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9 SUPERIOR COURT OF CALIFORNIA

10 IN AND FOR THE COUNTY OF SAN FRANCISCO

11
12 IAN D'SA, MARIA DIAZ, JORGE
VALDIVIA, and FRANCISCO ROMERO on
13 behalf of themselves, all others similarly
situated, and the State of California,

14 Plaintiffs,

15 vs.

16 AMBER INDIA CORPORATION, AMBER
17 INDIA COMMERCIAL, INC., AMBER INDIA
ENTERPRISE, INC., VIJAY BIST, VIJAY
18 KUMAR, and DOES 1-25,

19 Defendants,

Case No. CGC-15-544578

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR UNPAID WAGES
AND BREAK VIOLATIONS**

DEMAND FOR JURY TRIAL

20
21 Plaintiffs Ian D'Sa, Maria Diaz, Jorge Valdivia, and Francisco Romero, on behalf of
22 themselves, all others similarly situated, and the State of California, bring this First
23 Amended Complaint against Defendants Amber India Corporation, Amber India
24 Commercial, Inc., Amber India Enterprise, Inc., Vijay Bist, and Vijay Kumar (collectively

1 “Amber India” or “Defendant”), and Does 1–25 (collectively “Defendants”), and allege as
2 follows. Plaintiffs file this First Amended Complaint as a matter of right pursuant to
3 California Labor Code section 2699.3(a)(2)(C).

4 **PARTIES**

5 1. Plaintiffs were, at all relevant times herein, residents of the State of California and
6 employed by Defendants to work at their “Amber India” restaurants throughout the San
7 Francisco Bay Area.

8 2. Defendants Amber India Corporation, Amber India Commercial, Inc., and Amber
9 India Enterprise, Inc. are California corporations that own and operate Indian food
10 restaurants called “Amber India” throughout the bay area, including in San Francisco.

11 3. Plaintiffs do not know the true names and capacities of defendants sued herein as
12 DOES 1–25 and therefore sue these defendants by such fictitious names. Plaintiffs will
13 amend this Complaint to allege their true identity and capacities when ascertained.
14 Plaintiffs are informed and believe, and on that basis allege, that each of these fictitiously
15 named defendants is responsible in some manner for the occurrences alleged herein and
16 thereby proximately caused Plaintiffs’ injuries alleged herein.

17 4. Plaintiffs are informed and believe, and on that basis allege, that, at all relevant
18 times, each of the defendants was the agent or employee of each of the remaining
19 defendants, and, in doing the things herein alleged was acting within the course and scope
20 of such employment, and that Defendants authorized ratified, and approved, expressly or
21 implicitly, all of the conduct alleged herein.

22 **JURISDICTION AND VENUE**

23 5. This Court has jurisdiction over the parties and claims involved in this action
24 because the acts and omissions complained of herein occurred at workplaces owned and

1 operated by Defendants in California. The amount of damages sought is within the
2 unlimited jurisdiction of this Court because the amount in controversy is over \$25,000.

3 6. Venue is proper in this Court pursuant to California Code of Civil Procedure section
4 395.5 because Defendants' principal place of business is, in part, in the City and County of
5 San Francisco, and Defendants' liability arose, in part, in the City and County of San
6 Francisco.

7 **FACTUAL ALLEGATIONS COMMON TO CLASS AND REPRESENTATIVE CLAIMS**

8 7. Plaintiff Ian D'Sa began working for Defendants in or about July 2014 as a Server at
9 the Amber India restaurant in San Jose and is currently still working there.

10 8. Plaintiff Maria Diaz began working for Defendants in or about May 2010 as a Busser
11 at the Amber India restaurant in San Jose and is currently still working there.

12 9. Plaintiff Jorge Valdivia began working for Defendants in or about March 2004 as a
13 Busser at the Amber India restaurant in San Jose and is currently still working there.

14 10. Plaintiff Francisco Romero began working for Defendants in or about November
15 2013 as a Busser at the Amber India restaurant in Palo Alto and stopped working there in
16 or about December 2014.

17 11. Defendants have never had, communicated, or implemented a meal or rest break
18 policy.

19 12. Defendants never authorized or permitted Plaintiffs or Putative Class Members
20 ("PCMs") to take a meal or rest break.

21 13. Defendants never posted any information about meal or rest breaks in the
22 workplace.

23 14. Plaintiffs and PCMs typically had so much work to do that they did not have time to
24 take meal or rest breaks.

1 15. Defendants never paid Plaintiffs or PCMs any compensation for missing their
2 breaks.

3 16. On one occasion about two years ago, Plaintiff Valdivia complained to his manager
4 about not getting breaks. The manager stated simply that employees were not allowed to
5 take breaks because they were too busy.

6 17. Plaintiffs and PCMs are required to clock in and out of work in an electronic
7 timekeeping system. Many PCMs work over eight hours per day or forty per week such
8 that they are entitled to overtime compensation. Defendants have a policy and practice of
9 manipulating PCMs' time records by deleting PCMs' overtime hours in order to avoid
10 paying PCMs straight time and overtime wages for that time. Defendants are hereby on
11 notice that they are required by law to preserve all time records relating to PCMs' hours
12 worked.

13 18. Defendants wilfully omitted PCMs' overtime hours and missed breaks from Plaintiffs'
14 and PCMs' wage statements.

15 19. Defendants wilfully refused to pay Plaintiff Romero and PCMs their accrued overtime
16 compensation and missed-break premium wages upon their termination.

17 **CLASS ACTION ALLEGATIONS**

18 20. Plaintiffs bring this class action pursuant to Code Civ. Proc. § 382 and Bus. & Prof.
19 Code § 17200 *et seq.* for violations of California's wage and hour laws, on behalf of
20 themselves and all others similarly situated ("the Putative Class"):

21 Persons who worked for Defendants as non-exempt, hourly-wage
22 employees at any of Defendants' Amber India restaurants at any time
23 during the four years prior to the filing of this law suit and until final
24 judgment is entered.

21. Common questions of law and fact that exist with regard to PCMs which include,

1 without limitation, the following:

2 a. Whether Defendants had, communicated, or implemented a meal or rest
3 break policy.

4 b. Whether Defendants failed to authorize and permit at least one thirty-minute
5 off duty meal break to PCMs for every five hours they worked in a day.

6 c. Whether Defendants failed to authorize and permit at least one ten-minute
7 rest break to PCMs for every four hours (or major fraction thereof) they worked in a day.

8 d. Whether Defendants failed to pay PCMs straight time and overtime
9 compensation for hours worked over eight per day or forty per week based on their policy
10 and practice of manipulating PCMs' timecards.

11 e. Whether Defendants failed to provide accurate, itemized wage statements to
12 PCMs.

13 f. With regard to any PCMs whose employment with Defendant was terminated,
14 whether Defendants wilfully failed to pay such PCMs, at the time of their termination, all
15 premium wages owed as a consequence for failing to provide the required meal and rest
16 breaks and provide accurate wage statements.

17 g. Whether Defendants engaged in unfair competition proscribed by Bus. & Prof.
18 Code § 17200 *et seq.* by engaging conduct as alleged herein.

19 h. Whether Defendants violated applicable provisions of the Labor Code,
20 including, without limitation, sections 201, 226, 226.7, 2698 *et seq.*, and Industrial Welfare
21 Commission ("IWC") Wage Order No. 5 (California Code of Regulations, title 8, section
22 11050).

23 i. Whether Defendants should be enjoined from their unlawful practices as
24 alleged herein.

1 22. The foregoing issues can be resolved with common methods of proof, including the
2 following:

3 a. Defendants' employee handbook and other written policies and procedures,
4 or the lack thereof;

5 b. Defendants' time-keeping records;

6 c. Defendants' wage statements;

7 d. Defendants' person-most-knowlegeable testimony regarding its break
8 practices;

9 e. Statistical data gathered through an adequate sampling of declaration and
10 deposition testimony.

11 23. Plaintiffs' claims are typical of the claims of the Class that Plaintiffs seek to
12 represent.

13 24. PCMs are so numerous that joinder of all members would be unfeasible and
14 impractical. The disposition of the claims through the class action procedure will benefit
15 both the parties and the Court. The exact number of PCMs is unknown to Plaintiff at this
16 time. However, at present, it is estimated that there are more than 100 PCMs. In any case,
17 the number and identity of PCMs are readily ascertainable through the inspection of
18 Defendants' records.

19 25. Plaintiffs will fairly and adequately represent and protect the interests of PCMs.
20 Plaintiffs have retained and are represented by counsel competent and experienced in
21 complex class action litigation, including wage and hour class actions of this type.

22 26. Plaintiffs know of no difficulty that will be encountered in the management of this
23 litigation that would preclude its maintenance as a class action. The nature of this action
24 and the nature of laws available to Plaintiffs render use of the class action procedure the

1 superior and appropriate procedure to afford relief for the wrongs herein alleged.

2 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

3 27. Pursuant to the Private Attorneys General Act of 2004 (Lab. Code § 2698 *et seq.*)
4 (“PAGA”), Plaintiffs bring this action as a representative law enforcement action on behalf
5 of The State of California.

6 28. “PAGA Members” include:

7 Persons who worked for Defendants as non-exempt, hourly-wage
8 employees at any of Defendants’ Amber India restaurants at any time
9 during the one year prior to the filing of this First Amended Complaint
10 (“FAC”) until final judgment is entered.

11 29. Plaintiffs and the PAGA Members are similarly situated in that they have
12 substantially similar job requirements, duties, and pay provisions, and are subject to
13 Defendant’s practice, policy, or plan of unlawfully refusing to provide meal and rest breaks,
14 refusing to pay straight time and overtime compensation, failing to provide itemized,
15 accurate wage statements, and failing to pay all earned wages upon termination.

16 30. Plaintiffs have exhausted the administrative requirements of Lab. Code § 2699.3 by
17 notifying the Labor and Workforce Development Agency (“LWDA”) and Defendant via
18 certified mail of the specific provisions of the Labor Code that Defendant violated including
19 the facts and theories to support the violation. Thirty-three days have elapsed since
20 Plaintiffs mailed such notice, and the LWDA has not responded.

21 **FIRST CAUSE OF ACTION**
22 **Failure to Provide Meal Breaks**
23 **(Class Claim)**

24 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth
herein below.

31. Defendants’ conduct, as alleged herein, constitutes a violation of Cal. Lab. Code §

1 512(a), which requires employers to provide one thirty-minute meal break for every five
2 hours of work.

3 32. Defendants' conduct, as alleged herein, also constitutes a violation of Cal. Lab.
4 Code § 226.7, which prohibits an employer from requiring employees to work during any
5 meal period mandated by the Industrial Welfare Commission ("IWC"). IWC Wage Order
6 No. 5 requires that employers authorize and permit its employees to take one thirty-minute
7 meal break for every five hours of work. Cal. Lab. Code § 226.7(b) and Wage Order No. 5
8 require employers to pay employees who miss their legally required meal breaks one hour
9 of premium wages at the employee's regular rate of compensation for each day that the
10 meal breaks are not provided.

11 33. Defendants knowingly and intentionally failed to provide Plaintiffs and PCMs with the
12 legally required meal breaks and failed to pay Plaintiffs and PCMs the resulting premium
13 wages owed.

14 34. As a direct result of Defendants' unlawful employment practices, as alleged herein,
15 Plaintiffs and PCMs have been injured and are entitled to unpaid premium wages and
16 interest.

17 **SECOND CAUSE OF ACTION**
18 **Failure to Provide Rest Breaks**
(Class Claim)

19 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth
20 herein below.

21 35. Defendants' conduct, as alleged herein, constitutes a violation of Cal. Lab. Code §
22 226.7, which prohibits an employer from requiring employees to work during any meal or
23 rest period mandated by the IWC. IWC Wage Order No. 5 requires employers authorize
24 and permit its employees to take one ten-minute paid rest break for every four hours of

1 work, or major fraction thereof. Cal. Lab. Code § 226.7(b) and Wage Order No. 5 require
2 employers to pay employees who miss their legally required rest breaks one hour of
3 premium wages at the employee's regular rate of compensation for each day that the rest
4 breaks are not provided.

5 36. Defendants knowingly and intentionally failed to provide Plaintiffs and PCMs with the
6 legally required rest breaks and failed to pay Plaintiffs and PCMs the resulting premium
7 wages owed.

8 37. As a direct result of Defendants' unlawful employment practices, as alleged herein,
9 Plaintiffs and PCMs have been injured and are entitled to unpaid premium wages and
10 interest.

11 **THIRD CAUSE OF ACTION**
12 **Unpaid Wages**
(Class Claim)

13 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth
14 herein below.

15 38. Defendants' conduct, as alleged herein, constitutes a violation of Cal. Lab. Code §
16 204, which requires employers to pay to its employees all wages due on a semi-monthly
17 basis.

18 39. Defendants knowingly and intentionally refused to pay PCMs straight time
19 compensation for hours worked over eight per day and forty per week.

20 40. As a direct result of Defendants' unlawful employment practices, as alleged herein,
21 Plaintiffs and PCMs have been injured and are entitled to unpaid wages and interest.

22 **FOURTH CAUSE OF ACTION**
23 **Unpaid Overtime**
(Class Claim)

24 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth

1 herein below.

2 41. Defendants' conduct, as alleged herein, constitutes a violation of Cal. Lab. Code §
3 510 and IWC Wage Order No. 5, which require employers to pay overtime to its employees
4 for hours worked over eight per day and forty per week.

5 42. Defendants knowingly and intentionally refused to pay PCMs overtime compensation
6 for hours worked over eight per day and forty per week.

7 43. As a direct result of Defendants' unlawful employment practices, as alleged herein,
8 Plaintiffs and PCMs have been injured and are entitled to unpaid overtime wages and
9 interest.

10 **FIFTH CAUSE OF ACTION**
11 **Failure to Provide Accurate, Itemized Wage Statements**
12 **(Class Claim)**

13 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth
14 herein below.

15 44. Defendants' conduct, as alleged herein, constitutes a violation of Cal. Lab. Code §
16 226(a), which requires employers to provide its employees with accurate itemized wage
17 statements for each pay period. Defendants knowingly and intentionally failed to provide
18 Plaintiffs and the Class members with accurate, itemized wage statements showing the
19 total hours worked during the pay period, the applicable hourly rate or rates in effect during
20 the pay period, and Defendant's legal name and address.

21 45. As a direct result of Defendants' unlawful employment practices, as alleged herein,
22 Plaintiffs and the Class members have been injured because they could not promptly and
23 easily determine from their wage statements the total hours worked during the pay period,
24 the applicable hourly rate or rates in effect during the pay period, and Defendant's legal
name and address. Plaintiffs and the Class members are therefore entitled to penalties

1 and attorney's fees under Lab. Code § 226(e).

2 **SIXTH CAUSE OF ACTION**

3 **Waiting Time Penalties**

4 **(Class Claim)**

5 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth
6 herein below.

7 46. Defendants' conduct, as alleged herein, constitutes a violation of Lab. Code §
8 201(a), which requires an employer to pay an employee all earned and unpaid wages
9 immediately upon discharge. Defendants wilfully failed to pay Plaintiffs and the Class
10 members all wages owed upon his termination.

11 47. As a direct result of Defendants' unlawful employment practices, as alleged herein,
12 Plaintiffs and the Class members are entitled to penalties under Lab. Code § 203(a).

13 **SEVENTH CAUSE OF ACTION**

14 **Unfair and Unlawful Business Practices**

15 **(Class Claim)**

16 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth
17 herein below.

18 48. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
19 Bus. & Prof. Code § 17200 *et seq.*, which prohibits unfair business acts and/or practices.

20 49. As a direct result of Defendants' unfair and unlawful business practices, Plaintiffs
21 have been injured as alleged herein and are entitled to unpaid premium wages, interest,
22 and attorney's fees.

23 **EIGHTH CAUSE OF ACTION**

24 **Preliminary and Permanent Injunction**

(Class Claim)

Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth
herein below.

1 50. Defendants have violated various provisions of the Labor Code, Business and
2 Professions Code and IWC Wage Order as alleged herein and will continue to violate such
3 laws if they are not enjoined from doing so.

4 51. Because of the continuing nature of Defendants' violations, Plaintiffs and the Class
5 members have an inadequate remedy at law. Monetary compensation alone will not afford
6 adequate and complete relief to Plaintiffs and the Class members because it is impossible
7 to determine the amount of damages that will compensate them for Defendants' future
8 unlawful practices. If Defendants are not enjoined from the unlawful practices, as alleged
9 herein, Plaintiffs, the Class members, and future employees subject to such continuing
10 practices will be forced to bring a multiplicity of legal actions in order to obtain adequate
11 relief.

12 52. Plaintiffs request that the Court issue a preliminary and permanent injunction
13 requiring Defendants to provide all employees who fall within any of the job classifications
14 covered by the Class all applicable rights afforded by the Labor Code and IWC Wage Order
15 and inform them of such rights, which include, without limitation, (1) adequate meal breaks,
16 (2) adequate rest breaks, (3) straight time compensation, (4) overtime compensation, (5)
17 accurate, itemized wage statements, and (6) payment of all earned wages upon
18 termination, including earned premium wages.

19 **NINTH CAUSE OF ACTION**
20 **Declaratory Relief**
(Class Claim)

21 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth
22 herein below.

23 53. An actual controversy has arisen between Plaintiffs and the Class members on the
24 one hand, and Defendants on the other, as to their respective rights, remedies and

1 obligations with regard to Defendants' unlawful conduct, as alleged herein.

2 54. Plaintiffs therefore seek a declaratory judgment as to the respective rights, remedies,
3 and obligations of the parties.

4 **TENTH CAUSE OF ACTION**
5 **§ 2699(f) Civil Penalties**
6 **(PAGA Representative Claim)**

7 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth
8 herein below.

9 55. Defendants' failure to provide meal and rest breaks to Plaintiffs and the PAGA
10 Members, as alleged herein, gives rise to civil penalties under Lab. Code § 2699(f), which
11 Plaintiffs and the PAGA members seek to collect on behalf of the State of California.
12 Additionally, Plaintiffs and the PAGA members are entitled to attorney's fees and costs
13 pursuant to Lab. Code § 2699(g)(1).

14 **ELEVENTH CAUSE OF ACTION**
15 **§ 210 Civil Penalties**
16 **(PAGA Representative Claim)**

17 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth
18 herein below.

19 56. Defendants' failure to pay all wages due to Plaintiffs and the PAGA members, as
20 alleged herein, gives rise to civil penalties under Lab. Code § 210, which Plaintiffs and the
21 PAGA members seek to collect on behalf of the State of California. Additionally, Plaintiffs
22 and the PAGA members are entitled to attorney's fees and costs pursuant to Lab. Code §
23 2699(g)(1).

24 **TWELFTH CAUSE OF ACTION**
25 **§ 558(a) Civil Penalties**
26 **(PAGA Representative Claim)**

27 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth

1 herein below.

2 57. Defendants' failure to provide meal and rest breaks and failure to pay overtime
3 compensation to Plaintiffs and the PAGA members, as alleged herein, gives rise to civil
4 penalties under Lab. Code § 558(a), which Plaintiffs and the PAGA members seek to
5 collect on behalf of the State of California. Additionally, Plaintiffs and the PAGA members
6 are entitled to attorney's fees and costs pursuant to Lab. Code § 2699(g)(1).

7 **THIRTEENTH CAUSE OF ACTION**
8 **§ 226.3 Civil Penalties**
9 **(PAGA Representative Claim)**

10 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth
11 herein below.

12 58. Defendants' failure to provide itemized, accurate wage statements to Plaintiffs and
13 the PAGA members, as alleged herein, gives rise to civil penalties under Lab. Code §
14 226.3, which Plaintiffs and the PAGA members seek to collect on behalf of the State of
15 California. Additionally, Plaintiffs and the PAGA members are entitled to attorney's fees
16 and costs pursuant to Lab. Code § 2699(g)(1).

17 **PRAYER FOR RELIEF**

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

- 19 1. Certification of this action as a class action;
- 20 2. Appointment of Plaintiffs as class representatives;
- 21 3. Appointment of Richard A. Hoyer, David C. Lipps, and the law firm of Hoyer &
22 Associates as class counsel;
- 23 4. Designation of this action as a PAGA representative law enforcement action;
- 24 5. Designation of Plaintiffs as representatives of the PAGA Members;
6. That the Court order Defendants to pay damages to Plaintiffs to compensate them

1 for unpaid wages and premium wages, together with interest at the legal rate;

2 7. That the Court order Defendants to pay all applicable penalties arising from their
3 unlawful conduct, as alleged herein;

4 8. That the Court declare Defendants' conduct, as alleged herein, to be unlawful;

5 9. That the Court enjoin Defendants from continuing to engage in unlawful conduct, as
6 alleged herein;

7 10. That the Court order Defendants to pay Plaintiffs' attorney's fees and costs as
8 alleged herein and also pursuant to Code Civ. Proc. § 1021.5;

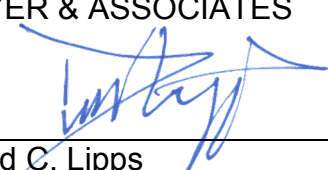
9 11. Such other relief as the Court deems just and proper.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiffs hereby demand a jury trial on all causes of action and claims with respect
12 to which they have a right to jury trial.

13
14 Date: April 7, 2015

HOYER & ASSOCIATES

15
16 
17 _____
David C. Lipps
Attorney for Plaintiffs
IAN D'SA
MARIA DIAZ
JORGE VALDIVIA
FRANCISCO ROMERO

1 **PROOF OF SERVICE BY MAIL**

2 I declare that I am employed in the City and County of San Francisco, State of
3 California. I am over eighteen years of age and not a party to the within entitled cause. My
4 business address is 4 Embarcadero Center, Suite 1400, San Francisco, California 94111. I
5 am familiar with this office’s practice for depositing mail with the United States Post Office.

6 I served the within:

7 **FIRST AMENDED CLASS ACTION COMPLAINT**

8 to:

9 **Amber India Corporation and Amber
10 India Commercial, Inc.
11 C/O Vijay Kumar
2290 W. El Camino Real, #9
Mountain View, CA 94040**

**Amber India Enterprise, Inc.
C/O Vijay Bist
377 Santana Row, Ste. 1140
San Jose, CA 95128**

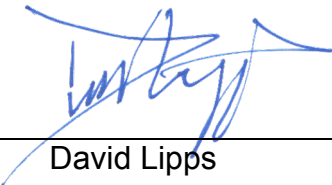
12 **Vijay Kumar
13 2290 W. El Camino Real, #9
Mountain View, CA 94040**

**Vijay Bist
377 Santana Row, Ste. 1140
San Jose, CA 95128**

14 on:

15 **April 7, 2015**

16 by depositing a true copy of items listed above in a sealed envelope, with postage thereon
17 fully pre-paid for collection and processing with the United States Postal Service in San
18 Francisco, California. I declare under penalty of perjury that the foregoing is true and
19 correct, and that this declaration was executed at San Francisco, California, on the date
20 above.

21
22 
23 _____
24 David Lipps