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14 ADAM HOHNBAUM, on behalf of
himself and all others similarly situated,
and on behalf of the general public
15

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

17 ADAM HOHNBAUM, on behalf of himself and)
18 all others similarly situated, and on behalf of the)
19 general public,)

20 Plaintiffs,

22 v.

23 BRINKER RESTAURANT CORPORATION,
24 a Delaware Corporation; and DOES 1 through
500, Inclusive

25 Defendants.
26
27
28

Case No.

GIC 834348

) CLASS ACTION COMPLAINT FOR
) DAMAGES, INJUNCTIVE AND
) DECLARATORY RELIEF AND
) RESTITUTION

) 1) Failure to Provide Rest Periods (Lab. Code,
) § 226.7; IWC Wage Order Nos. 5-1998, 5-
) 2000(12); Cal. Code Regs., Title 8, § 11050)

) 2) Failure to Provide Meal Periods (Lab. Code,
) §§ 226.7, 512; IWC Wage Order Nos. 5-1998,
) 5-2000(11); Cal. Code Regs., Title 8, § 11050)

) 3) Knowing and Intentional Failure to Comply
) With Itemized Employee Wage Statement
) Provisions (Lab. Code, §§ 226, 1174, 1175)

) 4) Violation of Unfair Competition Law (Bus.
) & Prof. Code, § 17200 et seq.)

DEMAND FOR JURY TRIAL

9/15/98 10:15 AM
CLERK OF COURT
SAN DIEGO, CALIFORNIA
ZUSK 16 P 4: 20

1 Plaintiff ADAM HOHNBAUM, on behalf of himself and all others similarly situated,
2 and on behalf of the general public, complains of Defendants and for causes of action alleges:

3 I.

4 INTRODUCTION

5 1. This is a class action, pursuant to Code of Civil Procedure section 382, on behalf
6 of Plaintiff and all employees, including but not limited to hourly restaurant employees not
7 classified as "Exempt" or primarily employed in executive, professional, or administrative
8 capacities ("Restaurant Non-Exempt Employees") employed by, or formerly employed by,
9 BRINKER RESTAURANT CORPORATION, a Delaware Corporation, and any subsidiaries or
10 affiliated companies ("BRINKER" or "Defendants"), within the State of California.

11 2. For at least four years prior to the filing of this action and through to the present
12 ("liability period"), Defendants have had a consistent policy of requiring Restaurant Non-Exempt
13 Employees within the State of California, including Plaintiff, to work through rest periods and
14 failing to provide rest periods of at least ten minutes per four hours worked or major fraction
15 thereof and failing to pay such employees one hour of pay at the employees' regular rate of
16 compensation for each workday that the rest period is not provided, or other compensation, as
17 required by California state wage and hour laws.

18 3. For at least four years prior to the filing of this action and through to the present,
19 Defendants have had a consistent policy of requiring Restaurant Non-Exempt Employees within
20 the State of California, including Plaintiff, to work through meal periods and work at least five
21 (5) hours without a meal period and failing to pay such employees one (1) hour of pay at the
22 employees' regular rate of compensation for each workday that the meal period is not provided,
23 or other compensation, as required by California state wage and hour laws.

24 4. Plaintiff, on behalf of himself and all Class Members, brings this action pursuant
25 to Labor Code sections 226, subdivision (b), 226.7 and 512, and California Code of Regulations,
26 Title 8, section 11050, seeking unpaid rest and meal period compensation, penalties, injunctive
27 and other equitable relief, and reasonable attorneys' fees and costs.

28

1 **B. Defendants**

2 9. Defendant BRINKER RESTAURANT CORPORATION is a Delaware
3 corporation that is engaged in the ownership and operation of restaurants located in San Diego
4 County, and throughout the State of California, including but not limited to "Chili's Grill and
5 Bar," "Romano's Macaroni Grill," "Maggiano's Little Italy," "Corner Bakery Café," "Cozymel's
6 Mexican Grill," and "On The Border." During the liability period, Defendants employed
7 Plaintiff and similarly situated persons as Restaurant Non-Exempt Employees within California.
8 On information and belief, each of the Defendants is conducting business in good standing in
9 California.

10 10. The true names and capacities, whether individual, corporate, associate, or
11 otherwise, of Defendants sued herein as DOES 1 through 500, inclusive, are currently unknown
12 to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil
13 Procedure section 474. Plaintiff is informed and believes, and based thereon alleges, that each of
14 the Defendants designated herein as a DOE is legally responsible in some manner for the
15 unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to
16 reflect the true names and capacities of the Defendants designated hereinafter as DOES when
17 such identities become known.

18 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
19 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
20 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
21 Defendant are legally attributable to the other Defendants.

22 **IV.**

23 **FACTUAL BACKGROUND**

24 12. Defendants own and operate restaurants, and, at all times during the liability
25 period, have conducted business in San Diego County and elsewhere within California. At these
26 restaurants, Defendants have, among other things, employed persons as restaurant employees.

27 13. Upon information and belief, each BRINKER restaurant is staffed, inter alia, by
28 hourly non-exempt cooks, stewards, busboys, waiters, waitresses, hostesses and/or other hourly

1 Restaurant Non-Exempt Employees. Upon information and belief, Restaurant Non-Exempt
2 Employees have not been paid during the liability period rest and meal period compensation.
3 Plaintiff is informed and believes, and based thereon alleges, Defendants currently employ
4 thousands of employees in the State of California as Restaurant Non-Exempt Employees.

5 14. During the liability period, named Plaintiff and members of the Plaintiff Class
6 were employed by Defendants as Restaurant Non-Exempt Employees and were paid on an hourly
7 basis. Plaintiff and the members of the Plaintiff Class of Restaurant Non-Exempt Employees
8 were not provided rest or meal periods or compensation in lieu thereof as mandated under the
9 California Labor Code, and the implementing rules and regulations of the Industrial Welfare
10 Commission ("IWC") California Wage Orders.

11 15. On information and belief, Defendants are and were well aware that Restaurant
12 Non-Exempt Employees were not provided rest and meal periods. Defendants' denial of wages
13 and other compensation due to Plaintiff and members of the Plaintiff Class in the position of
14 Restaurant Non-Exempt Employees was willful and deliberate.

15 16. On information and belief, Defendants willfully failed to pay the rest and meal
16 period wages of former Restaurant Non-Exempt Employees, including members of the Plaintiff
17 Class, when each such employee quit or was discharged.

18 V.

19 **CLASS ACTION ALLEGATIONS**

20 17. Plaintiff brings this action on behalf of himself and all others similarly situated as
21 a class action pursuant to section 382 of the Code of Civil Procedure. Plaintiff seeks to represent
22 a Class composed of and defined as follows:

23 All persons who are employed or have been employed by
24 Defendants in the State of California who, within four (4) years of
25 filing of this Complaint, have worked as restaurant employees and
26 in any other position that did not consist of over 50%
27 administrative, executive, or professional duties and have not been
provided a rest period for every four hours or major fraction
thereof worked per day and were not provided compensation of
one hour's pay or other compensation for each day on which such
rest periods were not provided.

28 Plaintiff also seeks to represent a Subclass composed of and defined as follows:

1 All persons who are employed or who have been employed by Defendants in the
2 State of California who, within four (4) years of filing of this Complaint, have
3 worked five and/or ten hours without being provided a meal period and/or second
meal and were not provided compensation of one hour's pay or other
compensation for each day on which such meal period was not provided.

4 Plaintiff reserves the right under rule 1855, subdivision (b), California Rules of Court, to amend
5 or modify the Class description with greater specificity or further division into subclasses or
6 limitation to particular issues.

7 18. This action has been brought and may properly be maintained as a class action
8 under the provisions of section 382 of the Code of Civil Procedure because there is a well-
9 defined community of interest in the litigation and the proposed Class is easily ascertainable.

10 **A. Numerosity**

11 19. The potential members of the Class as defined are so numerous that joinder of all
12 the members of the Class is impracticable. While the precise number of Class Members has not
13 been determined at this time, Plaintiff is informed and believes that Defendants currently employ,
14 and during the relevant time periods employed, thousands of employees, the vast majority of
15 them in the State of California, in positions as Restaurant Non-Exempt Employees in San Diego
16 County and dispersed throughout California during the liability period and who are or have been
17 affected by Defendants' policy of not providing meal periods or providing them more than five
18 hours into an employee's shift and not providing rest periods without the appropriate legal
19 compensation.

20 20. Accounting for employee turnover during the relevant periods necessarily
21 increases this number substantially. Upon information and belief, Plaintiff alleges Defendants'
22 employment records would provide information as to the number and location of all Class
23 Members. Joinder of all members of the proposed Class is not practicable.

24 **B. Commonality**

25 21. There are questions of law and fact common to the Class that predominate over
26 any questions affecting only individual Class Members. These common questions of law and fact
27 include, without limitation:

28 1. Whether Defendants violated Labor Code sections 226.7, IWC Wage

1 Order No. 5-2001 or other applicable IWC Wage Orders, and California
2 Code of Regulations, Title 8, section 11050, by failing to provide daily rest
3 periods to Restaurant Non-Exempt Employees for every four hours or
4 major fraction thereof worked and failing to compensate said employees
5 one hour's wages in lieu of rest periods;

6 2. Whether Defendants violated Labor Code sections 226.7 and 512, IWC
7 Wage Order No. 5-2001 or other applicable IWC Wage Orders, and
8 California Code of Regulations, Title 8, section 11050, by failing to
9 provide meal periods to Restaurant Non-Exempt Employees on days they
10 worked in excess of five hours or providing meal periods more than five
11 hours into the employees' shifts and failing to compensate said employees
12 one hour's wages in lieu of meal periods;

13 3. Whether Defendants violated Labor Code sections 226.7 and 512, IWC
14 Wage Order No. 5-2001 or other applicable IWC Wage Orders, and
15 California Code of Regulations, Title 8, section 11050, by failing to
16 provide second meal periods to Restaurant Non-Exempt Employees on
17 days they worked in excess of ten hours;

18 4. Whether Defendants violated sections 226 of the Labor Code and IWC
19 Wage Order No. 5-2001 sub-sections (7)(a), (7)(b), (7)(c) by failing to,
20 among other violations, accurately report compensation owed for rest and
21 meal period violations;

22 5. Whether Defendants violated section 17200 et seq. of the Business and
23 Professions Code by failing to properly provide rest and meal periods
24 without compensating non-exempt employees one hour's pay for every
25 day such periods were not provided, and failing to keep accurate records of
26 Class Members' compensation owed;

27 6. Whether Defendants violated section 17200 et seq. of the Business and
28 Professions Code and Labor Code sections 226, 226.7, 512, IWC Wage

Order No. 5-2001 and other applicable IWC Wage Orders which violation constitutes a violation of fundamental public policy; and

7. Whether Plaintiff and the Members of the Plaintiff Class are entitled to equitable relief pursuant to Business and Professions Code sections 17200 et seq.

C. Typicality

22. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff and all members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws and regulations that have the force and effect of law and statutes as alleged.

D. Adequacy of Representation

23. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represents Plaintiff is competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

24. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or practice of requiring employees to work five hours or more without meal periods, denying Class Members proper rest and meal periods without legal compensation, and requiring employees to work in excess of ten hours per day without second meal periods.

25. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VI.

CAUSES OF ACTION

**First Cause of Action Against All Defendants
Failure to Provide Rest Periods or Compensation in Lieu Thereof
(Lab. Code, § 226.7; IWC Wage Order No. 5; Cal. Code Regs., Title 8, § 11050)**

26. Plaintiff incorporates paragraphs 1 through 25 as though fully set forth herein.

27. By their failure to provide rest periods for every four hours or major fraction thereof worked per day to non-exempt employees, and failing to provide compensation for such unprovided rest periods, as alleged above, Defendants willfully violated the provisions of Labor Code section 226.7 and IWC Wage Order Nos. 5-1998, 5-2000, and 5-2001. Plaintiff and the Class Members he seeks to represent did not willfully waive through mutual consent with Defendants rest or meal periods.

28. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226, 226.7, and IWC Wage Orders.

29. Sections 226, subdivision (a), and 1174 of the California Labor Code and IWC Wage Order No. 5 require Defendants to itemize in wage statements and to accurately report total hours worked by Plaintiff and the members of the proposed Class. Defendants have knowingly and intentionally failed to comply with these provisions on each and every wage statement that should have been provided to Plaintiff and members of the proposed Class.

30. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

**Second Cause of Action Against All Defendants
Failure to Provide Meal Periods or Compensation in Lieu Thereof
(Lab. Code, §§ 226.7, 512; IWC Wage Order No. 5, Cal. Code Regs., Title 8, § 11050)**

31. Plaintiff incorporates paragraphs 1 through 30 as though fully set forth herein.

32. By their failure to provide meal periods for days on which non-exempt employees work(ed) in excess of five hours, or failure to provide such meal periods within the first five hours of the employees' shift, or to provide second meal periods for days employees worked in

1 excess of ten hours, and failing to provide compensation for such unprovided or improperly
2 provided meal periods, as alleged above, Defendants willfully violated the provisions of Labor
3 Code sections 226.7, 512 and IWC Wage Order No. 5.

4 33. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
5 represent have been deprived of premium wages in amounts to be determined at trial, and are
6 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
7 costs, under Labor Code sections 226, 226.7, and IWC Wage Order Nos. 5-1998, 5-2000, and 5-
8 2001.

9 34. Section 226, subdivision (a), and 1174 of the California Labor Code and IWC
10 Wage Order No. 5 require Defendants to itemize in wage statements and to accurately report total
11 hours worked by Plaintiff and the members of the proposed Class. Defendants have knowingly
12 and intentionally failed to comply with these provisions on each and every wage statement that
13 should have been provided to Plaintiff and members of the proposed Class.

14 35. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
15 described below.

16 **Third Cause of Action Against All Defendants**
17 **Knowing and Intentional Failure to Comply With**
18 **Itemized Employee Wage Statement Provisions**
(Lab. Code §§ 226, 1174, 1175;
IWC Wage Order No. 5, Cal. Code Regs., Title 8, § 11050)

19 36. Plaintiff incorporates paragraphs 1 through 35 as though fully set forth herein.

20 37. Section 226, subdivision (a), of the California Labor Code requires Defendants to
21 itemize in wage statements all deductions from payment of wages and to accurately report total
22 hours worked by Plaintiff and the members of the proposed Class. Defendants have knowingly
23 and intentionally failed to comply with Labor Code section 226, subdivision (a), on each and
24 every wage statement provided to Plaintiff and members of the proposed Class.

25 38. Section 1174 of the California Labor Code requires Defendants to maintain and
26 preserve, in a centralized location, records showing the names and addresses of all employees
27 employed, payroll records showing the hours worked daily by and the wages paid to its
28 employees. Defendants have knowingly and intentionally failed to comply with Labor Code

1 section 1174. The failure of Defendants, and each of them, to comply with Labor Code section
2 1174 is unlawful pursuant to Labor Code section 1175.

3 39. IWC Wage Order Nos. 5-2001(7), 5-2000(7) and 5-1998(7) require Defendants to
4 maintain time records showing, among other things, when the employee begins and ends each
5 work period, meal period, and total daily hours worked in itemized wage statements, and all
6 deductions from payment of wages, and to accurately report total hours worked by Plaintiff and
7 the members of the proposed Class.

8 40. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
9 described below.

10 **Fourth Cause of Action Against All Defendants**
11 **Violation of Unfair Competition Law**
(Bus. & Prof. Code, § 17200 et seq.)

12 41. Plaintiff incorporates paragraphs 1 through 40 as though fully set forth herein.

13 42. Defendants' failure to compensate for un-provided or improperly provided rest
14 and meal periods to Plaintiff and members of the Plaintiff Class, under the IWC Wage Orders
15 and under the California Labor Code, and failure to keep proper records, as alleged herein,
16 constitute unlawful activity prohibited by Business and Professions Code section 17200 et seq.

17 43. The actions of Defendants in failing to pay Plaintiff and members of the Plaintiff
18 Class in a lawful manner, as will be further alleged herein, constitute false, unfair, fraudulent and
19 deceptive business practices, within the meaning of Business and Professions Code section
20 17200 et seq.

21 44. Plaintiff is entitled to an injunction and other equitable relief against such
22 unlawful practices in order to prevent future damage, for which there is no adequate remedy at
23 law, and to avoid a multiplicity of lawsuits. He brings this cause individually and as a member of
24 the general public as a representative of all others subject to Defendants' unlawful acts and
25 practices.

26 45. As a result of their unlawful acts, Defendants have reaped and continue to reap
27 unfair benefits at the expense of Plaintiff and the Class he seeks to represent. Defendants should
28 be enjoined from this activity and made to disgorge these ill-gotten gains and restore to Plaintiff

1 and the members of the Plaintiff Class the wrongfully withheld wages and overtime
2 compensation pursuant to Business and Professions Code section 17203. Plaintiff is informed
3 and believes, and thereon alleges, that Defendants are unjustly enriched through their failure to
4 provide meal periods within the first five hours of a shift, appropriate rest periods, and/or
5 appropriate compensation in lieu of meal and rest periods to Plaintiff and members of the
6 Plaintiff Class.

7 46. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members
8 of the Plaintiff Class are prejudiced by Defendants' unfair trade practices.

9 47. As a direct and proximate result of the unfair business practices of Defendants,
10 and each of them, Plaintiff, individually and on behalf of all employees similarly situated, is
11 entitled to equitable and injunctive relief, including full restitution and/or disgorgement of all
12 wages and premium pay which have been unlawfully withheld from Plaintiff and members of the
13 Plaintiff Class as a result of the business acts and practices described herein and enjoining
14 Defendants to cease and desist from engaging in the practices described herein.

15 48. The illegal conduct alleged herein is continuing, and there is no indication that
16 Defendants will not continue such activity into the future. Plaintiff alleges that if Defendants are
17 not enjoined from the conduct set forth in this Complaint, they will continue to require
18 employees to work through meal and/or second meal periods and/or work five hours or more
19 without receiving a meal period, will continue to fail to provide rest periods or provide
20 appropriate compensation in lieu thereof, and will continue to fail to pay and to avoid paying
21 appropriate taxes, insurance, and unemployment withholdings.

22 49. Plaintiff further requests that the Court issue a preliminary and permanent
23 injunction prohibiting Defendants from requiring Plaintiff and the Plaintiff Class to work through
24 meal periods, and from continuing to fail to provide rest periods and meal periods or provide
25 appropriate compensation in lieu thereof.

26 50. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
27 described below.


28

PRAYER

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. For compensatory damages in an amount according to proof with interest thereon;
3. For economic and/or special damages in an amount according to proof with interest thereon;
4. That Defendants be found to have engaged in unfair competition in violation of section 17200 et seq. of the California Business and Professions Code;
5. That Defendants be ordered and enjoined to make restitution to the Class due to their unfair competition, including disgorgement of their wrongfully-obtained revenues, earnings, profits, compensation, and benefits, pursuant to California Business and Professions Code sections 17203 and 17204;
6. That Defendants be enjoined from continuing the illegal course of conduct alleged herein;
7. That Defendants further be enjoined to cease and desist from unfair competition in violation of section 17200 et seq. of the California Business and Professions Code;
8. That Defendants be enjoined from further acts of restraint of trade or unfair competition;
9. For punitive damages;
10. For attorneys' fees, interest and costs of suit; and
11. For such other and further relief as the Court deems just and proper.

COHELAN & KHOURY
LORENS AND ASSOCIATES
THE TURLEY LAW FIRM, APLC
Counsel for Plaintiff,

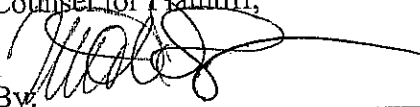
By: 
Michael D. Singer

Dated: August 12, 2004

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

COHELAN & KHOURY
LORENS AND ASSOCIATES
THE TURLEY LAW FIRM, APLC
Counsel for Plaintiff,

By: 
Michael D. Singer

Dated: August 12, 2004

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