, thirty (30)
2 minute meal periods, and that PLAINTIFF and CLASS MEMBERS were not provided with all meal
3 periods or payment of one (1) additional hour of pay at their regular rate when PLAINTIFF and
4 CLASS MEMBERS did not receive a timely, uninterrupted thirty (30) minute meal period.

5 28. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew
6 or should have known that PLAINTIFF and CLASS MEMBERS were entitled to uninterrupted rest
7 periods in accordance with the Labor Code and Industrial Wage Order (“IWC”) Wage Order 5-2001
8 or payment of one (1) additional hour of pay at their regular rate when PLAINTIFF and CLASS
9 MEMBERS were not authorized and permitted to take compliant rest periods, and that PLAINTIFF
10 and CLASS MEMBERS were not authorized and permitted to take compliant rest periods or payment
11 of one (1) additional hour of pay at their regular rate when PLAINTIFF and CLASS MEMBERS
12 were not provided a compliant rest period.

13 29. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew
14 or should have known that PLAINTIFF and CLASS MEMBERS were entitled to receive, but did
15 not receive, overtime compensation for work that DEFENDANTS knew or should have known was
16 performed.

17 30. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew
18 or should have known that PLAINTIFF and CLASS MEMBERS were entitled to receive at least
19 minimum wages for compensation and that, in violation of the Labor Code, they did not receive at
20 least minimum wages for work that DEFENDANTS knew or should have known was performed.

21 31. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew
22 or should have known that DEFENDANTS, including their agents, were prohibited from collecting,
23 taking, or receiving any gratuity or a part thereof that was paid, given to, or left for PLAINTIFF and
24 CLASS MEMBERS. In violation of the Labor Code, DEFENDANTS, including their agents,
25 unlawfully collected gratuities paid, given to, or left for PLAINTIFF and CLASS MEMBERS.

26 32. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew
27 or should have known that PLAINTIFF and CLASS MEMBERS were entitled to timely payment of
28 wages during their employment. In violation of the Labor Code, DEFENDANTS did not pay

1 PLAINTIFF and CLASS MEMBERS all wages, including, but not limited to, minimum wages,
2 overtime wages, and meal period and rest break premium wages, within statutorily required time
3 periods.

4 33. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew
5 or should have known that PLAINTIFF and CLASS MEMBERS were entitled to timely payment of
6 wages upon termination of employment. In violation of the Labor Code, DEFENDANTS did not
7 pay PLAINTIFF and CLASS MEMBERS all wages due, including, but not limited to, minimum
8 wages, overtime wages, and meal period and rest break premium wages, within statutorily required
9 time periods.

10 34. PLAINTIFF is informed and believes, and thereon alleges, that at all times herein
11 mentioned, DEFENDANTS knew or should have known that DEFENDANTS had a duty to
12 compensate PLAINTIFF and CLASS MEMBERS for all hours worked, and that DEFENDANTS
13 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed
14 to do so in violation of the Labor Code.

15 35. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew
16 or should have known that DEFENDANTS had a duty to maintain accurate and complete payroll
17 records in accordance with the Labor Code and IWC Wage Order 5-2001, but willfully, knowingly,
18 and intentionally failed to do so.

19 36. Upon information and belief, DEFENDANTS issue the same formatted wage
20 statements to all employees of Upstairs 2. PLAINTIFF is informed and believes, and thereon alleges,
21 that DEFENDANTS knew or should have known that PLAINTIFF and CLASS MEMBERS were
22 entitled to receive complete and accurate wage statements in accordance with California law. In
23 violation of the Labor Code, DEFENDANTS did not provide PLAINTIFF and CLASS MEMBERS
24 with complete and accurate wage statements.

25 37. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew
26 or should have known that PLAINTIFF and CLASS MEMBERS were entitled to written notice of
27 paid sick leave or paid time off available. In violation of the Labor Code, DEFENDANTS did not
28 provide to PLAINTIFF and CLASS MEMBERS written notice of paid sick leave or paid time off

1 available.

2 **SATISFACTION OF CLASS ACTION CRITERIA**

3 38. PLAINTIFF brings this action on his own behalf, as well as on behalf of each and all
4 other persons similarly situated, and seeks certification of THE CLASS and FORMER EMPLOYEE
5 SUBCLASS under Code of Civil Procedure section 382.

6 39. There is a well-defined community of interest in litigation and the CLASS
7 MEMBERS are readily ascertainable:

8 a. Numerosity: The members of THE CLASS and FORMER EMPLOYEE
9 SUBCLASS are so numerous that joinder of all members would be unfeasible and impractical. The
10 membership of the entire class is unknown to PLAINTIFF at this time; however, THE CLASS is
11 estimated to be greater than fifty (50) individuals, and the identity of such membership is readily
12 ascertainable by inspection of DEFENDANTS' employment records.

13 b. Typicality: PLAINTIFF is qualified to, and will, fairly and adequately protect
14 the interests of each member of THE CLASS, with whom he has a well-defined community of
15 interest, and PLAINTIFF'S claims (or defenses, if any) are typical of all CLASS MEMBERS as
16 demonstrated herein.

17 c. Adequacy: PLAINTIFF is qualified to, and will, fairly and adequately protect
18 the interests of the CLASS MEMBERS, with whom he has a well-defined community of interest and
19 typicality of claims, as demonstrated herein. PLAINTIFF acknowledges that he has an obligation to
20 make known to the Court any relationship, conflicts, or differences with any CLASS MEMBERS.
21 PLAINTIFF'S attorneys, the proposed class counsel, are versed in the rules governing class action
22 discovery, certification, and settlement. PLAINTIFF has incurred, and throughout the duration of
23 this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily
24 expended for the prosecution of this action for the substantial benefit of the CLASS MEMBERS.

25 d. Superiority: The nature of this action makes the use of class action
26 adjudication superior to other methods. A class action will achieve economies of time, effort, and
27 expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same
28 issues can be adjudicated in the same manner and at the same time for THE CLASS.

1 e. Public Policy Considerations: California has a stated public policy in favor of
2 class actions in this context for the vindication of employee rights and enforcement of the Labor
3 Code. Employers in the State of California violate employment and labor laws every day. Current
4 employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former
5 employees are fearful of bringing actions because they believe their former employers might damage
6 their future endeavors through negative references and/or other means. Class actions provide the
7 CLASS MEMBERS who are not named in the complaint with a type of anonymity that allows for
8 the vindication of their rights while simultaneously protecting their privacy.

9 **FIRST CAUSE OF ACTION**

10 **Failure To Provide Meal Periods**

11 **(Cal. Lab. Code Sections 226.7, 512(a); Cal. Code Regs. tit. 8 §§ 11050, 11070)**

12 **(Against DEFENDANTS and DOES 1 to 25)**

13 40. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
14 every allegation set forth above.

15 41. At all relevant times, Labor Code sections 226.7, 512(a), and 1198 have provided that
16 no employer shall require an employee to work during any meal period mandated by an applicable
17 order of the IWC. IWC Wage Orders 5-2001(11) and 7-2001(11), *codified* at Cal. Code Regs. tit. 8
18 §§ 11050, 11070.

19 42. At all relevant times herein, Labor Code section 512 has provided that “[a]n employer
20 may not employ an employee for a work period of more than five hours per day without providing
21 the employee with a meal period of not less than 30 minutes,” except that if the total work period per
22 day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent
23 of both the employer and employee. Cal. Lab. Code § 512(a). During this meal period of not less
24 than thirty (30) minutes, the employee is to be completely free of the employer’s control and must
25 not perform any work for the employer. If the employee does perform work for the employer during
26 this thirty (30) minute meal period, the employee has not been provided with a duty-free meal period,
27 in accordance with California law, and is to be compensated for any work performed during this (30)
28 minute meal period in addition to one (1) additional hour of compensation at each employee’s regular

1 rate of pay for each workday that a meal period was not provided. *See also* IWC Wage Orders 5-
2 2001(11) and 7-2001(11), *codified* at Cal. Code Regs. tit. 8 §§ 11050, 11070.

3 43. At all relevant times herein, pursuant to Labor Code sections 226.7, 512(a), 1198 and
4 the applicable IWC Wage Order, an employer may not employ an employee for a work period of
5 more than ten (10) hours per day without providing the employee with another meal period of not
6 less than thirty (30) minutes, or to pay an employee one (1) additional hour of pay at the employee's
7 regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal
8 period may be waived by mutual consent of the employer and the employee only if the first meal
9 period was not waived. IWC Wage Orders 5-2001(11) and 7-2001(11), *codified* at Cal. Code Regs.
10 tit. 8 §§ 11050, 11070.

11 44. As alleged above, at all relevant times herein, DEFENDANTS failed to provide
12 PLAINTIFFS and CLASS MEMBERS with a full, thirty (30) minute uninterrupted meal period free
13 from job duties, as required by Labor Code sections 226.7, 512(a), and IWC Order Nos. 5-2001(11)
14 and 7-2001(11), *codified* at Cal. Code Regs. tit. 8 §§ 11050, 11070. Additionally, DEFENDANTS
15 did not provide PLAINTIFF and CLASS MEMBERS with a second uninterrupted thirty (30) minute
16 meal period on days they worked over ten (10) hours, as required by the Labor Code. Cal. Lab. Code
17 §§ 226.7, 512(a); IWC Wage Orders 5-2001(11) and 7-2001(11), *codified* at Cal. Code Regs. tit. 8
18 §§ 11050, 11070.

19 45. As alleged above, at all relevant times herein, DEFENDANTS further violated Labor
20 Code section 226.7 and IWC Order No. 5-2001 by failing to compensate PLAINTIFF and CLASS
21 MEMBERS who were not provided with an uninterrupted meal period or one (1) additional hour of
22 compensation at each employee's regular rate of pay for each workday that a meal period was not
23 provided. *See* Cal. Lab. Code § 226.7(c), IWC Wage Orders 5-2001(11) and 7-2001(11), *codified* at
24 Cal. Code Regs. tit. 8 §§ 11050, 11070.

25 46. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to
26 proof at trial, and seek all wages earned and due, penalties, interest, expenses, and costs of suit.
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1 **SECOND CAUSE OF ACTION**

2 **Failure To Authorize And Permit Required Rest Breaks**

3 **(Cal. Lab. Code sections 226.7, 1198; Cal. Code Regs. tit. 8 §§ 11050, 11070)**

4 **(Against DEFENDANTS and DOES 1 to 25)**

5 47. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
6 every allegation set forth above.

7 48. At all relevant times herein, Labor Code sections 226.7 and 1198 and IWC Wage
8 Orders 5-2001 and 7-2001 were applicable to PLAINTIFF and CLASS MEMBERS employed by
9 DEFENDANTS.

10 49. As alleged above, at all relevant times herein, IWC Wage Orders 5-2001 and 7-2001
11 have stated that “[e]very employer shall authorize and permit all employees to take rest periods ...
12 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the
13 total daily work time is less than three and one-half (3.5) hours. IWC Wage Orders 5-2001(12) and
14 7-2001(12), *codified* at Cal. Code Regs. tit. 8 §§ 11050, 11070.

15 50. As alleged above, at all relevant times herein, Labor Code section 226.7 provides that
16 “[a]n employer shall not require an employee to work during a meal or rest or recovery period
17 mandated pursuant to an applicable statute....” Cal. Lab. Code § 226.7(b).

18 51. At all relevant times herein, DEFENDANTS regularly failed to authorize or permit
19 PLAINTIFF and CLASS MEMBERS to take ten (10) minute uninterrupted rest periods for each four
20 (4) hours worked, or major fraction thereof. PLAINTIFF and CLASS MEMBERS were regularly
21 denied uninterrupted rest periods in violation of the Labor Code. IWC Wage Orders 5-2001(12) and
22 7-2001(12), *codified* at Cal. Code Regs. tit. 8 §§ 11050, 11070; *see also* Cal. Lab. Code § 226.7(b).

23 52. At all relevant times herein, DEFENDANTS’ staffing and scheduling policies and/or
24 practices prevented PLAINTIFF and CLASS MEMBERS from being relieved of all duties in order
25 to take an uninterrupted rest break. DEFENDANTS failed to relinquish any control over how
26 employees spend their break time. *See Augustus v. ABM Security Systems, Inc.*, 2 Cal. 5th 257, 260
27 (2016). As a result, PLAINTIFF and CLASS MEMBERS would work shifts in excess of 3.5 hours,
28 in excess of six (6) hours, and in excess of ten (10) hours, without receiving the uninterrupted ten

1 (10) minute rest periods to which they were entitled.

2 53. By DEFENDANTS' failure to authorize and permit PLAINTIFF and CLASS
3 MEMBERS to take uninterrupted rest breaks for every four (4) hours or major fraction thereof
4 worked per day, DEFENDANTS willfully violated the Labor Code. IWC Wage Orders 5-2001(12)
5 and 7-2001(12), *codified* at Cal. Code Regs. tit. 8 §§ 11050, 11070; *see also* Cal. Lab. Code § 226.7.

6 54. At all relevant times herein, Labor Code section 226.7 has provided that “[i]f an
7 employer fails to provide an employee a meal or rest or recovery period in accordance with a state
8 law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate
9 of compensation for each workday that the meal or rest or recovery period is not provided.” Cal.
10 Lab. Code § 226.7(c); IWC Wage Orders 5-2001(12) and 7-2001(12), *codified* at Cal. Code Regs.
11 tit. 8 §§ 11050, 11070.

12 55. At all relevant times herein, DEFENDANTS have had a company-wide policy and
13 practice of not paying PLAINTIFF and CLASS MEMBERS rest period premiums when rest periods
14 were missed, late and/or interrupted.

15 56. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to
16 proof at trial, and seek all wages earned and due, penalties, interest, expenses, and costs of suit.

17 **THIRD CAUSE OF ACTION**

18 **Failure To Pay Overtime**

19 **(Cal. Lab. Code sections 510, 1198; Cal. Code Regs. tit. 8 §§ 11050, 11070)**

20 **(Against DEFENDANTS and DOES 1 to 25)**

21 57. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
22 every allegation set forth above.

23 58. At all relevant times herein, Labor Code section 510 has mandated that any time
24 worked beyond eight hours in one workday or beyond 40 hours in any workweek must be
25 compensated at no less than one and one-half times the regular wage. *See* Cal. Lab. Code § 510(a).

26 59. IWC Wage Orders 5-2001 and 7-2001 further provides that employees “shall not be
27 employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless
28 the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours

1 worked over 40 hours in the workweek.” IWC Order Nos. 5-2001(3)(A) and 7-2001(3)(A), *codified*
2 at Cal. Code Regs. tit. 8 §§ 11050, 11070; *see also* Cal. Lab. Code § 1198.

3 60. At all relevant times herein, DEFENDANTS were required to compensate
4 PLAINTIFF and CLASS MEMBERS for all overtime, calculated at one and one-half (1 ½) times
5 the regular rate of pay, for all hours worked in excess of eight (8) hours per day and/or forty (40)
6 hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double-
7 time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in
8 excess of eight (8) hours on the seventh consecutive day of work in any workweek. Cal. Lab. Code
9 §§ 510, 1194, IWC Wage Orders 5-2001(3) and 7-2001(3), *codified* at Cal. Code Regs. tit. 8
10 §§ 11050, 11070.

11 61. As alleged above, at all relevant times herein, DEFENDANTS willfully failed to pay
12 all overtime wages owed to PLAINTIFF and CLASS MEMBERS, in violation of Labor Code
13 sections 510 and 1198 and IWC Order Nos. 5-2001(3) and 7-2001(3), *codified* at Cal. Code Regs.
14 tit. 8 §§ 11050, 11070.

15 62. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to
16 proof at trial, and seek all wages earned and due, penalties, interest, expenses, attorneys’ fees and
17 costs of suit.

18 **FOURTH CAUSE OF ACTION**

19 **Failure To Pay Minimum Wages**

20 **(Cal. Lab. Code sections 1182.12, 1194, 1197, 1197.1, and 1198;**

21 **and Cal. Code Regs. tit. 8, §§ 11050, 11070)**

22 **(Against DEFENDANTS and DOES 1 to 25)**

23 63. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
24 every allegation set forth above.

25 64. At all relevant times herein, employers operating under California law must pay at
26 least minimum wage to their employees for all hours worked. IWC Order Nos. 5-2001(4) and 7-
27 2001(4), *codified* at Cal. Code Regs. tit. 8 §§ 11050, 11070. An employee not paid at least minimum
28 wage is entitled to recover the unpaid balance of such wages. Cal. Lab. Code §§ 1182.12 and 1194.

1 In addition, an employee is entitled to recover liquidated damages equaling the wages unlawfully
2 unpaid, as well as interest. Cal. Lab. Code §1194.2. An employer failing to pay minimum wages
3 must pay a civil penalty of \$100 for the initial pay period and \$250 for each subsequent pay period
4 during which such violations occurred. Cal. Lab. Code § 1197.1.

5 65. Additionally, IWC Wage Orders 5-2001 and 7-2001 state, “Each workday an
6 employee is required to report for work and does report, but is not put to work or is furnished less
7 than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the
8 usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4)
9 hours, at the employee’s regular rate of pay.”

10 66. As alleged above, at all relevant times herein, DEFENDANTS failed to pay
11 PLAINTIFF and CLASS MEMBERS minimum wages for all hours worked, in violation of Labor
12 Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and IWC Order Nos. 5-2001(4) and 7-
13 2001(4), *codified* at Cal. Code Regs. tit. 8 §§ 11050, 11070. DEFENDANTS also failed to pay
14 PLAINTIFF and CLASS MEMBERS minimum wages when they reported to work, but were not put
15 to work or were furnished less than half of their usual or scheduled day’s work.

16 67. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to
17 proof at trial, and seek all wages earned and due, interest, penalties, expenses, attorneys’ fees and
18 costs of suit.

19 **FIFTH CAUSE OF ACTION**

20 **Failure To Timely Pay All Wages**

21 **(Cal. Lab. Code sections 204, 1182.12, 1194, 1194.2, 1197, 1198,**

22 **and Cal. Code Regs. tit. 8 §§ 11050, 11070)**

23 **(Against DEFENDANTS and DOES 1 to 25)**

24 68. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
25 every allegation set forth above.

26 69. At all times relevant herein, Labor Code section 204 has provided that all wages
27 earned by any person in any employment between the first (1st) and the fifteenth (15th) days,
28 inclusive, of any calendar month, other than those wages due upon termination of an employee, are

1 due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during
2 which the labor was performed. Labor Code section 204 further provides that all wages earned by
3 any person in any employment between the sixteenth (16th) and the last day, inclusive, of any
4 calendar month, other than those wages due upon termination of an employee, are due and payable
5 between the first (1st) and the tenth (10th) day of the following month. Cal. Lab. Code § 204(a).

6 70. At all times relevant herein, Labor Code section 204 has further provided that all
7 wages earned for labor in excess of the normal work period shall be paid no later than the payday for
8 the next regular payroll period. Cal. Lab. Code § 204(b). Alternatively, at all times relevant herein,
9 Labor Code section 204 has provided that the requirements of this section are deemed satisfied by
10 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
11 than seven (7) calendar days following the close of the payroll period. Cal. Lab. Code § 204(d).

12 71. At all relevant times herein, Labor Code sections 1182.12, 1194, 1197, 1197.1 and
13 1198 have provided that the minimum wage for employees fixed by the applicable IWC Wage Order
14 is the minimum wage to be paid to employees, and the payment of a wage less than the minimum
15 wage set by the IWC is unlawful. “Hours worked,” and therefore compensable time, is defined in
16 IWC Wage Orders 5-2001 and 7-2001 as “the time during which an employee is subject to the control
17 of an employer, and includes all time the employee is suffered or permitted to work, whether or not
18 required to do so...” IWC Wage Order Nos. 5-2001(2)(K) and 7-2001(2)(G), *codified* at Cal Code.
19 Regs. tit. 8 §§ 11050(2)(K), 11070(2)(G).

20 72. As alleged above, at all relevant times herein, DEFENDANTS willfully failed to pay
21 PLAINTIFF and CLASS MEMBERS all wages due including, but not limited to overtime wages,
22 minimum wages (including reporting time pay), and meal and rest period premium wages, within
23 the periods mandated by Labor Code section 204.

24 73. DEFENDANTS’ conduct violates Labor Code sections 204, 1182.12, 1194, 1194.2,
25 1197, 1198, and IWC Order Nos. 5-2001 and 7-2001, *codified* at Cal. Code Regs. tit. 8 §§ 11050,
26 11070.

27 74. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to
28 proof at trial, and seek all wages earned and due, penalties, interest, expenses, attorneys’ fees and

1 costs of suit.

2 **SIXTH CAUSE OF ACTION**

3 **Failure To Pay Timely Wages Due At Termination/Waiting Time Penalties**

4 **(Cal. Lab. Code sections 201, 202, 203)**

5 **(Against DEFENDANTS and DOES 1 to 25)**

6 75. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
7 every allegation set forth above.

8 76. At all relevant times herein, pursuant to Labor Code sections 201 and 202, employers
9 must pay all wages due upon termination and, if an employer terminates an employee, the employee's
10 wages are "due and payable immediately." Cal. Lab. Code § 201. Pursuant to Labor Code section
11 202, employers are required to pay all wages due to an employee no later than 72 hours after the
12 employee quits employment, unless the employee provided 72 hours of notice of the intention to
13 quit, in which case the employee is entitled to those wages at the time of quitting. Cal. Lab. Code §
14 202.

15 77. At all relevant times herein, Labor Code section 203 provides that "[i]f an employer
16 willfully fails to pay... any wages of an employee who is discharged or who quits, the wages of the
17 employee shall continue as a penalty from the due date thereof at the same rate until paid or until an
18 action therefor is commenced; but the wages shall not continue for more than 30 days." Cal. Lab.
19 Code § 203.

20 78. As alleged above, at all relevant times herein, PLAINTIFF and members of the
21 FORMER EMPLOYEE SUBCLASS were entitled to, but did not receive, meal and rest period
22 premium wages, overtime wages, minimum wages (including reporting time pay), and all
23 compensation owed to them. When PLAINTIFF and members of the FORMER EMPLOYEE
24 SUBCLASS separated from employment with DEFENDANTS, DEFENDANTS willfully failed to
25 pay all wages owed, and also willfully failed to make timely final payment of wages, in violation of
26 Labor Code sections 201, 202, and 203.

27 79. As a consequence of DEFENDANTS' willful conduct in not timely paying wages
28 owed at the time of separation from employment, PLAINTIFF and the FORMER EMPLOYEE

1 SUBCLASS are entitled to 30 days' worth of their average daily wages as a penalty under Labor
2 Code section 203.

3 80. PLAINTIFF and the FORMER EMPLOYEE SUBCLASS have been damaged in an
4 amount according to proof at trial, and seek all wages earned and due, penalties, interest, expenses,
5 attorneys' fees and costs of suit.

6 **SEVENTH CAUSE OF ACTION**

7 **Failure To Maintain Required Records**

8 **(Cal. Lab. Code sections 226(a), 226.3, 1174(d), and 1198.5;**

9 **and Cal. Code Regs. tit. 8 §§ 11050, 11070)**

10 **(Against DEFENDANTS and DOES 1 to 25)**

11 81. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
12 every allegation set forth above.

13 82. At all relevant times herein, Labor Code section 1174 has provided that every
14 employer shall “[k]eep, at a central location in the state or at the plants or establishments at which
15 employees are employed, payroll records showing the hours worked daily by and the wages paid to,
16 and the number of piece-rate units earned by and any applicable piece rate paid to, employees
17 employed at the respective plants or establishments. These records shall be kept on file for not
18 less than three years.” Cal. Lab. Code §1174(d).

19 83. Pursuant to IWC Wage Orders 5-2001 and 7-2001, employers are required to keep
20 accurate time records including, but not limited to, when the employee begins and ends each work
21 period and meal period. IWC Order Nos. 5-2001(7) and 7-2001(7), *codified* at Cal. Code Regs. tit.
22 8 §§ 11050, 11070. During the CLASS PERIOD, DEFENDANTS failed to keep accurate records
23 of workday and meal period start and stop times for PLAINTIFF and CLASS MEMBERS, in
24 violation of the Labor Code. *See* Cal. Lab. Code §1198.5; IWC Wage Order Nos. 5-2001(7) and 7-
25 2001(7), *codified* at Cal. Code Regs. tit. 8 §§ 11050, 11070.

26 84. At all relevant times herein, Labor Code section 226 provides that an employer is to
27 maintain accurate records, including, but not limited to: total daily hours worked by each employee;
28 applicable rates of pay; all deductions; meal periods; time records showing when each employee

1 begins and ends each work period; and accurate itemized statements. By DEFENDANTS' policy
2 and practice of inaccurately recording time in which PLAINTIFF and CLASS MEMBERS worked,
3 including failing to record time during which PLAINTIFF and CLASS MEMBERS worked and took
4 meal periods, DEFENDANTS knowingly and intentionally failed to maintain records as required by
5 the Labor Code. *See* Cal. Lab. Code §§ 226(a), 1174(d); *see also* IWC Wage Order Nos. 5-2001(7)
6 and 7-2001(7), *codified* at Cal. Code Regs. tit. 8 §§ 11050, 11070.

7 85. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to
8 proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses, and
9 costs of suit.

10 **EIGHTH CAUSE OF ACTION**

11 **Failure To Furnish Accurate Itemized Wage Statements**

12 **(Cal. Lab. Code section 226(a), 226(e), 226.3, Cal. Code Regs. tit. 8 §§ 11050, 11070)**

13 **(Against DEFENDANTS and DOES 1 to 25)**

14 86. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
15 every allegation set forth above.

16 87. At all relevant times herein, Labor Code section 226 has required employers to furnish
17 each employee an accurate and itemized wage statement in writing that includes, but not limited to,
18 total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods;
19 and total hours worked. *See* Cal. Lab. Code § 226(a); IWC Wage Order Nos. 5-2001(7) and 7-
20 2001(7), *codified* at Cal. Code Regs. tit. 8 §§ 11050, 11070.

21 88. At all relevant times herein, DEFENDANTS systematically provided PLAINTIFF
22 and CLASS MEMBERS incomplete and inaccurate wage statements. The violations include,
23 without limitation, the failure to accurately list the total hours worked by each employee, total
24 straight/regular and overtime wages earned, and meal and/or rest break premiums to which
25 PLAINTIFF and CLASS MEMBERS were entitled.

26 89. By DEFENDANTS' company-wide policies and practices of inaccurately recording
27 time in which PLAINTIFF and CLASS MEMBERS worked, DEFENDANTS knowingly and
28 intentionally failed to maintain records as required by the Labor Code. Cal. Lab. Code §§ 226(a),

1 226(e), 226.3; IWC Wage Order Nos. 5-2001(7) and 7-2001(7), *codified* at Cal. Code Regs. tit. 8
2 §§ 11050, 11070.

3 90. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to
4 proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses, and
5 costs of suit.

6 **NINTH CAUSE OF ACTION**

7 **Failure To Provide Written Notice of Paid Sick Leave**

8 **(Cal. Lab. Code section 246(i))**

9 **(Against DEFENDANTS and DOES 1 to 25)**

10 91. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
11 every allegation set forth above.

12 92. At all times herein, Labor Code section 246 has required that employers provide
13 employees with "written notice that sets forth the amount of paid sick leave available, or paid time
14 off an employer provides in lieu of sick leave, either on the employee's itemized wage statement
15 described in section 226 or in a separate writing provided on the designated pay date with the
16 employee's payment of wages." Cal. Lab. Code § 246(i).

17 93. At all times herein, DEFENDANTS failed to provide PLAINTIFF and CLASS
18 MEMBERS with the required written notice on wage statements and/or other separate written
19 statements that listed the requisite information set forth in Labor Code section 246. Specifically,
20 DEFENDANTS' wage statements failed to state PLAINTIFF'S and CLASS MEMBERS' paid sick
21 leave balance, as required by the Labor Code. Cal. Lab. Code § 246(i).

22 94. DEFENDANTS' conduct violates Labor Code section 246(i).

23 95. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to
24 proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses, and
25 costs of suit.

1 **TENTH CAUSE OF ACTION**

2 **Unfair And Unlawful Business Practices**

3 **(Cal. Bus. & Prof. Code section 17200, *et seq.*)**

4 **(Against DEFENDANTS and DOES 1 to 25)**

5 96. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
6 every allegation set forth above.

7 97. At all times herein, California Business & Professions Code provides that “person”
8 shall mean and include “natural persons, corporations, firms, partnerships, joint stock companies,
9 associations and other organizations of persons.” Cal. Bus. & Prof. Code § 17201.

10 98. At all times herein, DEFENDANTS’ conduct, as alleged herein, has been, and
11 continues to be, unfair, unlawful and harmful to PLAINTIFF, CLASS MEMBERS, the general
12 public, and DEFENDANTS’ competitors. PLAINTIFF and CLASS MEMBERS have suffered
13 injury in fact and have lost money as a result of DEFENDANTS’ unlawful business practices.

14 99. At all times herein, DEFENDANTS’ activities, as alleged herein, are violations of
15 California law, and constitute false, unfair, fraudulent and deceptive business acts and practices in
16 violation of California Business & Professions Code sections 17200 *et seq.*

17 100. Each and every one of the DEFENDANTS’ acts and omissions in violation of the
18 Labor Code and IWC Wage Orders 5-2001 and 7-2001, as alleged herein—including but not limited
19 to DEFENDANTS’ failure to provide meal periods, failure to authorize and permit rest breaks,
20 failure to pay overtime compensation; failure to pay minimum wages, failure to timely pay all wages,
21 failure to timely pay all wages due to terminated employees, failure to maintain required records,
22 failure to furnish accurate itemized wage statements, and failure to provide written notice of paid
23 sick leave— constitute unfair and unlawful business practices under California Business &
24 Professions Code sections 17200 *et seq.*

25 101. DEFENDANTS’ violations of California wage and hour laws constitute a business
26 practice because DEFENDANTS’ aforementioned acts and omissions were done repeatedly over a
27 significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and CLASS
28 MEMBERS.

1 102. As a result of the violations of California law herein described, DEFENDANTS
2 unlawfully gained an unfair advantage over other businesses. PLAINTIFF and CLASS MEMBERS
3 have suffered pecuniary loss by DEFENDANTS' unlawful business acts and practices alleged
4 herein.

5 103. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
6 PLAINTIFF and CLASS MEMBERS are entitled to restitution of the wages withheld and retained
7 by DEFENDANTS during a period that commences four years prior to the filing of this complaint;
8 a permanent injunction requiring DEFENDANTS to pay all outstanding wages due to PLAINTIFF
9 and CLASS MEMBERS; an award of attorneys' fees pursuant to California Code of Civil Procedure
10 section 1021.5 and other applicable laws; and an award of costs.

11 **PRAYER FOR RELIEF**

12 Wherefore PLAINTIFF, individually and on behalf of all other persons similarly situated,
13 respectfully prays for relief against DEFENDANTS and Does 1 through 25, inclusive, and each of
14 them, as follows:

- 15 1. For compensatory damages in an amount to be ascertained at trial;
- 16 2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well as
17 disgorged profits from the unfair and unlawful business practices of DEFENDANTS;
- 18 3. For meal period and rest break compensation pursuant to Labor Code section 226.7
19 and IWC Wage Order Nos. 5-2001 and 7-2001;
- 20 4. For liquidated damages pursuant to Labor Code section 1194.2;
- 21 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
22 violating the relevant provisions of the Labor Code and IWC Wage Orders, and from engaging in
23 the unlawful business practices complained of herein;
- 24 6. For waiting time penalties pursuant to Labor Code section 203;
- 25 7. For statutory and civil penalties according to proof, including but not limited to all
26 penalties authorized by the Labor Code sections 226(e);
- 27 8. For interest on the unpaid wages at 10% per annum pursuant to Labor Code Sections
28 218.6, 1194, California Civil Code sections 3287, 3288, and/or any other applicable provision

1 providing for pre-judgment interest;

2 9. For reasonable attorneys' fees and costs pursuant to Labor Code sections 1194, 2699,
3 California Civil Code section 1021.5, and any other applicable provisions providing for attorneys'
4 fees and costs;

5 10. For declaratory relief;

6 11. For an order requiring and certifying the first through tenth Causes of Action pled in
7 this Complaint as a class action;

8 12. For an order appointing PLAINTIFF as the representative of THE CLASS, and
9 PLAINTIFF'S counsel as counsel for THE CLASS; and

10 13. For such further relief that the Court may deem just and proper.

11 DATED: March 28, 2019

GUNN COBLE LLP

12
13 By: 

Beth A. Gunn
Catherine J. Coble
David Z. Feingold

Attorneys for Plaintiff SHAWN PARIKH,
an individual, on behalf of himself and all
others similarly situated

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15
16
17 **DEMAND FOR JURY TRIAL**

18 PLAINTIFF, on behalf of himself and all others similarly situated, hereby demands a jury
19 trial with respect to all issues triable of right by jury.

20 DATED: March 28, 2019

GUNN COBLE LLP

21
22 By: 

Beth A. Gunn
Catherine J. Coble
David Z. Feingold

Attorneys for Plaintiff SHAWN PARIKH,
an individual, on behalf of himself and all
others similarly situated