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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF ORANGE
10 COMPLEX DIVISION
11

12 Amanda Quiles, Heather Turman, and
13 Kimberly Dang, individually, on behalf of
all others similarly situated, and on behalf
14 of the general public, and Shannon Payne,
Lonnie Finley, Joshua Allen, JW Perkins,
15 and Kellianne Ryan, individually,

16 Plaintiffs,

17 vs.
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19
20 Koji's Japan Incorporated dba Koji's
Shabu Shabu and Koji's Sushi & Shabu
21 Shabu, Arthur J. Parent, Jr., and DOES 1
through 50 inclusive,
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23 Defendants.
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CASE NO.: 30-2010-00425532-CU-OE-CXC

Hon. ~~Nancy Weber Stock~~ Robert Moss
CX-102

**FIFTH AMENDED INDIVIDUAL, CLASS
AND COLLECTIVE ACTION
COMPLAINT FOR DAMAGES, AND
RESTITUTION**

- (1) Failure to Pay Overtime in Violation of California Labor Code Sections 510, 1194, 1198 and IWC Wage Orders
- (2) Failure to Pay Earned Wages Upon Discharge, Waiting Time Penalties in Violation of California Labor Code Sections 200-203
- (3) Failure to Provide Timely, Accurate, Itemized Wage Statements in Violation of California Labor Code Section 226
- (4) Failure to Provide and/or Authorize Meal and Rest Periods/Unpaid Wages in Violation of California Labor Code Sections 226.7 and 512 and IWC Wage Orders
- (5) Failure to Compensate for All Hours Worked in Violation of Labor Code Sections 221 and 223 and IWC Wage Orders

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- (6) **Misappropriation of Tips by Employer and Employer’s Agents in Violation of California Business and Professions Code Section 17200, *et seq.***
- (7) **Failure to Pay the Minimum Wage in Violation of California Labor Code Sections 1182.11, 1182.12, 1182.13, 1194, 1197, the California Minimum Wage Order, MW-2001**
- (8) **Violations of the Fair Labor Standards Act, 29 U.S.C. Sections 206, 207, and 216**
- (9) **Unlawful and/or Unfair Business Practices in Violation of California Business and Professions Code Section 17200, *et seq.***
- (10) **Retaliation for Protected Activity in Violation of California Labor Code Section 98.6**
- (11) **Retaliation for Protected Activity in Violation of Fair Labor Standards Act Section 215(a)(3)**
- (12) **Civil Penalties Pursuant to California Labor Code Section 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004**

Individual and Representative Plaintiffs Amanda Quiles, Heather Turman, and Kimberly Dang (“Representative Plaintiffs”), on behalf of themselves and on behalf of all others similarly situated, as well as Individual Plaintiffs Shannon Payne, Lonnie Finley, Joshua Allen, JW Perkins, and Kellianne Ryan (all Individual and Representative Plaintiffs collectively may be referred to simply as “Plaintiffs”), complain against Defendants Koji’s Japan Incorporated, dba Koji’s Shabu Shabu and Koji’s Sushi & Shabu Shabu, Arthur J. Parent, Jr., A.J. Parent Company, Inc. dba AmericasPrinter.com, AMERICAS PRINTER.COM, and americasprinter.com,¹ and DOES 1 through 50 inclusive, as follows:

¹ Plaintiffs have identified three different formats for the dba, relying on the Orange County government’s register of fictitious business names and the AmericasPrinter.com website. The Orange County government website shows the business owner of Americas Printer.com and americasprinter.com as A.J. Parent Company Inc.

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2 **PRELIMINARY STATEMENT**

3 1. The class claims in this action are brought by Representative Plaintiffs pursuant to
4 Code of Civil Procedure (“CCP”) § 382, seeking unpaid minimum and overtime wages, missed
5 meal period and rest period wages, penalties, equitable relief, restitution of tip money
6 misappropriated, interest, and reasonable attorneys’ fees and costs, under, among others, California
7 Labor Code §§ 201, 202, 203, 218.6, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1182.11, 1182.12,
8 1183.13, 1194, 1197, 1197.1, 1198, 2698, 2699, the California Minimum Wage Order MW-2001,
9 Industrial Welfare Commission Wage Order No. 5-2001 (See Cal. Admin. Code, tit. 8, § 11050),²
10 Business and Professions Code § 17200 *et seq.*, CCP §1021.5, and the Fair Labor Standards Act,
11 29 U.S.C. §§ 206, 207 and 216, on behalf of the following proposed class and subclasses:

12 **All Allegations Other than Tip Misappropriation:**

13 All persons who were employed by Defendants as servers,
14 hosts/hostesses, floor managers, sushi chefs, assistant general
15 managers, bussers, dishwashers, bartenders, kitchen helpers, and
“barbacks,” from November 16, 2006, to the date of the final
disposition of this case.

16 **Tip Misappropriation Subclass:**

17 All persons who were employed by Defendants as servers,
18 hosts/hostesses, floor managers, assistant general managers,
19 bussers, dishwashers, bartenders and “barbacks,” at any time from
20 November 16, 2006, to the date of the final disposition of this
action.

21 2. Under California Business and Professions Code (“Cal. Bus. & Prof. Code”) §
22 17200 *et seq.*, and pursuant to both the class action and representative action procedures provided
23 for in these statutes, Individual Plaintiffs and Representative Plaintiffs – the latter on behalf of
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26 ² Wage Order 5 covers the “Public Housekeeping Industry.” “Public Housekeeping Industry” means any industry,
27 business, or establishment which provides meals...whether operated as a primary business or when incidental to other
28 operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to
... [r]estaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and
all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the
premises”

1 themselves and proposed Class Members - also seek restitution of all benefits Defendants have
2 received from their unlawful actions as alleged herein.

3 3. The Class Period is designated as the period from November 16, 2006 through the
4 date of final disposition of this action. From the start of the Class Period through the present,
5 Defendants have had a policy and/or practice of ignoring and violating a host of local, California,
6 and Federal wage and hour laws in their business. From the start of the Class Period through the
7 present, Defendants have had a policy and/or practice of: (1) failing to pay any overtime premiums
8 for hours worked over eight in a day and 40 in a week, whenever meal breaks are deducted, because
9 meal breaks are not actually taken; (2) failing to provide and/or authorize and permit meal and rest
10 periods and failing to pay any premiums for such missed breaks, as required by law; (3) failing to
11 provide accurate and complete itemized wage statements as required by law; (4) failing to pay
12 employees for all hours worked (*i.e.*, missed meal breaks), resulting in overall wages below the
13 Federal, state, and local minimum wages; (5) unlawful misappropriation of tip money from those
14 in the direct chain of customer service to agents of the employer and executive and/or management
15 employees outside the chain of service (*e.g.*, Sushi Chef/Kitchen Managers), for whom the tips
16 were not left, paid, or given; and (6) failing to correct all of the foregoing deficiencies and pay all
17 wages due upon employees' termination. The legal violations described above apply to all
18 Individual Plaintiffs as well.

19 4. Approximately one week after Defendants were served with this lawsuit, Plaintiff
20 Quiles suffered retaliation when she was suspended and terminated approximately one week
21 thereafter.

22 THE PARTIES

23 5. Individual and Representative Plaintiff Amanda Quiles, is a resident of Studio City,
24 California, and was employed by Defendants as a Server and Hostess from approximately March
25 2008 to December 2010, working in the Hollywood restaurant, in Los Angeles County.

26 6. Individual and Representative Plaintiff Heather Turman is a resident of Los
27 Angeles, California, and was employed by Defendants as a Server, "Manager," and "Assistant
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1 General Manager” from approximately July 2007 to August 2010, working in the Hollywood
2 restaurant, in Los Angeles County.

3 7. Individual and Representative Plaintiff Kimberly Dang is a resident of Los Angeles,
4 California, and was employed by Defendants from approximately June 2005 to February 2007 in
5 the Orange County restaurant, in Orange, California, and from approximately February 2007 to
6 November 2009 in the Hollywood restaurant, in Los Angeles.

7 8. Individual Plaintiff Shannon Payne is a resident of West Hollywood, California and
8 was employed by Defendants from approximately November 2010 to February 2012 in the
9 Hollywood restaurant, in Los Angeles.

10 9. Individual Plaintiff Lonnie Finley is a resident of Van Nuys, California, and was
11 employed by Defendants from approximately July 2007 to November 2011 in the Hollywood
12 restaurant, in Los Angeles.

13 10. Individual Plaintiff Joshua Allen is a resident of Toluca Lake, California and was
14 employed by Defendants from approximately September 2005 to February 2012 in the Hollywood
15 restaurant, in Los Angeles.

16 11. Individual Plaintiff JW Perkins is now a resident of Astoria, New York and was
17 employed by Defendants from approximately March 2011 to February 2012 in the Hollywood
18 restaurant, in Los Angeles.

19 12. Individual Plaintiff Kellianne Ryan is now a resident of Feasterville, Pennsylvania
20 and was employed by Defendants from approximately November 2010 to September 2011, in the
21 Hollywood restaurant, in Los Angeles.

22 13. Upon information and belief, Defendant Koji’s Japan Incorporated is a California
23 Corporation with its headquarters in Buena Park, California, which does business, or did business,
24 in Hollywood, in Los Angeles County, and Orange, in Orange County. Upon information and
25 belief, Koji’s Japan Incorporated does business, or did business as, Koji’s Shabu Shabu and Koji’s
26 Sushi & Shabu Shabu.
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1 14. Upon information and belief, Defendant Arthur J. Parent, Jr. (aka Artie Parent), is
2 the owner, President and sole shareholder of Koji's Japan Incorporated, a California Corporation
3 with its headquarters in Buena Park, California, which does business, or did business, in
4 Hollywood, in Los Angeles County, and Orange, in Orange County.

5 15. Upon information and belief, Defendant A.J. Parent Company, Inc. is a California
6 Corporation with its headquarters in Buena Park, California, which does business, or did business,
7 in Hollywood, in Los Angeles County, and Orange, in Orange County. Upon information and
8 belief, A.J. Parent Company, Inc. does business as AmericasPrinter.com, AMERICAS
9 PRINTER.COM, and americasprinter.com and has, or had, another "dba" name – A&A Graphics
10 & Printing.

11 16. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their true
12 names and capacities are unknown to Plaintiffs. When their true names and capacities are
13 ascertained, Plaintiffs will amend this complaint by inserting their true names and capacities herein.
14 Plaintiffs are informed and believe, and thereon allege, that each of the fictitiously-named
15 defendants is responsible in some manner for the occurrences herein alleged, and that the damages
16 sustained by Plaintiffs and the Class Members herein alleged were proximately caused by such Doe
17 Defendants.

18 17. Plaintiffs are informed, believe, and thereon allege that each of the Defendants
19 herein was, at all times relevant to this action, the agent, employee, representing partner, and/or
20 joint venturer of the remaining Defendants and was acting within the course and scope of the
21 relationship. Plaintiffs are further informed, believe, and thereon allege, that each of the Defendants
22 herein gave consent to, ratified and authorized the acts alleged herein to the remaining Defendants.

23 VENUE

24 18. Venue in the County of Orange, Civil Complex Division, is proper under California
25 Code of Civil Procedure Section 395(a), because Defendants reside in Orange County and maintain
26 their business headquarters in Orange County.

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2 **GENERAL ALLEGATIONS**

3 19. Koji's Japan Incorporated does business, or did business, as Koji's Shabu Shabu and
4 Koji's Sushi & Shabu Shabu (hereafter, "Koji's") in two restaurant locations, in Hollywood and in
5 Orange, California. The business operates, or operated, exclusively in California. The company's
6 headquarters is listed for payroll, tax, and service of process purposes as 6950 Aragon Cir., Ste. #1,
7 Buena Park, CA 90621, by the site from which its sole owner and President – Artie Parent – also
8 operates AmericasPrinter.com, which (upon information and belief) he also owns and runs.

9 20. Defendants operated restaurants with, upon information and belief, more than 50
10 servers, hosts/hostesses, floor managers, sushi chefs, assistant general managers, bussers,
11 dishwashers, bartenders, kitchen helpers, "barbacks," and others working in non-executive
12 capacities (hereafter, "Covered Positions"), and have (upon information and belief) employed in
13 excess of 100 persons in these positions during the Class Period.

14 21. Upon information and belief, all employees in Covered Positions were paid on an
15 hourly basis – not on a salary basis.

16 22. Employees in the Covered Positions are entitled to take meal and rest periods as
17 provided under California Labor Code §§ 512 and 226.7, but Defendants routinely failed to provide
18 coverage at the restaurants which would allow employees an opportunity to take meal and rest
19 periods as provided by statutes. In other words, Defendants did not provide or authorize and permit
20 meal and rest periods as a matter of course. Employees in the Covered Positions were expected to
21 respond to customers' and managers' needs at all times, and there are never designated half-hour
22 uninterrupted meal periods or two, 10-minute rest breaks provided or authorized and permitted. On
23 the contrary, employees in the Covered Positions, if at all, would often try to eat rapidly or squeeze
24 in a needed phone call between serving customers or between work assignments, if possible, but
25 were generally unable to step away from the job site or go to a designated area for breaks/meals.

26 23. Moreover, Plaintiff Amanda Quiles was written up for taking a rest break of ten (10)
27 minutes or less, during which time she purchased ice cream from the ice cream shop downstairs
28 from Koji's restaurant.

1 24. Upon information and belief, Defendants have never paid a single meal/rest period
2 premium for missed meal or rest periods, as required under Cal. Lab. § 226.7 and Industrial Welfare
3 Commission Wage Order #5, upon information and belief.

4 25. During all or some part of the Class Period, half-hour meal periods were
5 automatically deducted on the timecards of employees in the Covered Positions, though employees
6 did not actually take these meal periods. As a result, these employees were at times (readily
7 calculable by reviewing payroll and time records) not paid at least the minimum wage for all hours
8 worked. For example, employees were paid at the minimum wage for eight hours worked, but paid
9 nothing for the additional half-hour that was deducted for a supposed meal period, but which they
10 – in fact – worked.

11 26. Moreover, each instance in which an employee was recorded to have worked, and
12 was paid for, greater than 7.5 hours in a day, he/she was denied overtime at 1.5 times his/her hourly
13 rate, to which he or she was entitled, for the break time which was deducted when meal breaks were
14 not taken. That is, for example, during the Class Period, employees were paid for only 8 hours
15 worked (with no overtime), instead of 8.5 hours worked, and as such, deprived of 0.5 hours of
16 overtime, because their timecards assumed improperly that they took half-hour meal periods, when
17 they could not do so.

18 27. In like manner, employees worked over 40 hours in a week but were not paid for all
19 of the overtime worked.

20 28. Moreover, for the subclass of employees affected by tip misappropriation – those
21 engaged in the chain of service for restaurant customers – their tips were misappropriated by
22 Defendants' agents for/to whom the tips were not given, paid, or left. Upon information and belief,
23 throughout the Class Period, Julio Abarca, Felix Martinez, Marco Martinez, and Maria Martinez,
24 among other agents of Defendants outside the chain of direct customer service, took tip money
25 from the Servers, Hosts/Hostesses, and others engaged in the direct service of customers.
26 Defendants' policy, practice, and procedure is to permit tip pooling between employees in Covered
27 Positions and its agents, who have the authority to supervise, direct, and control the acts of
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1 employees. Upon information and belief, these agents take a full share of the tip pool for a given
2 shift when they are present, just as if they were non-agents in Covered Positions.

3 29. Defendants have knowingly and intentionally failed to provide their employees with
4 accurate, itemized records of their earnings and deductions. Among other discrepancies,
5 Defendants are aware that the records provided to Plaintiffs and the Class Members: fail to reflect
6 all hours worked by the employees (*e.g.*, off-the-clock time automatically deducted for meal
7 periods); fail to itemize accurate amounts of tip compensation paid for, given to, or left for
8 employees; and fail to include meal/rest period and overtime premiums.

9 30. Plaintiffs and employees in the Covered Positions, were never (among other
10 deficiencies) paid for all of their time worked and overtime and meal/rest premiums, and were never
11 paid the full tip money they were entitled to receive. Though Defendants were aware of these
12 violations, *inter alia*, Defendants knowingly and intentionally refused to pay Plaintiffs and the
13 Class Members all earned wages in a timely manner when they left Defendants' employ.

14 31. For a brief period during the Class Period, which upon information and belief lasted
15 not more than four months, Defendants changed their policies to comply with some of the laws at
16 issue, providing coverage for employees to allow them to take their meal and rest periods. However,
17 Defendants quickly abandoned this practice and willfully returned to violating the law.

18 **JOINT EMPLOYER LIABILITY AS TO PARENT**

19 32. As owner, President, and sole shareholder of Koji's, Defendant Parent directly or
20 indirectly, himself or through his agents, employed or exercised control over the wages, hours, and
21 working conditions of the Plaintiffs and the putative class.

22 33. Defendant Parent: suffered and/or permitted Plaintiffs and the putative class members to
23 work; had control or constructive control over the wages, hours, and working conditions of
24 Plaintiffs and the putative class members; and had the power to prevent, but failed to prevent, the
25 violations articulated herein from occurring.

26 34. Defendant Parent started Koji's, and he alone had the authority to close the restaurants and
27 layoff the entire staff.

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1 35. Defendant Parent alone, hired, promoted from within, and fired employees such as the office
2 manager/bookkeeper and general managers, along with certain other employees who, in turn, hired,
3 promoted, and fired putative class members.

4 36. Defendant Parent was solely responsible for granting raises to supervisory employees.

5 37. Defendant Parent routinely reviewed Koji's finances to ensure profitability and engaged in
6 regular communications with the restaurants' managers.

7 38. Defendant Parent directly received sales and labor reports from Koji's' General Managers
8 and/or assistant general managers.

9 39. Defendant Parent had detailed operational discussions and communications with managers
10 on occasion and had discussions regarding controlling labor costs with Koji's' General Managers.

11 40. Defendant Parent sent emails to General Managers and assistant general managers to enact
12 and enforce new policies.

13 41. Defendant Parent made decisions and engaged in discussions with managers regarding basic
14 restaurant management issues, such as décor and menu items at the restaurants, providing discounts
15 or complimentary dining to certain employees and customers, approving purchases of equipment
16 and furniture for restaurants, negotiating rent, marketing strategies, improving the quality of
17 customer service, and issues involving menu printing.

18 **ALTER EGO LIABILITY AS TO PARENT AND A.J. PARENT COMPANY, INC.**

19 42. Plaintiffs are informed and believe, and based thereon allege, that at all times herein
20 mentioned, Arthur J. Parent, Jr., Koji's Japan, Inc., and A.J. Parent Company, Inc., dba
21 AmericasPrinter.com, operated with a unity of interest and ownership such that the separate
22 personalities of the corporations and the equitable owner do not in reality exist:

- 23
- 24 • Mr. Parent is the sole proprietor, equity holder, and officer of Koji's Japan, Inc., and A.J.
25 Parent Company, Inc. dba AmericasPrinter.com, AMERICAS PRINTER.COM, and
26 americasprinter.com;
 - 27 • There has been a co-mingling of personal and corporate funds between Mr. Parent, on the
28 one hand, and Koji's Japan, Inc., and A.J. Parent Company, Inc. on the other, as well as

1 between Koji's Japan, Inc., and A.J. Parent Company, Inc. dba AmericasPrinter.com,
2 AMERICAS PRINTER.COM, and americasprinter.com.

- 3 • Koji's Japan, Inc., and A.J. Parent Company, Inc. dba AmericasPrinter.com, AMERICAS
4 PRINTER.COM, and americasprinter.com have not followed all required corporate
5 formalities, do not maintain adequate accounting records, are not adequately capitalized,
6 and do not conduct transactions at an arm's length from Mr. Parent.

7 43. If the wrongful acts carried out by Mr. Parent as alleged in this complaint are treated
8 as those of the corporations alone, Mr. Parent would be rewarded for maintaining shell companies,
9 whose sole purpose is to protect his personal assets.

10 44. Unless Mr. Parent and A.J. Parent Company, Inc. dba AmericasPrinter.com,
11 AMERICAS PRINTER.COM, and americasprinter.com, are treated as alter egos of Koji's, Mr.
12 Parent's alleged refusal to comply with the California wage and hour laws and refusal to pay
13 Plaintiffs the wages to which they are lawfully entitled will leave Mr. Parent wrongfully engorged
14 and Plaintiffs deprived of compensation for their labor and unlawful working conditions. Plaintiffs
15 understand that Mr. Parent has shuttered the Koji's restaurants and is in the process of selling all of
16 the restaurants' tangible assets.

17 **CALIFORNIA CLASS ACTION ALLEGATIONS**

18 45. Representative Plaintiffs bring this action on their behalf and as a class action under
19 Cal. Code of Civil Procedure § 382 on behalf of the following defined group:

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21 All persons who were employed by Defendants as servers,
22 host/hostesses, floor managers, sushi chefs, assistant general
23 managers, bussers, dishwashers, bartenders, kitchen helpers, and
"barbacks," at any time from November 16, 2006, to the date of the
final disposition of this case.

24 46. Representative Plaintiffs also bring this action on behalf of the following subclass
25 of employees as to the tip misappropriation allegations:

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27 All persons who were employed by Defendants as servers,
28 hosts/hostesses, floor managers, assistant general managers,

1 bussers, and “barbacks,” at any time from November 16, 2006,
2 through the date of the final disposition of this action.

3 47. This action is brought, and may properly be maintained, as a class action under
4 §382 because there is a well-defined community of interest in the litigation, and the proposed Class
5 is easily ascertainable.

6 48. Numerosity: The Proposed Class is so numerous that joinder of all members is
7 impracticable. Representative Plaintiffs are informed and believe, and on that basis allege, that
8 during the relevant time period, Defendants employed more than one hundred people who are
9 geographically dispersed and who satisfy the definition of the Proposed Class.

10 49. Typicality: Representative Plaintiffs’ claims are typical of the claims of the Class
11 Members. Plaintiffs, like other Class Members, were subjected to Defendants’ common, unlawful
12 policies, practices, and procedures described above. The Representative Plaintiffs’ positions at the
13 company were typical of those of other Class Members.

14 50. Adequacy: Representative Plaintiffs will fairly and adequately protect the interests
15 of the members of the Class. Plaintiffs have retained counsel competent and experienced in
16 complex class actions and California labor and employment litigation.

17 51. Commonality: Common questions of law and fact exist, including but not limited
18 to the following:

19 (a) Whether, as a result of automatically deducted meal period time
20 (though employees worked through meal periods), Defendants unlawfully failed to pay overtime
21 compensation to Plaintiffs and Class Members in violation of the California Unfair Competition
22 Law, Cal. Bus. & Prof. Code § 17200 *et seq.* and the California Labor Code and related regulations,
23 Cal. Labor Code §§ 201, 202, 203, 226, 510, 1174, 1174.5, and 1194, Cal. IWC Wage Order No.
24 5;

25 (b) Whether Defendants unlawfully failed to provide timely, half-hour
26 uninterrupted meal breaks to Plaintiffs and Class Members (and/or ensure such breaks were taken)
27 in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*, Cal.
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1 Labor Code §§ 226.7, 512, and Cal. IWC Wage Order No. 5, and pay premiums when such breaks
2 were missed;

3 (c) Whether Defendants unlawfully failed to authorize and permit two,
4 timely ten-minute rest breaks to Plaintiffs and Class Members in violation of the California Unfair
5 Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*, Cal. Labor Code § 226.7, and Cal. IWC
6 Wage Order No. 5, and pay premiums when such breaks were missed;

7 (d) Whether Defendants unlawfully misappropriated tips paid, given to,
8 and/or left for Plaintiffs and Class Members, giving them to the employers' agents, in violation of
9 the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*, based on the
10 standards articulated in Cal. Lab. §§ 350 and 351;

11 (e) Whether, as a result of automatically deducted meal breaks, which
12 were in fact time worked, Defendants unlawfully failed to pay Representative Plaintiffs and Class
13 Members at the California minimum wage, in violation of the California Unfair Competition
14 Law, Cal. Bus. & Prof. Code § 17200 *et seq.*, Cal. Labor Code §§ 1182.11, 1182.12, 1182.13,
15 1194, 1197, and Cal. Minimum Wage Order, MW-2001;

16 (f) Whether Defendants unlawfully failed to keep and furnish Class
17 Members with accurate, itemized records of hours worked, in violation of Labor Code §§ 226 and
18 1174;

19 (g) Whether Defendants' violations were willful;

20 (h) Whether Defendants' policy and practice of failing to pay its
21 employees all wages due within the time required by law after their employment ended violates the
22 law and warrants waiting time penalties under Cal. Labor Code §§ 200, 201, 202, and 203; and

23 (i) The proper measure of damages sustained and the proper measure of
24 restitution recoverable by Representative Plaintiffs and the Class Members.

25 52. Superiority: A class action is superior to other available methods of the fair and
26 efficient adjudication of the controversy, particularly in the context of wage and hour litigation
27 where individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits
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1 against these defendants and fear retaliation. Prosecuting hundreds of identical, individual lawsuits
2 does not promote judicial efficiency or equity and consistency in judicial results.

3 53. Representative Plaintiffs intend to send notice to all members of the Proposed Class
4 to the extent required by § 382. The names and address of the Proposed Class are available from
5 Defendants.

6 **FEDERAL COLLECTIVE ACTION ALLEGATIONS**

7 54. Representative Plaintiffs bring this action on behalf of themselves and other
8 employees similarly situated as authorized under FLSA, 29 U.S.C. § 216(b). The employees
9 similarly situated are:

10
11 **Collective Class:** Plaintiffs and all other persons who are or have
12 been employed by Koji's Japan Incorporated dba Koji's Shabu
13 Shabu and Koji's Sushi & Shabu Shabu, and/or Arthur J. Parent, Jr.
14 at their Hollywood and/or Orange County restaurants as Servers,
15 Host(esse)s, "Managers," Bussers (aka busboys), dishwashers,
16 bartenders, kitchen helpers, and/or in any other employees working
in a non-executive capacity at any time commencing three years
prior to the date of the filing of this Complaint through the date of
the final disposition of this action.

17 55. Upon information and belief, by automatically deducting half-hour meal periods
18 when employees routinely missed meals, Defendants suffered and permitted Representative
19 Plaintiffs and the Collective Class to work more than forty hours per week without appropriate
20 overtime compensation.

21 56. Upon information and belief, Defendants knew that Representative Plaintiffs and
22 the Collective Class performed work that required overtime pay. Defendants have operated under
23 a scheme to deprive these employees of appropriate overtime compensation by failing to properly
24 compensate them for all hours worked.

25 57. Upon information and belief, Defendants suffered and permitted Representative
26 Plaintiffs and the Collective Class to work uncompensated hours, with the result that they were not
27 paid the minimum wage for all hours worked.

1 58. Upon information and belief, Defendants failed to keep accurate time records for all
2 hours worked by the Representative Plaintiffs and the Proposed Collective Class in violation of
3 FLSA, 29 U.S.C. § 201, *et seq.*

4 59. Defendants' unlawful conduct has been widespread, repeated, and consistent.

5 60. Defendants' conduct, as set forth in this Complaint, was willful and in bad faith, and
6 has caused significant damages to Representative Plaintiffs, and the Collective Class.

7 61. Defendants are liable under the FLSA for failing to properly compensate
8 Representative Plaintiffs and the Collective Class, and as such, notice should be sent to the
9 Collective Class. There are numerous similarly-situated current and former employees of
10 Defendants who have been denied overtime pay and the minimum wage in violation of the FLSA
11 who would benefit from the issuance of a Court-supervised notice of the present lawsuit and the
12 opportunity to join in the present lawsuit. Those similarly-situated employees are known to
13 Defendants and are readily identifiable through Defendants' records.

14 **QUILES'S INDIVIDUAL CLAIM FOR RELIEF**

15 62. After Defendants were served with Plaintiff Quiles's complaint, Arthur J. Parent, Jr.
16 willfully, intentionally, oppressively, and / or maliciously ordered employees at Koji's to find a
17 way to get rid of her.

18 63. On or about December 6, 2010, approximately one week after Defendants were
19 served with this lawsuit, Plaintiff Quiles was suspended from her position as a server with Koji's.

20 64. Approximately one week thereafter, Defendants notified Plaintiff Quiles that they
21 were terminating her employment.

22 65. Plaintiff Quiles was not given a specific reason for this termination.

23 66. Plaintiff Quiles' termination and suspension were unlawful retaliation for having
24 engaged in the protected activity of filing this lawsuit.

25 67. As a result of the retaliatory termination and suspension, Plaintiff Quiles has
26 suffered mental and emotional distress, in addition to economic damages.

27
28 **FIRST CAUSE OF ACTION**

1 **UNLAWFUL FAILURE TO PAY REQUIRED OVERTIME WAGES UNDER**
2 **CALIFORNIA LAW**
3 **(California IWC Wage Order No. 5; California Labor Code §§ 510, 1194, 1198)**

4 68. Plaintiffs incorporate by reference in this cause of action each allegation of the
5 preceding paragraphs, as though fully set forth herein.

6 69. At all relevant times herein, California Labor Code § 510 and IWC Wage Order No.
7 5 (8 C.C.R. § 11050 - dealing with (among others) employees who work at restaurants) required
8 employers, like Defendants, to pay non-exempt employees overtime premium(s) for hours worked
9 in excess of 8 in a given workday, 40 in a given workweek, or on the seventh day worked in a single
10 workweek. Pursuant to California Labor Code § 1198, it is unlawful to employ persons for hours
11 longer than the hours set by the Industrial Welfare Commission ("IWC"), or under conditions
12 prohibited by the applicable wage orders of the IWC.

13 70. Plaintiffs and the Class Members were non-exempt employees entitled to be paid
14 overtime compensation for all overtime hours worked.

15 71. Plaintiffs are informed and believe, and thereon allege, that members of the Class
16 worked in excess of eight hours per day and in excess of 40 hours per week, and Defendants
17 unlawfully failed to pay members of the Class the proper overtime compensation required in
18 violation of IWC Wage Order No. 5 (8 C.C.R. § 11050), and the California Labor Code §§ 510 and
19 1198, throughout the Class Period and continuing to the present. Pursuant to California Labor Code
20 § 1194, the Plaintiffs and the other Class Members are entitled to recover their unpaid overtime
21 compensation.

22 72. As a direct and proximate result of Defendants' unlawful conduct, as set forth
23 herein, Plaintiffs and the Class have sustained damages, including loss of earnings for hours of
24 overtime worked on behalf of Defendants in an amount to be established at trial, plus interest,
25 attorneys' fees and costs.

26 73. Defendants' failure to pay overtime was done willfully, in bad faith, in knowing
27 violation of the California Labor Code and the IWC Wage Order, and with malice.

1 74. Plaintiffs seek attorneys' fees and costs, under California Labor Code § 1194,
2 §2699(g)(1), as well as an award of attorneys' fees and costs pursuant to Code of Civil Procedure
3 § 1021.5 and other applicable law.
4

5 **SECOND CAUSE OF ACTION**
6 **LATE PAY AND WAITING TIME PENALTIES**
7 **(California Labor Code §§ 201-203)**

8 75. Plaintiffs incorporate by reference in this cause of action each allegation of the
9 preceding paragraphs as though fully set forth herein.

10 76. California Labor Code §§ 201 and 202 require an employer to pay its employees all
11 wages due within the time specified by law. Labor Code § 203 provides that if an employer willfully
12 fails to pay such wages, the employer must continue to pay the subject employees' wages until the
13 back wages are paid in full or an action is commenced, up to a maximum of thirty days of wages.

14 77. Plaintiffs and Class Members who ceased employment with Defendants are entitled
15 to unpaid compensation, but to date have not received such compensation, more than 72 hours after
16 the cessation of their employment.

17 78. More than thirty days have passed since Plaintiffs Turman, Dang, and Class
18 Members left Defendants' employ.

19 79. As a consequence of Defendants' willful failure to timely compensate Plaintiffs and
20 Class Members for all hours worked, the Plaintiffs and Class Members whose employment ended
21 during the Class Period are entitled to penalties under Labor Code § 203.

22 80. Plaintiffs also seek attorneys' fees and costs, under California Labor Code § 2699(g)(1), as
23 well as an award of attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 and
24 other applicable law.

25 **THIRD CAUSE OF ACTION**
26 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
27 **(California Labor Code § 226)**

28 81. Plaintiffs incorporate by reference in this cause of action each allegation of the
preceding paragraphs as though fully set forth herein.

1 82. California Labor Code § 226(a) provides that, at the time of each payment of wages,
2 an employer shall provide each employee with a wage statement itemizing, among other things, the
3 total hours worked by the employee in the pay period.

4 83. California Labor Code § 226(e) provides that an employee suffering injury as a
5 result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is
6 entitled to recover the greater of his or her actual damages or a penalty of \$50 for the initial pay
7 period in which a violation occurs and \$100 per employee for each violation in a subsequent pay
8 period (up to a maximum of \$4,000), in addition to attorneys' fees and costs.

9 84. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
10 wage statements to Plaintiffs and Class Members in accordance with Labor Code § 226. The
11 statements provided to Plaintiffs and Class Members have not accurately reflected actual gross
12 wages earned, including overtime and meal/rest premiums, among other compensation, and the
13 total hours worked by employees (including time that was off-the-clock because of automatically,
14 inappropriately deducted meal break time) and appropriate tip compensation. Such failures caused
15 injury to Plaintiffs and the Class Members, by, among other things, impeding them from knowing
16 the total hours worked and the amount of wages to which they are and were entitled. Plaintiffs and
17 the Class Members are therefore entitled to the damages and penalties, plus attorneys' fees and
18 costs, provided for under Labor Code §§ 226(e) and (g). Pursuant to Labor Code § 226(g).

19 85. Plaintiffs also seek attorneys' fees and costs, under California Labor Code §
20 2699(g)(1), as well as an award of attorneys' fees and costs pursuant to Code of Civil Procedure §
21 1021.5 and other applicable law.

22
23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**
(California IWC Wage Order No. 5; Labor Code §§ 226.7, and 512)

25 86. Plaintiffs incorporate by reference in this cause of action each allegation of the
26 preceding paragraphs as though fully set forth herein.

1 87. The Plaintiffs and Class Members regularly worked in excess of five hour shifts
2 without being afforded at least a half-hour uninterrupted meal break in which they were relieved of
3 all duty, as required by Cal. Labor Code §§ 226.7 and 512(a) and Wage Order No. 5, § 11(a).

4 88. As a result of Defendants' failure to afford proper meal periods, it is liable to the
5 Plaintiffs and Class Members for one hour of additional pay at the regular rate of compensation for
6 each workday that the proper meal periods were not provided, pursuant to Cal. Labor Code §226.7
7 and Wage Order No. 5, § 11(b). Upon information and belief, Defendants never paid such
8 premiums to Plaintiffs and the Class Members.

9 89. Plaintiffs and the Class Members regularly worked more than three and one-half
10 hours in a day without being authorized and permitted to take a 10-minute duty-free rest period,
11 and regularly worked more than six hours in a day without being authorized and permitted to take
12 two, 10-minute duty-free rest periods per four hours or major fraction thereof, as required under
13 Cal. Labor Code § 226.7 and Wage Order No. 5, § 12(a).

14 90. As a result of Defendants' failure to afford proper rest periods, it is liable to the
15 Plaintiffs and Class Members for one hour of additional pay at the regular rate of compensation for
16 each workday that the proper rest periods were not provided, pursuant to Cal. Labor Code § 226.7
17 and Wage Order No. 5, § 12(b). Upon information and belief, Defendants never paid such
18 premiums to Plaintiffs and the Class Members.

19 91. Plaintiffs also seek attorneys' fees and costs, under California Labor Code §
20 2699(g)(1), as well as an award of attorneys' fees and costs pursuant to Code of Civil Procedure §
21 1021.5 and other applicable law.

22 **FIFTH CAUSE OF ACTION**
23 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**
24 **(California Labor Code §§ 221, 223, and IWC Wage Order No. 5)**

25 92. Plaintiffs incorporate by reference in this cause of action each allegation of the
preceding paragraphs as though fully set forth herein.

26 93. Defendants routinely required Plaintiffs and the Class Members to work off-the-
27 clock, without being compensated.

1 94. The California Labor Code, including but not limited to §§ 221 and 223, and IWC
2 Wage Order No. 5, require that employees be paid for all hours worked.

3 95. Plaintiffs also seek attorneys' fees and costs, under California Labor Code §
4 2699(g)(1), as well as an award of attorneys' fees and costs pursuant to Code of Civil Procedure §
5 1021.5 .

6
7 **SIXTH CAUSE OF ACTION**
8 **MISAPPROPRIATION OF TIPS BY EMPLOYER AND EMPLOYER'S AGENTS**
9 **(Cal. Business and Professions Code § 17200, *et seq.*)**

10 96. Plaintiffs incorporate by reference in this cause of action on each allegation of the
preceding paragraphs as though fully set forth herein.

11 97. Cal. Labor Code § 351 states, "No employer or agent shall collect, take, or receive
12 any gratuity or a part thereof that is paid, given to, or left for an employee by a patron Every
13 gratuity is hereby declared to be the sole property of the employee or employees to whom it was
14 paid, given, or left for." Cal. Labor Code § 350(a) and (d) defines "employer" as "every person
15 engaged in any business or enterprise in this state that has one or more persons in service under any
16 appointment, contract of hire, or apprenticeship, express or implied, oral or written, irrespective of
17 whether the person is the owner of the business or is operating on a concessionaire or other basis,"
18 and "agent" as "every person other than the employer having the authority to hire or discharge any
19 employee or supervise, direct, or control the acts of employees."

20 98. In violation of California law, Defendants and Defendants' agents, including
21 Defendants' executives such as the Sushi Chefs and Kitchen Managers, responsible for overseeing
22 staff at Koji's, have collected, taken, or received gratuities paid, given to, or left for Plaintiffs and
23 the Class Members, with respect to employees in the chain of direct customer service, though they
24 were not themselves in the chain of direct customer service.

25 99. Defendants' violations of California tipping laws, as well as the other statutory and
26 regulatory violations alleged herein, constitute unlawful business actions and practices in violation
27 of Business and Professions Code § 17200, *et seq.* Pursuant to Business and Professions Code §
28 17200, *et seq.*, Plaintiffs and the Class Members are entitled to restitution of the value of all tips

1 taken, among other relief alleged herein, that were withheld and retained by Defendants during a
2 period that commences four years prior to the filing of this action, in addition to an award of
3 attorneys' fees and costs pursuant to Labor Code §2699(g)(1), Code of Civil Procedure § 1021.5
4 and other applicable law.

5
6 **SEVENTH CAUSE OF ACTION**
7 **FAILURE TO PAY MINIMUM WAGE**

8 **(California Labor Code §§ 1182.11, 1182.12, 1182.13, 1194, 1197, the California Minimum
9 Wage Order, MW-2001)**

10 100. Plaintiffs incorporate by reference in this cause of action each allegation of the
11 preceding paragraphs as though fully set forth herein.

12 101. California has, at various times during the Class Period, had different minimum
13 wages, reflected in California Labor Code §§ 1182.11, 1182.12, 1182.13, 1194, 1197, and the
14 California Minimum Wage Order, MW-2001. Defendants have at all times relevant to this
15 Complaint been subject to the statewide minimum wages.

16 102. Upon information and belief, Defendants' practice has been to pay Class Members
17 the minimum wage for hours worked during their scheduled shift time. However, as discussed
18 above, Plaintiffs and the Class Members have been required to work off-the-clock during their meal
19 periods. As such, Plaintiffs and the Class Members have not earned the minimum wage for all hours
20 actually worked.

21 103. As a result of these unlawful actions, Defendants are liable to Plaintiffs, under
22 California Labor Code §§ 1182.11, 1182.12, 1182.13, 1194, 1197 and the California Minimum
23 Wage Order, MW-2001, for the minimum wage for all hours worked, plus interest, attorneys' fees
24 and costs, and all other legal and equitable relief available from a court.

25 104. Plaintiffs also seek attorneys' fees and costs, under California Labor Code §1194
26 and § 2699(g)(1), as well an award of attorneys' fees and costs pursuant to Code of Civil Procedure
27 § 1021.5 and other applicable law.

28 // //

1 111. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA,
2 within the meaning of 29 U.S.C. § 255(a).

3 112. Plaintiffs, on behalf of themselves and the Collective Class, seek damages in the
4 amount of the amount of their payment below the minimum wage, and their respective unpaid
5 overtime compensation, liquidated damages from three years immediately preceding the filing of
6 this action, plus interests and costs as allowed by law, pursuant to 29 U.S.C. §§ 216(b) and 255(a),
7 and such other legal and equitable relief as the Court deems just and proper.

8 113. Plaintiffs, on behalf of themselves and the Collective Class, seek recovery of their
9 attorneys' fees and costs to be paid by Defendants, as provided by the FLSA, 29 U.S.C. § 216(b),
10 and an award of attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 and other
11 applicable law.

12
13 **NINTH CAUSE OF ACTION**
14 **UNFAIR PRACTICE UNDER THE UNFAIR COMPETITION ACT**
15 **(California Business and Professions Code §§ 17200-17208)³**

16 114. Plaintiffs incorporate by reference in this cause of action each allegation of the
17 preceding paragraphs as though fully set forth herein.

18 115. Defendants' numerous violations of California law and Federal law, as well as the
19 other statutory and regulatory violations alleged herein, constitute unlawful business actions and
20 practices in violation of Business and Professions Code § 17200, *et seq.*

21 116. Pursuant to Business and Professions Code § 17200, *et seq.*, Plaintiffs and the Class
22 Members are entitled to restitution of the overtime earnings and other unpaid wages, among other
23 relief alleged herein, that were withheld and retained by Defendants during a period that
24 commences four years prior to the filing of this action, in addition to an award of attorneys' fees
25 and costs pursuant to Code of Civil Procedure § 1021.5 and other applicable law.

26 // //

27 // //

28 ³ Note that the misappropriation of tips cause of action under B.P.C. § 17200 is separately enumerated, since it is not derivative of any of the other alleged causes of action, while the Ninth Cause of Action is strictly derivative of claims in the other causes of action.

1 **TENTH CAUSE OF ACTION**
2 **RETALIATION FOR PROTECTED ACTIVITY (ON BEHALF OF AMANDA QUILES)**
3 **(California Labor Code § 98.6)**

4 117. Plaintiff Quiles incorporates by reference in this cause of action each allegation of
5 the preceding paragraphs as though fully set forth herein.

6 118. Under California Labor Code § 98.6, "No person shall discharge an employee or in
7 any manner discriminate against any employee . . . because the employee or applicant for
8 employment has filed a bona fide complaint or claim or instituted or caused to be instituted any
9 proceeding under or relating to his or her rights [under the Labor Code]."

10 119. In November 2010, Plaintiff Quiles engaged in protected activity under California
11 law by filing this lawsuit. Defendants were served with her complaint on or about November 29,
12 2010.

13 120. After Defendants were served with Plaintiff Quiles's complaint, Arthur J. Parent, Jr.
14 willfully, intentionally, oppressively, and / or maliciously ordered employees at Koji's to find a
15 way to get rid of her.

16 121. As a result of Arthur J. Parent, Jr.'s orders, on or about December 6, 2010, approximately
17 one week after Defendants were served with her complaint, Plaintiff Quiles was suspended from
18 her server position. On or about December 13, 2010, Plaintiff Quiles was notified that she was
19 terminated.

20 122. Plaintiff Quiles' termination and suspension are adverse employment actions
21 prohibited by Cal. Labor Code § 98.6.

22 123. Plaintiff Quiles' termination and suspension are direct and proximate results of her
23 prior protected activity.

24 124. As a result of the retaliatory termination and suspension, Plaintiff Quiles has
25 suffered mental and emotional distress, in addition to economic damages.

26 125. As a result of the retaliation, Plaintiff Quiles is and will continue to be entitled to
27 backpay, compensatory and punitive damages, along with interest, attorneys' fees, and all other
28 relief available under the Labor Code, attorneys' fees and costs under § 2699(g)(1), as well an

1 award of attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 and other
2 applicable law.

3
4 **ELEVENTH CAUSE OF ACTION**
5 **RETALIATION FOR FILING A FAIR LABOR STANDARDS ACT COMPLAINT,**
6 **29 U.S.C. §215(a)(3)**
7 **(On Behalf of Amanda Quiles)**

8 126. Plaintiff Quiles incorporates by reference in this cause of action each allegation of
9 the preceding paragraphs as though fully set forth herein.

10 127. After Defendants were served with Plaintiff Quiles's complaint, Arthur J. Parent, Jr.
11 willfully, intentionally, oppressively, and / or maliciously ordered employees at Koji's to find a
12 way to get rid of her.

13 128. The FLSA, 29 U.S.C. §215(a)(3) makes it unlawful to discharge or in any other manner
14 discriminate against any employee because such employee has filed any complaint or instituted or
15 caused to be instituted any proceeding under the Fair Labor Standards Act.

16 129. The FLSA's anti-retaliation provision encourages reports of illegal activity,
17 protecting any employee who protests about the failure to pay overtime wages.

18 130. Because Plaintiff Quiles filed a lawsuit complaining of wage payment and overtime
19 violations, and therefore, engaged in protected activity under the FLSA, and was retaliated against
20 with a suspension and termination, she is entitled to relief including but not limited to
21 reimbursement of lost wages and interest thereon, damages including punitive damages, payment
22 of reasonable attorney's fees, and the posting of notices to employees, as well as award of attorneys'
23 fees and costs pursuant to the FLSA, Code of Civil Procedure § 1021.5 and other applicable law.

24 **TWELFTH CAUSE OF ACTION**
25 **CIVIL PENALTIES UNDER LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**
26 **OF 2004**
27 **(California Labor Code §§ 2698, et seq.)**

28 131. Plaintiffs incorporate by reference in this cause of action each allegation of the
preceding paragraphs as though fully set forth herein.

132. California Labor Code § 2698, et seq., the Labor Code Private Attorneys General
Act of 2004 ("PAGA"), enables a Court to award civil penalties for violations of the Labor Code

1 that, prior to the Act, could only be assessed and collected by the Labor and Workforce
2 Development Agency.

3 133. Plaintiffs have provided notice pursuant to Cal. Labor Code § 2699.3 and on
4 November 16, 2010 and thereafter, most recently January 16, 2014 (on behalf of the new named
5 Plaintiffs), asked the California Labor and Workforce Development Agency if it intended to
6 investigate alleged Labor Code violations, as set forth in the letter attached to a prior version of this
7 complaint.

8 134. On December 22, 2010, Plaintiffs' counsel received notification from the California
9 Labor & Workforce Development Agency that the agency does not intend to investigate the alleged
10 violations. At least thirty-three days have passed since Plaintiffs' most recent exhaustion with the
11 California Labor and Workforce Development Agency. Therefore, Plaintiffs are entitled to
12 prosecute their PAGA claims.

13 135. Accordingly, on behalf of themselves and all other Class Members who have
14 worked for Koji's Japan Incorporated and Arthur Parent, Jr. at any time since one year prior to the
15 filing of this First Amended Complaint to the trial in this action ("PAGA Class Members"),
16 Plaintiffs allege as follows:

17 136. California Labor Code § 558 imposes civil penalties, in addition to any other civil
18 or criminal penalty provided by law, upon any employer or other person acting on behalf of an
19 employer who violates a section of Division 2, Part 2, Chapter 1 of the Labor Code or any provision
20 regulating hours and days of work in any Industrial Welfare Commission Wage Order. Pursuant to
21 Labor Code § 558, Koji's Japan Incorporated and Arthur Parent, Jr. are subject to a civil penalty of
22 (1) for an initial violation, fifty dollars \$50 for each underpaid Plaintiff and PAGA Class Member
23 for each pay period for which the employee was not paid appropriate overtime premiums under
24 Labor Code § 510, as alleged in the First Cause of Action, in addition to an amount sufficient to
25 recover underpaid wages; and (2) for each subsequent violation, one hundred dollars (\$100) for
26 each underpaid Plaintiff and PAGA Class Member for each pay period for which the employee was
27

1 underpaid under Labor Code § 510, as alleged in the First Cause of Action, in addition to an amount
2 sufficient to recover underpaid wages.

3 137. Under California Labor Code § 2699(f)(2), which provides a civil penalty for those
4 violations of the Labor Code which lack a corresponding statutory penalty, Koji's Japan
5 Incorporated and Arthur Parent, Jr. are subject to a civil penalty of one hundred dollars (\$100) for
6 each Plaintiff and PAGA Class Member per pay period for the initial violation of Labor Code
7 §§ 201 and 202 for their failure to pay earned wages upon discharge, as alleged in the Second Cause
8 of Action, and two hundred dollars (\$200) for each Plaintiff and PAGA Class Member per pay
9 period for each subsequent violation of Labor Code §§ 201 and 202, as alleged in the Second Cause
10 of Action.

11 138. Under California Labor Code § 226.3, which provides for civil penalties for
12 violations of California Labor Code § 226(a) in addition to any other penalty provided by law,
13 Koji's Japan Incorporated and Arthur Parent, Jr. are subject to a civil penalty of two hundred fifty
14 dollars (\$250) per each Plaintiff and PAGA Class Member for the first violation, and one thousand
15 dollars (\$1,000) per each Plaintiff and PAGA Class Member for each subsequent violation of Labor
16 Code § 226(a) for failure to provide timely, accurate, itemized wage statements, as alleged in the
17 Third Cause of Action.

18 139. Under California Labor Code § 558, described above, Koji's Japan Incorporated and
19 Arthur Parent, Jr. are subject to a civil penalty of (1) for an initial violation, fifty dollars \$50 for
20 each underpaid Plaintiff and PAGA Class Member for each pay period for which the employee was
21 not provided a meal period under Labor Code § 512, as alleged in the Fourth Cause of Action, in
22 addition to an amount sufficient to recover underpaid wages; and (2) for each subsequent violation,
23 one hundred dollars (\$100) for each underpaid Plaintiff and PAGA Class Member for each pay
24 period for which the employee was underpaid under Labor Code § 510, as alleged in the Fourth
25 Cause of Action, in addition to an amount sufficient to recover underpaid wages.

26 140. Under California Labor Code § 2699(f)(2), described above, Koji's Japan
27 Incorporated and Arthur Parent, Jr. are subject to a civil penalty of one hundred dollars (\$100) for
28

1 each Plaintiff and PAGA Class Member per pay period for the initial violation of Labor Code
2 § 226.7 for failing to provide meal periods, as alleged in the Fourth Cause of Action, and two
3 hundred dollars (\$200) for each Plaintiff and PAGA Class Member per pay period for each
4 subsequent violation of Labor Code § 226.7 for failing to provide meal periods, as alleged in the
5 Fourth Cause of Action.

6 141. Under California Labor Code § 2699(f)(2), described above, Koji's Japan
7 Incorporated and Arthur Parent, Jr. are subject to a civil penalty of one hundred dollars (\$100) for
8 each Plaintiff and PAGA Class Member per pay period for the initial violation of Labor Code §
9 226.7 for failing to provide rest periods, as alleged in the Fourth Cause of Action, and two hundred
10 dollars (\$200) for each Plaintiff and PAGA Class Member per pay period for each subsequent
11 violation of Labor Code § 226.7 for failing to provide rest periods, as alleged in the Fourth Cause
12 of Action.

13 142. California Labor Code § 225.5 imposes civil penalties, in addition to any other civil
14 or criminal penalty provided by law, upon every person who unlawfully withholds wages due any
15 employee in violation of, *inter alia*, Labor Code §§ 221 and 223. Under California Labor Code §
16 225.5, Koji's Japan Incorporated and Arthur Parent, Jr. are subject to a civil penalty of (1) for an
17 initial violation, one hundred dollars (\$100) for each underpaid Plaintiff and PAGA Class Member
18 for each pay period for which employees were not compensated for all hours worked, as alleged in
19 the Fifth Cause of Action, in addition to an amount sufficient to recover such unlawfully deducted
20 wages; and (2) for each subsequent violation, two hundred dollars (\$200), plus 25% of the amount
21 unlawfully withheld for each underpaid Plaintiff and PAGA Class Member for each pay period for
22 which the employee was not compensated for all hours worked under Labor Code §§ 221 and 223,
23 as alleged in the Fifth Cause of Action, in addition to an amount sufficient to recover the unlawfully
24 deducted wages.

25 143. Under California Labor Code § 2699(f)(2), described above, Koji's Japan Incorporated and
26 Arthur Parent, Jr. are subject to a civil penalty of one hundred dollars (\$100) for each Plaintiff and
27 PAGA Class Member per pay period for the initial violation of Labor Code §§ 221 and 223, as
28

1 alleged in the Fifth Cause of Action, and two hundred dollars (\$200) for each Plaintiff and PAGA
2 Class Member per pay period for each subsequent violation of Labor Code §§ 221 and 223, as
3 alleged in the Fifth Cause of Action.

4 144. Under California Labor Code § 2699(f)(2), described above, Koji's Japan
5 Incorporated and Arthur Parent, Jr. are subject to a civil penalty of one hundred dollars (\$100) for
6 each Plaintiff and PAGA Class Member per pay period for the initial violation of Labor Code
7 § 351, for misappropriation of tips, as alleged in the Sixth Cause of Action, and two hundred dollars
8 (\$200) for each Plaintiff and PAGA Class Member per pay period for each subsequent violation of
9 Labor Code § 351 and Business and Professions Code § 17200, as alleged in the Sixth Cause of
10 Action.

11 145. Under California Labor Code § 2699(f)(2), described above, Koji's Japan
12 Incorporated and Arthur Parent, Jr. are subject to a civil penalty of one hundred dollars (\$100) for
13 each Plaintiff and PAGA Class Member per pay period for the initial violation of Labor Code §
14 1194, for failure to pay the California minimum wage, as alleged in the Seventh Cause of Action,
15 and two hundred dollars (\$200) for each Plaintiff and PAGA Class Member per pay period for each
16 subsequent violation of Labor Code § 1194, as alleged in the Seventh Cause of Action.

17 146. Plaintiffs also seek attorneys' fees and costs for each of the claims above, under
18 California Labor Code § 2699(g)(1), as well an award of attorneys' fees and costs pursuant to Code
19 of Civil Procedure § 1021.5 and other applicable law, and costs.

20
21 **REQUEST FOR RELIEF**

22 147. WHEREFORE, the Plaintiffs, on behalf of themselves and, Representative
23 Plaintiffs, on behalf of the proposed Class, request judgment and the following specific relief
24 against Defendants as follows:

25 A. That the Court determine that this action may be maintained as a class
26 action under Code of Civil Procedure § 382;

27 B. That the Court determine that this action may be maintained as a
28 collective action under 29 U.S.C. § 216(b);

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C. That Defendants are found to have violated the above-referenced provisions of the Labor Code and IWC Wage Order No. 5, and the FLSA, as to Plaintiffs and the Class;

D. That Defendants' actions are found to be willful to the extent necessary under §§ 201, 202 and 203 of the California Labor Code for willful failure to pay all compensation owed at the time of separation to Plaintiff and the Class Members no longer employed by Defendants, as to §226 of the California Labor Code for willful failure to provide the required accurate and itemized wage statements to Plaintiffs and the Class Members;

E. That Defendants are found to have violated provisions of the Labor Code and Wage Orders regarding meal periods and rest periods;

F. That Defendants are found to have violated provisions of the Labor Code and Wage Orders regarding overtime;

G. That Defendants are found to have violated provisions of the Labor Code and Wage Orders regarding uncompensated off-the-clock time, resulting in uncompensated hours worked and wages below the minimum wage;

H. That Defendants through their agents are found to have unlawfully misappropriated tips from customers in the direct chain of service to customers, in violation of §§ 350 and 351 of the Labor Code, serving as the basis for claims seeking restitution under Business and Professions Code § 17200;

I. That Defendants are found to have violated the FLSA with respect to overtime and the minimum wage;

J. That Defendants' violations as described above are found to be willful to the extent necessary under the FLSA for a three-year statute of limitations and other consequences;

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K. That Plaintiffs and the Class Members receive an award in the amount of unpaid wages owed, including interest thereon, and penalties subject to proof at trial;

L. That Plaintiffs and the Class Members receive an award of liquidated damages under the FLSA;

M. That Defendants be ordered and enjoined to pay restitution to Plaintiffs and the Class for amounts acquired through Defendants' unlawful activities, pursuant to Business and Professions Code §§ 17200-05;

N. That Defendants are required to pay Plaintiff Quiles backpay with interest and compensatory and punitive damages for her retaliatory suspension and termination, among other relief;

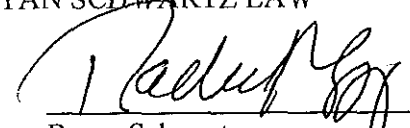
O. That Defendants be ordered to pay civil penalties under the Labor Code Private Attorneys General Act of 2004, pursuant to Labor Code § 2698, *et seq.*;

Q. That Plaintiffs and the Class receive an award of reasonable attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5, Labor Code § 1194, California Labor Code § 2699(g)(1), and/or other applicable laws; and

R. That the Court order further relief, in law or equity, as it deems appropriate and just.

Dated: October 2, 2015

BRYAN SCHWARTZ LAW

By: 

Bryan Schwartz
Rachel Terp
ATTORNEYS FOR PLAINTIFFS AND
THE CLASS

1 **PROOF OF SERVICE**

2 QUILES, et al. v. KOJI'S JAPAN, INC. et al.
3 30-2010-00425532-CU-OE-CXC

4 SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE

5 I am over the age of 18 years and not a party to the within entitled action; my
6 business address is 1330 Broadway, Suite 1630, Oakland, California 94612. On October
7 23, 2015 I served the documents described as:

8 **FIFTH AMENDED INDIVIDUAL, CLASS, AND COLLECTIVE ACTION
9 COMPLAINT FOR DAMAGES, AND RESTITUTION**

10 on the interested parties to said action by the following means:

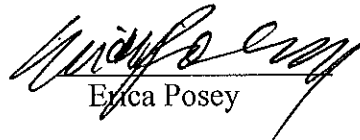
11 [X] (By U.S. Mail) By placing a true copy thereof, enclosed in a sealed envelope with
12 postage thereon fully prepaid, for collection and mailing on that date following ordinary
13 business practices, in the United States Mail at the offices of Bryan Schwartz Law, Oakland,
14 California, addressed as shown below. I am readily familiar with this business's practice for
15 collection and processing of correspondence for mailing with the U.S. Postal Service, and in
16 the ordinary course of business correspondence would be deposited with the U.S. Postal
17 Service the same day it was placed for collection and processing.

18 [X] (By Electronic Mail) By transmitting a true copy thereof by electronic mail to the
19 address shown below. The transmission was completed without error.

20 [X] (By Facsimile Transmission) By transmitting a true copy thereof by facsimile
21 transmission from facsimile number (510) 444-9301, to the interested parties to said action; the
22 transmission was reported as complete and without error. Said document was transmitted to
23 the interested parties as shown below at approximately 5:15 P.M.

24 I declare under penalty of perjury that the foregoing is true and correct, and that I am
25 employed in the office of a member of the Bar of this Court at whose direction the service
26 was made.

27 Executed on October 23, 2015 at Oakland, California.

28 
Erica Posey

NAME AND ADDRESS/FAX NUMBER/EMAIL OF EACH PERSON SERVED:

Stephen A. Madoni
Law Office of Stephen A. Madoni
3700 Newport Blvd., Suite 206
Newport Beach, CA 92663
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