

FILED

LOS ANGELES SUPERIOR COURT

APR 21 2008

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13 **Individually and on Behalf of All Similarly**
14 **Situated Individuals**

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF LOS ANGELES**

17 **AUSTIN RAINVILLE, Individually and**
18 **on Behalf of All Similarly Situated**
19 **Individuals,**

20 **Plaintiffs,**

21 **vs.**

22 **MELS DRIVE-IN, a corporation, and**
23 **DOES 1 through 25, Inclusive,**

24 **Defendants.**

25 **CASE NO. BC385194**

D 17

26 **FIRST AMENDED CLASS ACTION**
27 **COMPLAINT FOR:**

- 28 **1. UNPAID WAGES**
- 2. FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§ 510 and 1194);**
- 3. FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§ 512 and 226.7);**
- 4. FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS (CAL. LABOR CODE § 226);**
- 5. WAITING TIME PENALTIES (CAL. LABOR CODE §§ 201-203);**
- 6. CONVERSION (CAL. LABOR CODE §§ 3336 and 3294);**
- 7. UNFAIR COMPETITION (CAL. LABOR CODE §§ 17200 et seq.); and**
- 8. PRELIMINARY AND PERMANENT INJUNCTION**

JURY TRIAL DEMANDED

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1 Plaintiff Austin Rainville ("Plaintiff"), individually and on behalf of all similarly situated
2 individuals, alleges as follows:

3 **GENERAL ALLEGATIONS**

4 1. This is a proposed class action brought against Defendants Mels Drive-In ("Mels") and
5 DOES 1-25, inclusive (collectively, "Defendants"), on behalf of Plaintiff and all other
6 individuals who were employed as Servers, Cooks, Soda Jerks, Bussers, Dishwashers, Food
7 Runners, Chefs, and/or Cashiers at Mels Drive-In restaurants located in California at any time
8 during the four years preceding the filing of this action, and continuing while this action is
9 pending ("Class Period), and who were denied the benefits and protections required under the
10 California Labor Code and other statutes and regulations applicable to employees in the State of
11 California (collectively, "Restaurant Workers").

- 12 2. During the Class Period, Mels, in conjunction with other Defendants:
- 13 a. failed to pay wages for all hours worked by the Restaurant Workers;
 - 14 b. failed to pay overtime wages due to the Restaurant Workers;
 - 15 c. failed to provide meal and rest periods due to the Restaurant Workers;
 - 16 d. failed to provide the Restaurant Workers with timely and accurate wage and hour
17 statements;
 - 18 e. failed to pay the Restaurant Workers compensation in a timely manner upon their
19 termination or resignation;
 - 20 f. failed to maintain complete and accurate payroll records for the Restaurant
21 Workers;
 - 22 g. wrongfully withheld wages and compensation due to the Restaurant Workers; and
23 h. committed unfair business practices in an effort to increase profits and to gain an
24 unfair business advantage at the expense of the Restaurant Workers and the public.

25 3. The foregoing acts and other acts by Defendants - committed throughout California and
26 Los Angeles County - violated provisions of the California Labor Code, including sections 201,
27 202, 203, 226, 226.7, 510, 512, 515, 551, 552, 1194, and 1198 (collectively, "Employment
28 Laws"), violated the applicable Wage Orders issued by California's Industrial Welfare

1 Commission, including Wage Orders 5-2001 during the Class Period (“Regulations”), violated
2 California’s Unfair Business Practices Act, California Business & Professions Code sections
3 17200 *et seq.*, and violated Plaintiffs’ rights.

4 **JURISDICTION AND VENUE**

5 4. Venue is proper in this Judicial District and the County of Los Angeles because work was
6 performed by Plaintiff and other members of the Class for Defendants in the County of Los
7 Angeles, California, and Defendants’ obligations under the laws and regulations governing
8 employment in the State of California (henceforth “Employment Laws and Regulations”) to pay
9 overtime wages, to provide meal and rest periods and accurate wage statements to Plaintiff and
10 other members of the Class arose and were breached in the County of Los Angeles.

11 5. The California Superior Court has jurisdiction in this matter because Plaintiff Austin
12 Rainville is a resident of California, and Defendant Mels is a California corporation qualified to
13 do business in California and regularly conducts business in California. Further, no federal
14 question is at issue as the claims are based solely on California law.

15 **THE PARTIES**

16 6. Plaintiff Austin Rainville is, and at all relevant times was, a competent adult residing in
17 California. Mr. Rainville brings suit on behalf of himself and all similarly situated individuals
18 pursuant to California Code of Civil Procedure section 382, and California Business &
19 Professions Code sections 17200, *et seq.* Mr. Rainville worked at a Mels Drive-In restaurant in
20 Los Angeles County, California.

21 7. Defendant Mels Drive-In is, and at all relevant times was, a corporation registered with
22 the State of California’s Secretary of State. Mels conducts business throughout the State of
23 California, including in Los Angeles County.

24 Defendant Mels owns and operates a chain of approximately 9 Mels Drive-In restaurants
25 in California, including 3 in the County of Los Angeles. Mels’ registered agent for service of
26 process is located in the City of West Hollywood and the County of Los Angeles. Defendants
27 have engaged in unlawful employment practices addressed in this complaint throughout
28 California and in Los Angeles County.

1 9. Plaintiff is informed and believes and based thereon alleges that Mels' restaurants are
2 substantially similar in size, sales volume and number of employees required to work at each
3 location. Plaintiff is also informed and believes and thereon alleges that Mels uniformly applies
4 its labor staffing guidelines and overtime policies to all of Mels' restaurants.

5 10. Plaintiff is currently unaware of the true names and capacities of the defendants sued in
6 this action by the fictitious names DOES 1 through 25, inclusive, and therefore sues those
7 defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names
8 and capacities of such fictitiously named defendants when they are ascertained. Plaintiff is
9 informed and believes and based thereon states that the persons sued herein as DOES are in some
10 manner responsible for the conduct, injuries and damages herein alleged.

11 11. Plaintiff is informed and believes and based thereon alleges that each defendant sued in
12 this action, including each defendant sued by the fictitious names DOES 1 through 25, inclusive,
13 is responsible in some manner for the occurrences, controversies and damages alleged below.

14 12. Plaintiff is informed and believes and based thereon alleges that DOES 1 through 25,
15 inclusive were the agents, servants and/or employees of Defendants and, in doing the things
16 hereinafter alleged and at all times, were acting within the scope of their authority as such agents,
17 servants and employees, and with the permission and consent of Defendants.

18 13. Plaintiff is informed and believes and based thereon alleges that Defendants ratified,
19 authorized, and consented to each and all of the acts and conduct of each other as alleged herein.
20 Each of the defendants was the agent and/or employee of the others, and the conduct of each
21 defendant herein alleged was authorized and/or ratified by the others. The conduct of defendant
22 Mels Drive-In was carried on by and through its authorized agents, including owners, officers,
23 directors, managers and supervisors.

24 FACTS

25 14. During part of the four years preceding the filing of this action, Austin Rainville was
26 employed by Defendants as a Restaurant Worker in a Mels' restaurant in Los Angeles County,
27 California, and was a non-exempt/hourly employee under the Employment Laws and
28 Regulations. His dates of employment were from May, 2004 until August, 2005. During that

1 time period, Mr. Rainville was employed at Mels' West Hollywood restaurant.

2 15. During the time Plaintiff was employed by Mels, Defendants failed and refused to pay
3 Plaintiff for all hours worked ("off-the-clock" work), in violation of the Employment Laws and
4 Regulations.

5 16. During the time Plaintiff was employed by Mels, Defendants failed and refused to
6 provide Plaintiff with rest periods during work shifts over four hours, and routinely required
7 Plaintiff to work more than five hours without being given at least a 30-minute, uninterrupted
8 meal period, in violation of the Employment Laws and Regulations.

9 17. During Plaintiff's employment with Mels, Plaintiff was regularly required to work more
10 than eight hours per day and more than forty hours per workweek. Defendants regularly failed
11 and refused to compensate Plaintiff for the overtime hours he worked, in violation of the
12 Employment Laws and Regulations.

13 18. During Plaintiff's employment with Mels, Defendants failed and refused to provide
14 Plaintiff with timely and accurate wage and hour statements showing gross hours earned, total
15 hours worked, all deductions made, net wages earned, the name and address of the legal entity
16 employing them, accrued vacation, and all applicable hourly rates in effect during each pay
17 period, as well as the corresponding number of hours worked at each hourly rate.

18 19. During Plaintiff's employment with Mels, Defendants wrongfully withheld from Plaintiff
19 and failed to pay his wages and other compensation (including vacation pay) which was due for
20 all of his hours worked, for overtime work, for missed meal and rest periods, and as otherwise
21 required pursuant to the Employment Laws and Regulations.

22 20. Plaintiff seeks restitution and disgorgement of all sums wrongfully obtained by
23 Defendants through unfair business practices in violation of California's Business & Professions
24 Code sections 17200, *et seq.*, to prevent the Defendants from benefitting from their violations of
25 law and/or unfair acts. Such sums recovered under the Unfair Competition Act and Unfair
26 Businesses Act are equitable in nature and are not to be considered damages. Plaintiff is also
27 entitled to costs, attorney's fees, interest and penalties as provided for by the California Labor
28

1 Code, the California Business & Professions Code, and the Private Attorney General Act,
2 California Code of Civil Procedure section 1021.5.

3 21. To the extent that any Class Member, including Plaintiff, entered into any arbitration
4 agreement with any Defendant and such agreement purports to require arbitration, such
5 agreement is void and unenforceable. Any such agreement was one of adhesion, executed under
6 duress, lacked consideration and mutuality, and was otherwise void under both California Labor
7 Code section 229 and the California Supreme Court case of *Armendariz v. Foundation Health*
8 *Psychare Services, Inc.* (2000) 24 Cal.4th 83.

9 22. All Restaurant Workers, including Plaintiff, are putative class members.

10 23. Defendants have knowingly denied the Restaurant Workers meal and rest periods in
11 violation of the Employment Laws and Regulations.

12 24. The Restaurant Workers' duties and activities during their respective working hours and
13 each shift are known to and directed by Defendants, and are set and controlled by Defendants.

14 25. During the Class Period, Defendants have routinely failed and refused to compensate
15 Restaurant Workers all of the wages they are due ("off-the-clock" work).

16 26. During the Class Period, Restaurant Workers have been required to work more than eight
17 hours per day and more than forty hours per workweek. Defendants have routinely failed and
18 refused to compensate Restaurant Workers all of the overtime wages they are due.

19 27. During the Class Period, Defendants have routinely failed and refused to provide to
20 Restaurant Workers rest periods during work shifts over four hours, and have failed and refused
21 to provide Restaurant Workers with 30-minute, uninterrupted meal periods during work shifts
22 over five hours.

23 28. During the Class Period, Defendants have failed and refused to provide Restaurant
24 Workers with timely and accurate wage and hour statements showing gross hours earned, total
25 hours worked, all deductions made, net wages earned, the name and address of the legal entity
26 employing the Restaurant Workers, and all applicable hours rates in effect during each pay period
27 and the corresponding number of hours worked at each hourly rate.

1 29. During the Class Period, Defendants have failed and refused to pay accrued wages and
2 other compensation due immediately to Restaurant Workers who were terminated, and
3 Defendants have failed and refused to pay accrued wages and other compensation due within
4 seventy-two hours to Restaurant Workers who ended their employment.

5 30. During the Class Period, Defendants have failed and refused to maintain complete and
6 accurate payroll records for Restaurant Workers showing gross hours earned, total hours worked,
7 all deductions made, net wages earned, the name and address of the legal entity employing the
8 Restaurant Workers, and all applicable hours rates in effect during each pay period and the
9 corresponding number of hours worked at each hourly rate.

10 31. During the Class Period, Defendants have wrongfully withheld and failed to pay
11 Restaurant Workers wages and other compensation due them for all hours worked, for overtime
12 work, for missed meal and rest periods, and as otherwise required pursuant to the Employment
13 Laws and Regulations.

14 32. Plaintiff seeks injunctive relief in the form of an order prohibiting Defendants from
15 requiring Restaurant Workers to work without compensation, to work more than eight hours per
16 day, more than forty hours in any workweek, more than six days consecutively, or more than six
17 days per workweek, without payment of overtime wages, and prohibiting Defendants from
18 denying the Restaurant Workers meal and rest periods and required under the Employment Laws
19 and Regulations. Plaintiff also seeks payment of overtime wages and other compensation
20 (including vacation pay), plus all benefits required pursuant to the Employment Laws and
21 Regulations, plus penalties and interest, owed to Restaurant Workers. Plaintiff also seeks
22 attorney's fees and costs as provided by statute.

23 33. The proposed class is ascertainable in that its members can be identified using
24 information contained in Defendants' payroll and personnel records.

25 34. The Restaurant Workers are so numerous, conservatively estimated to include over 100
26 Restaurant Workers geographically dispersed throughout California, that joinder of each
27 individual Restaurant Worker would be impracticable, and the disposition of their claims in a
28 class action, rather than numerous individual actions, will benefit the parties, the Court and the

1 interests of justice.

2 35. As alleged herein, Defendants' conduct was fraudulent, deceitful and despicable in that
3 Defendants' had a scheme and plan to knowingly circumvent California wage and hour laws for
4 Defendants' benefit. Defendants' conduct was despicable in that it was carried on with a willful
5 and conscious disregard of the rights of others. Defendants' conduct was oppressive in that it
6 subjected people to cruel and unjust hardship in conscious disregard of the rights of others.
7 Defendants' conduct was fraudulent in that consisted of intentional misrepresentations, deceit,
8 and/or concealment of a material fact known to Defendants with the intention of thereby
9 depriving a person of property or legal rights or otherwise causing injury. Defendants' conduct
10 violated the Employment Laws and Regulations. Defendants' systematic acts and practices also
11 violated, *inter alia*, California Business & Professions Code section 17200, *et seq.*

12 36. There is a well-defined community of interest in the questions of law and fact involved in
13 this action because Defendants' failure to pay Restaurant Workers their wages or afford them the
14 protections required under the Employment Laws and Regulations affects all Restaurant
15 Workers. Common questions of law and fact predominate over questions that affect only
16 individual Restaurant Workers because all Restaurant Workers' duties and activities have been
17 controlled and directed by Defendants. The predominate questions of law and fact include, but
18 are not limited to:

- 19 a. Did Defendants devise a scheme and plan to circumvent California wage and hour
20 laws?;
- 21 b. Was/is Defendants' conduct fraudulent and deceitful?;
- 22 c. Was/is Defendants' conduct despicable in that it was carried on with a willful and
23 conscious disregard of the rights of others?;
- 24 d. Was/is Defendant's conduct oppressive in that it subjected people to cruel and
25 unjust hardship in conscious disregard of the rights of others?;
- 26 e. Was/is Defendant's conduct fraudulent in that consisted of intentional
27 misrepresentations, deceit, or concealment of a material fact known to Defendant with the
28 intention of thereby depriving a person of property or legal rights or otherwise causing injury?;

1 f. Did/does Defendants' conduct violate the Employment Laws and Regulations?;
2 and

3 g. Do/did Defendants' systematic acts and practices violate, *inter alia*, California
4 Business & Professions Code section 17200, *et seq.*?

5 37. Plaintiff's claims are typical of those of the other Restaurant Workers because all
6 Restaurant Workers share the same or similar employment duties and activities, all are
7 automatically classified as non-exempt employees, and all have been denied the benefits and
8 protections of the Employment Laws and Regulations in the same manner. As all of Defendants'
9 restaurants are substantially similar in size, sales volume and number of employees required to
10 operate, and as Defendants have uniformly applied the same labor staffing guidelines and
11 overtime policies to each restaurant, Plaintiff's claims are typical of the claims of all Restaurant
12 Workers. Plaintiff's claims are also typical because he has suffered the same damages as those
13 suffered by all Restaurant Workers.

14 38. Plaintiff can fairly and adequately represent and protect the interests of all Restaurant
15 Workers in that Mr. Rainville does not have any disabling conflicts of interest which are
16 antagonistic to those of all other Restaurant Workers. Plaintiff seeks no relief which is
17 antagonistic or adverse to the other Restaurant Workers, and the infringement of their rights and
18 the damages they have suffered are typical of all other Restaurant Workers. Plaintiff's counsel
19 are competent and experienced in litigating class actions in California based on large employers'
20 violations of the Employment Laws and Regulations.

21 39. As mentioned above, to the extent that any Restaurant Worker entered into any arbitration
22 agreement with any defendant and such agreement purports to require arbitration, such
23 agreement is void and unenforceable. Even if such agreement is deemed enforceable, however,
24 classwide arbitration is appropriate and should be utilized to obtain classwide relief.

25 40. The nature of this action and the nature of laws available to Plaintiff and the other
26 Restaurant Workers in the putative Class make use of the class action a particularly efficient and
27 effective procedure because:

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- 1 a. For many of the Restaurant Workers, individual actions or other individual
2 remedies would be impracticable and litigating individual actions would be too costly;
- 3 b. The action involves a large corporate employer (Mels) and a large number of
4 individual employees (Plaintiff and the other Restaurant Workers), many with relatively small
5 claims and all with common issues of law and fact;
- 6 c. If the Restaurant Workers are forced to bring individual lawsuits, the corporate
7 defendant would necessarily gain an unfair advantage, the ability to exploit and overwhelm the
8 limited resources of individual Class members with vastly superior financial and legal resources;
- 9 d. The costs of individual suits would likely consume the amounts recovered;
- 10 e. Requiring each Class member to pursue an individual remedy would also
11 discourage the assertion of lawful claims by current employees of Defendants, who would be
12 disinclined to pursue an action against their present and/or former employer due to an appreciable
13 and justified fear of retaliation and permanent damage to their immediate and/or future
14 employment; and
- 15 f. Common business practices Plaintiff experienced are representative of those
16 experienced by all Restaurant Workers and can establish the right of all Restaurant Workers to
17 recover on the alleged claims.

18 **FIRST CAUSE OF ACTION**

19 **(Failure to Pay Compensation For All Hours Worked - By Plaintiff Individually and on**
20 **Behalf of All Restaurant Workers)**

21 41. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
22 allegations contained in this complaint, and incorporates them by reference into this cause of
23 action as though fully set forth herein, excepting those allegations which are inconsistent with
24 this cause of action.

25 42. Plaintiff brings this action to recover unpaid compensation for all hours worked as
26 defined by the applicable Industrial Welfare Commission wage order as the time during which an
27 employee is subject to the control of an employer, and includes all the time the employee is
28 suffered or permitted to work, whether or not required to do so.

1 43. The Defendants' conduct described in this Complaint violates, among other things, Labor
2 Code sections 216 and 1194.

3 44. Defendants failed to pay Plaintiff for all of his actual hours worked. Defendants knew or
4 should have known that Plaintiff was working these hours.

5 45. Plaintiff is entitled to recover the unpaid balance of compensation Defendants owe
6 Plaintiff, plus interest on that amount, liquidated damages pursuant to Labor Code section 1194.2
7 and reasonable attorney fees and costs of this suit pursuant to Labor Code section 1194. Plaintiff
8 is also entitled to additional penalties and/or liquidated damages pursuant to statute.

9 46. Plaintiff is also entitled to penalties pursuant to Paragraph No. 20 of the applicable Wage
10 Order which provides, in addition to any other civil penalties provided by law, any employer or
11 any other person acting on behalf of the employer who violates, or causes *to be* violated, the
12 provisions of the Wage Order, shall be subject to a civil penalty of \$50.00 (for initial violations)
13 or \$100.00 (for subsequent violations) for each underpaid employee for each pay period during
14 which the employee was underpaid in addition to the amount which is sufficient to recover
15 unpaid wages.

16 47. The conduct of defendants and each of them in failing and refusing to pay Plaintiff
17 for all hours worked violated *Civil Code* § 3294 in the following respects:

18 a. The failure and refusal to pay Plaintiff for all hours worked was knowing
19 and carried on by Defendants with a willful and conscious disregard of
20 plaintiff's rights.

21 b. Defendants' conduct was oppressive in that it was despicable conduct which
22 subjected Plaintiff to cruel and unjust hardship in conscious disregard of his
23 rights. Plaintiff is therefore entitled to punitive damages against defendants
24 and each of them.

25 c. Defendant Mels is liable in punitive damages for the conduct of its
26 authorized agents, including owners, officers, directors, managers and supervisors.

27 48. Defendants committed the acts knowingly and willfully, with the wrongful and deliberate
28 intention of injuring Plaintiff, from improper motives amounting to malice, and in conscious

1 disregard of Plaintiff's rights. Plaintiff is thus entitled to recover nominal, actual, compensatory,
2 punitive, and exemplary damages in amounts according to proof at time of trial, but in amounts
3 in excess of the jurisdiction of this Court.

4 **SECOND CAUSE OF ACTION**

5 **(Failure to Pay Overtime Compensation - By Plaintiff Individually and on Behalf of All**
6 **Restaurant Workers: California Labor Code §§ 510 and 1194)**

7 49. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
8 allegations contained in this complaint, and incorporates them by reference into this cause of
9 action as though fully set forth herein, excepting those allegations which are inconsistent with
10 this cause of action.

11 50. During the Class Period, Defendants have routinely required Restaurant Workers,
12 including Plaintiff, to work over eight hours in a day and over forty hours in a workweek.
13 However, Defendants have failed and refused to pay the Restaurant Workers, including
14 Plaintiff, the overtime compensation required by the Employment Laws and Regulations.

15 51. The conduct of defendants and each of them in failing and refusing to pay Plaintiff
16 overtime compensation required by the Employment Laws and Regulations violated *Civil Code*
17 § 3294 in the following respects:

- 18 a. The failure and refusal to pay Plaintiff overtime compensation required by the
19 Employment Laws and Regulations was knowing and carried on by
20 Defendants with a willful and conscious disregard of plaintiff's rights.
- 21 b. Defendants' conduct was oppressive in that it was despicable conduct which
22 subjected Plaintiff to cruel and unjust hardship in conscious disregard of his
23 rights. Plaintiff is therefore entitled to punitive damages against defendants
24 and each of them.
- 25 c. Defendant Mels is liable in punitive damages for the conduct of its
26 authorized agents, including owners, officers, directors, managers and supervisors.

27 **4** The Restaurant Workers, including Plaintiff, have been deprived of their rightfully earned
28 overtime compensation as a direct and proximate result of Defendants' policies and practices and

1 Defendants' failure and refusal to pay that compensation. The Restaurant Workers, including
2 Plaintiff, are entitled to recover such amounts, plus interest, attorney's fees and costs.

3 **THIRD CAUSE OF ACTION**

4 **(Failure to Provide Meal and Rest Periods - By Plaintiff Individually and on Behalf of All**
5 **Restaurant Workers: California Labor Code §§ 226.7 and 512)**

6 53. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
7 allegations contained in this complaint, and incorporates them by reference into this cause of
8 action as though fully set forth herein, excepting those allegations which are inconsistent with
9 this cause of action.

10 54. During the Class Period, Defendants have routinely failed and refused to provide the
11 Restaurant Workers, including Plaintiff, with meal and rest periods during their work shifts, and
12 have failed to compensate Restaurant Workers, including Plaintiff, for those meal and rest
13 periods, as required by California Labor Code section 226.7 and the other applicable sections of
14 the Employment Laws and Regulations.

15 55. The conduct of defendants and each of them in failing and refusing to provide
16 Plaintiff with meal and rest periods or compensation in lieu thereof during his work shifts as
17 required by the Employment Laws and Regulations violated *Civil Code* § 3294 in the
18 following respects:

- 19 a. The failure and refusal to provide Plaintiff with meal and rest periods during
20 his work shifts was knowing and carried on by Defendants with a willful and
21 conscious disregard of plaintiff's rights.
- 22 b. Defendants' conduct was oppressive in that it was despicable conduct which
23 subjected Plaintiff to cruel and unjust hardship in conscious disregard of his
24 rights. Plaintiff is therefore entitled to punitive damages against defendants
25 and each of them.
- 26 c. Defendant Mels is liable in punitive damages for the conduct of its
27 authorized agents, including owners, officers, directors, managers and
28 supervisors.

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1 56. The Restaurant Workers, including Plaintiff, have been deprived of their rightfully
2 earned compensation for meal and rest periods as a direct and proximate result of Defendants'
3 policies and practices and Defendants' failure and refusal to pay that compensation. The
4 Restaurant Workers, including Plaintiff, are entitled to recover such amounts pursuant to
5 California Labor Code section 226.7(b), plus interest, attorney's fees and costs.

6 **FOURTH CAUSE OF ACTION**

7 **(Failure to Furnish Accurate Wage and Hour Statements - By Plaintiff Individually and on**
8 **Behalf of All Restaurant Workers: California Labor Code § 226)**

9 57. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
10 allegations contained in this complaint, and incorporates them by reference into this cause of
11 action as though fully set forth herein, excepting those allegations which are inconsistent with
12 this cause of action.

13 58. During the Class Period, Defendants have routinely failed to provide Restaurant Workers,
14 including Plaintiff, with timely and accurate wage and hour statements showing gross hours
15 earned, total hours worked, all deductions made, net wages earned, the name and address of the
16 legal entity employing the Restaurant Workers, and all applicable hours rates in effect during
17 each pay period and the corresponding number of hours worked at each hourly rate.

18 59. As a consequence of Defendants' actions, Restaurant Workers are entitled to all available
19 statutory penalties, costs and reasonable attorney's fees, including those provided in California
20 Labor Code section 226(e), as well as all other available remedies.

21 **FIFTH CAUSE OF ACTION**

22 **(For Waiting Time Penalties - By Plaintiff Individually and on Behalf of All Restaurant**
23 **Workers: California Labor Code §§ 201-203)**

24 60. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
25 allegations contained in this complaint, and incorporates them by reference into this cause of
26 action as though fully set forth herein, excepting those allegations which are inconsistent with
27 this cause of action.

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1 61. During the Class Period, Defendants failed to pay accrued wages and other compensation
2 due immediately to each Restaurant Worker who was terminated and failed to pay accrued
3 wages, including meal and rest period wages and other compensation due within seventy-two
4 hours to each Restaurant Worker who ended his or her employment.

5 62. As a consequence of Defendants' actions, Restaurant Workers are entitled to all available
6 statutory penalties, including those provided in California Labor Code section 203, as well as all
7 other available remedies.

8 **SIXTH CAUSE OF ACTION**

9 **(For Conversion - By Plaintiff Individually and on Behalf of All Restaurant Workers:**

10 **California Labor Code §§ 3336 and 3294)**

11 63. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
12 allegations contained in this complaint, and incorporates them by reference into this cause of
13 action as though fully set forth herein, excepting those allegations which are inconsistent with
14 this cause of action.

15 64. During the Class Period, Defendants have wrongfully withheld and failed to pay
16 Restaurant Workers, including Plaintiff, earned wages and other compensation due them for
17 overtime work, for meal and rest periods, and as otherwise required pursuant to the Employment
18 Laws and Regulations.

19 65. At all relevant times, Defendants have and had a legal obligation imposed by statute to
20 pay Restaurant Workers, including Plaintiff, all wages and compensation due. Such wages and
21 compensation belonged to and were the property of the Restaurant Workers, including Plaintiff,
22 at the time the labor and services were provided to Defendants and, accordingly, such wages and
23 compensation are the property of Restaurant Workers, including Plaintiff, and not the property of
24 Defendants. Defendants converted such wages as part of an intentional and deliberate scheme to
25 maximize their profits at the expense of the Restaurant Workers, including Plaintiff.

26 66. Defendants have knowingly and intentionally failed to pay Restaurant Workers, including
27 Plaintiff, overtime wages for hours worked over eight hours in a day and/or forty hours in a
28 workweek, failed to compensate them for meal and rest periods, and failed to provide them with

1 other compensation due. Instead, Defendants converted the rightfully earned wages of
2 Restaurant Workers, including Plaintiff, to Defendants' own use and benefit. Defendants
3 converted such wages as part of an intentional and deliberate scheme to maximize their profits at
4 the expense of the Restaurant Workers, including Plaintiff.

5 67. Defendants wrongfully converted the property of the Restaurant Workers, including
6 Plaintiff, by

7 a. Withholding earned wages and other compensation which the Restaurant
8 Workers, including Plaintiff, owned or had the right to own and had the legal right to hold,
9 possess and dispose of, and then

10 b. Taking the wages and other compensation due to the Restaurant Workers,
11 including Plaintiff, and utilizing such wages and compensation for Defendants' own use and
12 benefit.

13 68. Defendants have converted such wages and compensation as part of an intentional and
14 deliberate scheme to maximize profits at the expense of Restaurant Workers, including Plaintiff.
15 Defendants' conversion has been done with the advance knowledge, express or implied
16 authorization, and/or ratification of Defendants' respective corporate officers, directors and
17 managing agents.

18 69. In refusing to pay all of the wages and other compensation due to the Restaurant Workers,
19 including Plaintiff, Defendants have knowingly, unlawfully and intentionally taken, appropriated
20 and converted such wages and compensation for Defendants' own use, purpose and benefit. At
21 the time the conversion took place, Restaurant Workers, including Plaintiff, were entitled to
22 immediate possession of the wages earned.

23 70. The Restaurant Workers, including Plaintiff, have been injured by Defendants'
24 intentional conversion of such wages and compensation. The Restaurant Workers, including
25 Plaintiff, are entitled to immediate possession of all amounts converted by Defendants, with
26 interest, as well as any and all profits, whether direct or indirect, which Defendants' acquired by
27 their unlawful conversion of the property of the Restaurant Workers, including Plaintiff.

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1 71. In committing the foregoing acts, Defendants were guilty of oppression, fraud or malice,
2 and, in addition to the actual damages caused thereby, the Restaurant Workers, including
3 Plaintiff, are entitled to recover damages for the sake of example and by way of punishing
4 Defendants.

5 **SEVENTH CAUSE OF ACTION**

6 **(For Unfair Competition - By Plaintiff Individually and on Behalf of All Restaurant**
7 **Workers: California Business & Professions Code §§ 17200, et seq.)**

8 72. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
9 allegations contained in this complaint, and incorporates them by reference into this cause of
10 action as though fully set forth herein, excepting those allegations which are inconsistent with
11 this cause of action.

12 73. Defendants' violations of the Employment Laws and Regulations as alleged in this
13 Complaint, including Defendants'

14 a. Failure and refusal to pay Restaurant Workers, including Plaintiff, wages for all
15 hours worked;

16 b. Failure and refusal to pay Restaurant Workers, including Plaintiff, overtime
17 wages;

18 c. Failure and refusal to provide Restaurant Workers, including Plaintiff, with meal
19 and rest periods;

20 d. Failure and refusal to provide Restaurant Workers, including Plaintiff, with timely
21 and accurate wage and hour statements;

22 e. Failure to pay Restaurant Workers, including Plaintiff, compensation (including
23 vacation pay) in a timely manner upon their termination or resignation;

24 f. Failure to maintain complete and accurate payroll records for Restaurant Workers,
25 including Plaintiff; and

26 g. Wrongful conversion of wages and compensation due to Restaurant Workers,
27 including Plaintiff,

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1 all of which constitute unfair business practices in violation of the California Business &
2 Professions Code section 17200, *et seq.*

3 74. Defendants have avoided payment of wages, overtime wages and other benefits as
4 required by the California Labor Code, the California Code of Regulations, and applicable
5 Industrial Welfare Commission Wage Orders. Further, Defendants have failed to record, report
6 and pay the correct sums of assessment to the State authorities under the California Labor Code
7 and other applicable regulations.

8 75. As a result of Defendants' unfair business practices, Defendants have reaped unfair
9 benefits and illegal profits at the expense of Restaurant Workers, including Plaintiff, and
10 members of the public. Defendants should be made to disgorge their ill-gotten gains and to
11 restore them to Restaurant Workers, including Plaintiff.

12 76. Defendants' unfair business practices entitles Plaintiff to seek preliminary and permanent
13 injunctive relief including, but not limited to, orders that Defendants account for, disgorge and
14 restore to the Restaurant Workers, including Plaintiff, the wages and other compensation
15 unlawfully withheld from them.

16 **EIGHTH CAUSE OF ACTION**

17 **(For Preliminary and Permanent Injunction)**

18 77. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
19 allegations contained in this complaint, and incorporates them by reference into this cause of
20 action as though fully set forth herein, excepting those allegations which are inconsistent with
21 this cause of action.

22 78. Defendants have failed to pay Restaurant Workers, including Plaintiff, all of their wages
23 due, including overtime wages, and have not provided Restaurant Workers, including Plaintiff,
24 uninterrupted meal and rest periods, all in violation of the Employment Laws and Regulations.

25 79. If Defendants are not enjoined from this conduct, they will continue to require Restaurant
26 Workers, including Plaintiff, to work more than eight hours in a day or forty hours in a
27 workweek, or more than six consecutive days, or more than six days per workweek, without
28 paying them all of their overtime wages, without giving them uninterrupted meal and rest


- 1 5. For penalties as required by law;
- 2 6. For prejudgment interest at the legal rate pursuant to California Labor Code
- 3 section 218.6 and other applicable sections;
- 4 7. For reasonable attorney's fees pursuant to California Labor Code section 218.5
- 5 and other applicable sections;
- 6 8. For cost of suit incurred herein;
- 7 9. For disgorgement of profits garnered as a result of Defendants' unlawful failure to
- 8 pay overtime wages and meal and rest period compensation earned; and
- 9 10. For such further relief as the Court may deem appropriate.

10 **DATED: April 21, 2008**

LAW OFFICES OF THOMAS W. FALVEY

11

12

13 By: 
J.D. HENDERSON

14 Attorneys for Plaintiff AUSTIN RAINVILLE,
15 individually and on behalf of all similarly situated
16 individuals

17 **DEMAND FOR JURY TRIAL**


18 Plaintiff Austin Rainville, individually and on behalf of all similarly situated individuals,
19 demands jury trial of this matter.

20 **DATED: April 21, 2008**

LAW OFFICES OF THOMAS W. FALVEY

21

22

23 By: 
J.D. HENDERSON

24 Attorneys for Plaintiff AUSTIN RAINVILLE,
25 individually and on behalf of all similarly situated
26 individuals

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