

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JAVIER ROSAS, SERGIO VASQUEZ, OSCAR
PEREZ, SANTOS PEREZ-SANDAJ, JOEL E.
NAZARENO DONIS, EDWIN ALFONZO CRUZ,
CHARLES BUNTING, JULIAN HERNANDEZ,
ANTONIO MORALES, RAUL GUTIERREZ and
RODRIGO CRUZ,

Plaintiffs,

v.

CAPITAL GRILLE HOLDINGS, INC. d/b/a
THE CAPITAL GRILLE, GMRI, INC. and DARDEN
RESTAURANTS, INC.,

Defendants.

Case No. 12 C 660

Judge Feinerman

Magistrate Judge Schenkier

SECOND AMENDED COMPLAINT

Plaintiffs Javier Rosas, Sergio Vasquez, Oscar Perez, Santos Perez-Sandaj, Joel E. Nazareno Donis, Edwin Alfonzo Cruz, Charles Bunting, Julian Hernandez, Antonio Morales, Raul Gutierrez and Rodrigo Cruz, (collectively "Plaintiffs"), for their Complaint against Defendants Capital Grille Holdings, Inc. d/b/a The Capital Grille (hereafter "Capital Grille"), GRMI, Inc. and Darden Restaurants, Inc. (hereafter "Darden") (collectively "Defendants"), state as follows:

I. INTRODUCTION

1. Darden, along with its network of subsidiary companies, is an international conglomeration of restaurant chains which includes, among others, Olive Garden, Red Lobster, Bahama Breeze, Seasons 52, Longhorn Steakhouse and The Capital Grille restaurant concepts. The Capital Grille is Darden's fine-dining brand and operates in cities across the United States,

including Los Angeles. Plaintiffs work or have worked as Servers, Cooks and Dishwashers. As described more fully herein, Darden, along with its subsidiary companies GMRI, Inc. and Capital Grille, have implemented policies at its Capital Grille restaurants in Los Angeles and across the U.S. which resulted in theft of Capital Grille employees' earned wages in violation of federal and state laws by, for example: (1) unlawfully requiring employees to work "off-the-clock" and without pay before and after their assigned shifts; (2) failing to pay "split shift" pay; (3) failing to pay "reporting time pay"; and (4) failing to allow Plaintiffs to take rest breaks. In addition, Plaintiffs bring state law claims under California laws for Defendants' requirement that they be paid paperlessly, either through direct deposit or a Darden or other pay card, thereby incurring fees to receive their wages and failing to provide them with an itemization of their wages and deductions.

II. NATURE OF THE CASE

2. This lawsuit arises under the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* ("FLSA") and under the California Wages, Hours and Working Conditions Law, Ann. CA Lab. Code §§ 1171 *et seq.* ("CWHWCL") and California Payment of Wages Law, Ann. CA Lab. Code §§ 200 *et seq.* ("CPWL") for Defendants': 1) failure to pay Plaintiffs at the least the federally and/or state-mandated minimum wages for all time worked; 2) failure to pay overtime wages to Plaintiffs; 3) failure to pay Plaintiffs all earned wages at the rate agreed to by the parties; 4) requiring Plaintiffs to receive payment of their wages paperlessly, either through direct deposit or a Darden pay card, and thereby incur costs to receive their wages; 5) failure to provide Plaintiffs with a written accounting of their hours, wages earned and deductions from their wages in a timely manner; 6) failure to compensate Plaintiffs "split shift" pay for days on which a work schedule was interrupted by non-paid non-working periods established by the

employer, other than bona fide rest or meal periods; 7) failure to compensate Plaintiffs “reporting time” pay for days on which Plaintiffs reported for a scheduled shift and were furnished less than half of the scheduled day’s work; and 8) willful and intentional failure to allow Plaintiffs to take authorized rest periods at a rate of ten (10) minutes net rest time per four (4) hours worked.

III. JURISDICTION AND VENUE

3. This Court has jurisdiction over Plaintiffs’ FLSA claims pursuant to 28 U.S.C. §1331, arising under 29 U.S.C. §216(b) (Fair Labor Standards Act). This Court has supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. §1367.

4. Venue is proper in the Central District of California as a substantial number of the facts and events giving rise Plaintiffs’ claims occurred in that judicial district and as Defendants transacted business within that jurisdiction.

IV. PARTIES

PLAINTIFFS

5. At all relevant times, Plaintiff Sergio Vasquez, a person of majority age and domiciled in the state of California, was employed by Defendants at their Capital Grille restaurant located in Los Angeles, California as a Dishwasher and was Defendants’ “employee” as defined by the FLSA, CWHWCL and CPWL.

6. At all relevant times, Plaintiff Santos Sabaj, a person of majority age and domiciled in the state of California, was employed by Defendants at their Capital Grille restaurant located in Los Angeles, California as a Cook and was Defendants’ “employee” as defined by the FLSA, CWHWCL and CPWL.

7. At all relevant times, Plaintiff Oscar Perez, a person of majority age and domiciled in the state of California, was employed by Defendants at their Capital Grille

restaurant located in Los Angeles, California as a Cook and Dishwasher and was Defendants' "employee" as defined by the FLSA, CWHWCL and CPWL.

8. At all relevant times, Plaintiff Javier Rosas, a person of majority age and domiciled in the state of California, was employed by Defendants at their Capital Grille restaurant located in Los Angeles, California as a Dishwasher and was Defendants' "employee" as defined by the FLSA, CWHWCL and CPWL.

9. At all relevant times, Plaintiff Charles Bunting, a person of majority age and domiciled in the state of California, was employed by Defendants at their Capital Grille restaurant located in Los Angeles, California as a Server and was Defendants' "employee" as defined by the FLSA, CWHWCL and CPWL.

10. At all relevant times, Plaintiff Raul Gutierrez, a person of majority age and domiciled in the state of California, was employed by Defendants at their Capital Grille restaurant located in Los Angeles, California as a Cook and was Defendants' "employee" as defined by the FLSA, CWHWCL and CPWL.

11. At all relevant times, Plaintiff Antonio Morales, a person of majority age and domiciled in the state of California, was employed by Defendants at their Capital Grille restaurant located in Los Angeles, California as a Dishwasher and was Defendants' "employee" as defined by the FLSA, CWHWCL and CPWL.

12. At all relevant times, Plaintiff Rodrigo Cruz, a person of majority age and domiciled in the state of California, was employed by Defendants at their Capital Grille restaurant located in Los Angeles, California as a Dishwasher and was Defendants' "employee" as defined by the FLSA, CWHWCL and CPWL.

13. At all relevant times, Plaintiff Edwin Alfonso Cruz, a person of majority age and domiciled in the state of California, was employed by Defendants at their Capital Grille restaurant located in Los Angeles, California as a Cook and was Defendants' "employee" as defined by the FLSA, CWHWCL and CPWL.

14. At all relevant times, Plaintiff Julian Hernandez, a person of majority age and domiciled in the state of California, was employed by Defendants at their Capital Grille restaurant located in Los Angeles, California as a Server Assistant and was Defendants' "employee" as defined by the FLSA, CWHWCL and CPWL.

15. At all relevant times, Plaintiff Joel E. Nazareno Donis, a person of majority age and domiciled in the state of California, was employed by Defendants at their Capital Grille restaurant located in Los Angeles, California as a Cook and was Defendants' "employee" as defined by the FLSA, CWHWCL and CPWL.

DEFENDANTS

Darden

16. At all relevant times, Darden has been a corporation organized under the laws of the state of Florida and has conducted business in California, within that judicial district.

17. At all relevant time, Darden has been an "enterprise" as defined by in Section 3(r)(1) of the FLSA, 29 U.S.C. § 203(r)(1), and has been an enterprise engaged in commerce, or in the production of goods for commerce, within the meaning of Section 3(s)(1)(A) with annual gross volume of sales or business done exceeds \$500,000, exclusive of excise taxes and has had two or more employees who have handled goods which have moved in interstate commerce.

18. At all relevant times, Darden has been Plaintiffs' "employer" as that term is defined by the FLSA and by the CWHWCL and CPWL.

GMRI, Inc.

19. At all relevant times, GMRI, Inc. has been a corporation organized under the laws of the state of Florida and has conducted business in California, within that judicial district.

20. At all relevant time, GMRI, Inc. has been an “enterprise” as defined by in Section 3(r)(1) of the FLSA, 29 U.S.C. § 203(r)(1), and has been an enterprise engaged in commerce, or in the production of goods for commerce, within the meaning of Section 3(s)(1)(A) with annual gross volume of sales or business done exceeds \$500,000, exclusive of excise taxes and has had two or more employees who have handled goods which have moved in interstate commerce.

21. At all relevant times, GMRI, Inc. has been Plaintiffs’ “employer” as that term is defined by the FLSA and by the CWHWCL and CPWL.

Capital Grille

22. At all relevant times, Capital Grille has been a corporation organized under the laws of the state of North Carolina and has conducted business in California, within that judicial district.

23. At all relevant time, Capital Grille has been an “enterprise” as defined by in Section 3(r)(1) of the FLSA, 29 U.S.C. § 203(r)(1), and has been an enterprise engaged in commerce, or in the production of goods for commerce, within the meaning of Section 3(s)(1)(A) with annual gross volume of sales or business done exceeds \$500,000, exclusive of excise taxes and has had two or more employees who have handled goods which have moved in interstate commerce.

24. At all relevant times, Capital Grille has been Plaintiffs’ “employer” as that term is defined by the FLSA and by the CWHWCL and CPWL.

25. At all relevant times, Defendants have operated as single, integrated enterprise.

26. At all relevant times, Defendants have jointly employed the employees of the Capital Grille restaurants.

V. FACTUAL BACKGROUND

27. Defendants regularly required Plaintiffs to arrive prior to their shifts and begin to perform preparatory work before they were allowed to clock in and for which they were not compensated.

28. Defendants regularly required Plaintiffs to stay after their shifts after punching out to finish performing closing work, time for which they were not compensated.

29. Defendants sent Plaintiffs home early for shifts that were not busy without compensating them for the time.

**COUNT I
(Violation of the FLSA – Minimum Wages)**

Plaintiffs incorporate and reallege paragraphs 1 through 29 as though set forth herein.

30. This Count arises from a violation of the FLSA for Defendants' failure to pay Plaintiffs minimum wages for all compensable time worked in individual work weeks.

31. Defendants suffered and permitted Plaintiffs to work "off-the-clock" in certain work weeks in the three years prior to Plaintiffs filing this lawsuit as described more fully in paragraphs 27 through 29, *supra*.

32. Defendants were aware that Plaintiffs were performing such work "off-the clock" and took no steps to stop the practice.

33. As a result of Defendants' practice of suffering and permitting "off-the-clock" work by Plaintiffs, those Plaintiffs were not paid the federally mandated minimum wages.

34. Plaintiffs were not exempt from the minimum wage provisions of the FLSA.

35. Plaintiffs were entitled to be paid the federally mandated minimum wages for all time worked in individual work weeks.

36. Defendants' failure to pay Plaintiffs federally mandated minimum wages for all time worked in individual work weeks was a violation of the FLSA.

37. Plaintiffs are entitled to recover unpaid overtime wages for up to three years prior to the filing of this lawsuit because Defendants' violation of the FLSA was willful.

WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

- A. A judgment in the amount of unpaid overtime wages to Plaintiffs.
- B. Liquidated damages in the amount equal to all unpaid overtime wages;
- C. Reasonable attorneys' fees and costs of this action as provided by the FLSA;
- D. Such other and further relief as this Court deems appropriate and just.

COUNT II
(Violation of the FLSA – Overtime Wages)

Plaintiffs incorporate and reallege paragraphs 1 through 37 as though set forth herein.

38. This Count arises from a violation of the FLSA for Defendants' failure to pay Plaintiffs overtime wages for all compensable time worked in excess of forty (40) hours in individual work weeks.

39. Defendants suffered and permitted Plaintiffs to work "off-the-clock" in certain work weeks in the three years prior to Plaintiffs filing this lawsuit as described more fully in paragraphs 27 through 29, *supra*.

40. Defendants were aware that Plaintiffs were performing such work "off-the clock" and took no steps to stop the practice.

41. As a result of Defendants' practice of suffering and permitting "off-the-clock" work by Plaintiffs, in work weeks in which those employees' compensable work time exceeded forty (40) hours, those Plaintiffs were not paid overtime wages at a rate of one and one half times their regular rate of pay.

42. Plaintiffs were not exempt from the overtime provisions of the FLSA.

43. Plaintiffs were entitled to be paid overtime wages at a rate of one and one half times their regular rate of pay for all time worked in excess of forty (40) hours in individual work weeks.

44. Defendants did not pay Plaintiffs overtime wages for all compensable work time worked in excess of forty (40) hours in individual work weeks.

45. Defendants' failure to pay Plaintiffs overtime wages at a rate of one and one half times of their regular rate of pay for all time worked in excess of forty (40) hours in individual work weeks was a violation of the FLSA.

46. Plaintiffs are entitled to recover unpaid overtime wages for up to three years prior to the filing of this lawsuit because Defendants' violation of the FLSA was willful.

WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

- A. A judgment in the amount of unpaid overtime wages to Plaintiffs.
- B. Liquidated damages in the amount equal to all unpaid overtime wages;
- C. Reasonable attorneys' fees and costs of this action as provided by the FLSA;
- D. Such other and further relief as this Court deems appropriate and just.

COUNT III
(Violation of California Wages, Hours and Working Conditions Law – Minimum Wages)

Plaintiffs incorporate and reallege paragraphs 1 through 46 as though set forth herein.

47. This Count arises from a violation of the CWHWCL for Defendants' failure to pay Plaintiffs at least the California-mandated minimum wage rate for all time worked in individual work weeks.

48. Defendants suffered and permitted Plaintiffs to work "off-the-clock" in certain work weeks in the three years prior to Plaintiffs filing this lawsuit as described more fully in paragraphs 27 through 29, *supra*.

49. Defendants were aware that Plaintiffs were performing such work "off-the clock" and took no steps to stop the practice.

50. As a result of Defendants' practice of suffering and permitting "off-the-clock" work, Plaintiffs' wages fell below the California-mandated minimum wage rate.

51. Plaintiffs were not exempt from the minimum wage provisions of the CWHWCL.

52. Plaintiffs were entitled to be paid not less than the California-mandated minimum wage for all time worked in individual work weeks.

53. Defendants did not pay Plaintiffs the California-mandated minimum wage for all time worked in individual work weeks.

54. Defendants' failure to pay Plaintiffs the California-mandated minimum wage rate for all time worked in individual work weeks was a violation of the CWHWCL.

55. Plaintiffs are entitled to recover unpaid minimum wages for up to three years prior to the filing of this lawsuit based on the limitations period of the CWHWCL.

WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

- A. A judgment in the amount of the difference between the California-mandated minimum wage rate and the hourly wage rate paid to Plaintiffs.
- B. Statutory interest on all back wages owed as provided for by the CWHWCL;
- C. Reasonable attorneys' fees and costs of this action as provided by the CWHWCL;

D. Such other and further relief as this Court deems appropriate and just.

COUNT IV

(Violation of the California Wage, Hour and Working Conditions Law – Overtime Wages)

Plaintiffs incorporate and reallege paragraphs 1 through 55 as though set forth herein.

56. This Count arises from a violation of the CWHWCL for Defendants' failure to pay Plaintiffs overtime wages for all compensable time worked in excess of forty (40) hours in individual work weeks, and/or in excess of eight (8) hours in individual work days, and/or work done on a seventh consecutive day in an individual work week.

57. Defendants suffered and permitted Plaintiffs to work "off-the-clock" in certain work weeks in the three years prior to Plaintiffs filing this lawsuit as described more fully in paragraphs 27 through 29, *supra*.

58. Defendants were aware that Plaintiffs were performing such work "off-the clock" and took no steps to stop the practice.

59. As a result of Defendants' practice of suffering and permitting "off-the-clock" work by Plaintiffs, in work weeks in which those employees' compensable work time exceeded forty (40) hours, and/or in work days in which those employee's compensable work time exceeded eight (8) hours, and/or in work weeks in which work was done on a seventh consecutive day, those Plaintiffs were not paid overtime wages at a rate of one and one half times their regular rate of pay.

60. Plaintiffs were not exempt from the overtime provisions of the CWHWCL.

61. Plaintiffs were entitled to be paid overtime wages at a rate of one and one half times their regular rate of pay for all time worked in excess of forty (40) hours in individual work

weeks, and/or in excess of eight (8) hours in individual work days, and/or work done on a seventh consecutive day in an individual work week.

62. Defendants did not pay Plaintiffs overtime wages for all compensable work time worked in excess of forty (40) hours in individual work weeks, and/or in excess of eight (8) hours in individual work days, and/or work done on a seventh consecutive day in an individual work week.

63. Upon information and belief, Defendants' failure to pay Plaintiffs overtime wages at a rate of one and one half time of their regular rate of pay for all time worked in excess of forty (40) hours in individual work weeks, and/or in excess of eight (8) hours in individual work days, and/or work done on a seventh consecutive day in an individual work week was a violation of the CWHWCL.

64. Plaintiffs are entitled to recover unpaid overtime wages for up to three years based on the limitations period of the CWHWCL.

WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

- A. A judgment in the amount of unpaid overtime wages to Plaintiffs.
- B. Statutory interest on all owed overtime as provided for by the CWHWCL;
- C. Reasonable attorneys' fees and costs of this action as provided by the CWHWCL;
- D. Such other and further relief as this Court deems appropriate and just.

COUNT V
(Violation of the California Payment of Wages Law – Unpaid Wages)

Plaintiffs incorporate and reallege paragraphs 1 through 64 as though set forth herein.

65. This Count arises from the violation of the CPWL for Defendants' failure to pay Plaintiffs wages for all time worked at the agreed upon rate as described more fully in paragraphs 27 through 29, *supra*.

66. During the course of their employment with Defendants, Plaintiffs had agreements within the meaning of the CPWL to be compensated for all hours worked at an agreed upon rate.

67. Defendants' failure to pay Plaintiffs for all time worked at the rate agreed to by the parties violated the CPWL.

WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

- A. A judgment in the amount of all back wages due Plaintiffs as provided by the CPWL;
- B. Liquidated damages in an amount equal to the unpaid wages as provided by the CPWL;
- C. Reasonable attorneys' fees and costs of this action as provided by the CPWL;
- D. Such other and further relief as this Court deems appropriate and just.

COUNT VI
(Violation of the California Payment of Wages Law – Unauthorized Deductions)

Plaintiffs incorporate and reallege paragraphs 1 through 67 as though set forth herein.

68. This Count arises from Defendants' violation of the CPWL for its policy of paying its employees' wages electronically only through direct deposit in a bank account or on a Darden or other brand pay card thereby requiring its employees to incur fees in order to receive their wages.

69. Defendants required Plaintiffs to receive payment of their wages paid only electronically through direct deposit in a bank account or on a Darden brand or other brand pay card.

70. Plaintiffs were not given the choice of receiving their wages in cash or the form of a paper check.

71. Defendants failed to furnish Plaintiffs with an itemized statement of wages paid and deductions made from such wages.

72. In order to receive payment of their wages, Plaintiffs were required to utilize a Darden brand or other brand payment card for a fee and pay various fees to access their wages or had to incur fees in order to open a bank account in order to receive payment of their earned wages through direct deposit.

73. Plaintiffs are low-wage workers who earn at or just above the minimum wage rate and found Defendants' policy of only electronic payments to be burdensome.

74. Plaintiffs did not freely consent to receiving their wages through electronic means only which required incurring fees as described above.

75. Defendants' policy of requiring payment of wages to be made electronically only, thereby requiring Plaintiffs to incur fees, constituted an unlawful deduction from the employees' wages in violation of the CPWL.

WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

- A. A judgment in the amount of the monetary equivalent of all fees incurred by Plaintiffs to receive payment of their wages as a result of Defendants' unlawful policy;
- B. That the Court declare that Defendants' "electronic only" payment policy violates the CPWL and constitutes an unauthorized deduction from earned wages in violation of the CPWL;

- C. That the Court enjoin Defendants from violating the CPWL in the future through its “electronic only” payment system;
- D. Reasonable attorneys’ fees and costs of this action as provided by the CPWL
- E. Such other and further relief as this Court deems appropriate and just.

COUNT VII

(Violation of the California Payment of Wages Law – Itemized Statements)

Plaintiffs incorporate and reallege paragraphs 1 through 75 as though set forth herein.

76. This Count arises from Defendants’ willful and intentional violation of the CPWL for their policy of failing to furnish employees with an accurate itemized statement in writing of hours worked, wage rate, wages paid, deductions, and all other required information at the time of payment of wages.

77. Defendants required Plaintiffs to receive payment of their wages paid only electronically through direct deposit in a bank account or on a Darden brand or other brand pay card.

78. Plaintiffs were not given the choice of receiving their wages in cash or the form of a paper check.

79. As a result of Defendants’ wage payment policy, Plaintiffs did not receive and were denied access to their required itemized statements in violation of the CPWL.

80. Defendants’ failure to comply with requests by Plaintiffs for such itemized statements constituted an unlawful practice in violation of the CPWL.

81. As a result of Defendants’ violations of the CPWL, Plaintiffs have suffered injury and damage to their statutorily-protected rights.

82. Specifically, Plaintiffs have been injured by Defendants' intentional violation of the CPWL because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under the CPWL.

WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

- A. A judgment in the amount of the monetary equivalent of actual damages for Plaintiffs caused by Defendants' failure to comply with CPWL, or an aggregate penalty not exceeding four thousand dollars per employee;
- B. That the Court enjoin Defendants from violating the CPWL in the future through its policy of failing to furnish employees with written itemized statements;
- C. Reasonable attorneys' fees and costs of this action as provided by the CPWL
- D. Such other and further relief as this Court deems appropriate and just.

COUNT VIII

(Violation of the California Wage, Hours and Working Conditions Law – Split Shift Pay)

Plaintiffs incorporate and reallege paragraphs 1 through 82 as though set forth herein.

83. This Count arises from Defendants' violation of the CWHWCL for Defendants' failure to pay Plaintiffs "split shift" pay on days when they worked schedules that were interrupted by non-paid non-working periods established by the Defendants, other than bona fide rest or meal periods.

84. During the course of their employment with Defendants, Plaintiffs worked schedules that were interrupted by non-paid non-working periods established by the Defendants, other than bona fide rest or meal periods.

85. On days when Plaintiffs worked schedules that were interrupted by non-paid non-working periods established by the Defendants, other than bona fide rest or meal periods, they were entitled to be paid one (1) hour's pay at the minimum wage in addition to the minimum wage for that workday.

86. Upon information and belief, Defendants failed to pay Plaintiffs split shift pay on days when they worked schedules that were interrupted by non-paid non-working periods established by the Defendants, other than bona fide rest or meal periods.

87. Defendants willfully violated the split shift pay requirement of the CWHWCL.

WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

- A. A judgment in the amount of all back “split shift” wages due Plaintiffs as provided by the CWHWCL;
- B. Liquidated damages in an amount equal to the unpaid wages as provided by the CWHWCL;
- C. Reasonable attorneys’ fees and costs of this action as provided by the CWHWCL;
- D. Such other and further relief as this Court deems appropriate and just.

COUNT IX

(Violation of California Wage, Hours and Working Conditions Law – Reporting Time Pay)

Plaintiffs incorporate and reallege paragraphs 1 through 87 as though set forth herein.

88. This Count arises from Defendants’ violation of the CWHWCL for Defendants’ failure to pay Plaintiffs “reporting time” pay on days when they were required to report for work and did report, but were not put to work or were furnished less than half their usual or scheduled day’s work.

89. During the course of their employment with Defendants, Plaintiffs were required to report for work and did report, but were not put to work or were furnished less than half their usual or scheduled day’s work.

90. On days when Plaintiffs were required to report for work and did report, but were not put to work or were furnished less than half their usual or scheduled day’s work, they were

entitled to be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the Plaintiffs' regular rate of pay.

91. Defendants failed to pay Plaintiffs reporting time pay on days when they were required to report for work and did report, but were not put to work or were furnished less than half their usual or scheduled day's work.

92. Defendants willfully violated the reporting time pay requirement of the CWHWCL.

WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

- B. A judgment in the amount of all back "reporting time" wages due Plaintiffs as provided by the CWHWCL;
- C. Liquidated damages in an amount equal to the unpaid wages as provided by the CWHWCL;
- D. Reasonable attorneys' fees and costs of this action as provided by the CWHWCL;
- E. Such other and further relief as this Court deems appropriate and just.

COUNT X
(Violation of the California Payment of Wages Law – Rest Periods)

Plaintiffs incorporate and reallege paragraphs 1 through 92 as though set forth herein.

93. This Count arises from Defendants' willful and intentional violation of the CPWL for their policy of failing to allow Plaintiffs to take authorized rest periods at a rate of ten (10) minutes net rest time per four (4) hours worked.

94. Defendants required Plaintiffs to work without any opportunity to take authorized rest periods during shifts exceeding four (4) hours.

95. Due to Defendants' work practices and policies, including rigorous work schedules, time-sensitive work responsibilities, and pervasive understaffing of Defendants'

restaurants in California, Plaintiffs were routinely required to work through rest periods at the direction of Defendants with their knowledge, acquiescence and/or encouragement.

96. Whenever Plaintiffs “clocked out” at the end of their shifts, they were required to indicate on Defendants’ timekeeping system whether they had taken a rest period during their shift.

97. Plaintiffs were systematically required to indicate on Defendants’ timekeeping system that they had taken a rest period, even though they had not, in order to successfully “clock out” at the end of their shifts.

98. Whenever Plaintiffs indicated on Defendants’ timekeeping system that they had not taken a rest period, the system would not allow Plaintiffs to “clock out,” and authorization was required from Defendants to complete the “clock out” process.

99. Defendants’ routinely verbally reprimanded Plaintiffs who honestly indicated on Defendants’ timekeeping system that they had not taken a rest period during their shift.

100. By Defendants’ actions in requiring Plaintiffs to work through rest periods and/or Defendants’ failure to ensure that Plaintiffs were affirmatively relieved of duties for rest periods at a rate of ten (10) minutes net rest time per four (4) hours worked, Defendants violated the CPWL.

101. As a result of Defendants’ violations of the CPWL, Plaintiffs have suffered injury and damage to their statutorily-protected rights.

WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

- A. A judgment in the amount of one additional hour of pay at the Plaintiffs’ regular rate of compensation for each work day that a rest period was not provided for each plaintiff, as provided by the CPWL;
- B. That the Court enjoin Defendants from violating the CPWL in the future through its policy of actually and constructively requiring Plaintiffs to work through rest

periods;

- C. Reasonable attorneys' fees and costs of this action as provided by the CPWL
- D. Such other and further relief as this Court deems appropriate and just.

Respectfully submitted,

Dated: July 16, 2012

s/Christopher J. Williams
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