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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF ORANGE

14  
15 RACHAEL SEGUI Individually, and on behalf of ) Case No. 30-2016-00893360-CU-BT-CXC  
all persons similarly situated )  
16 ) Assigned for All Purposes to the Honorable  
Plaintiff, ) William Claster Dept. CX 102  
17 )  
18 vs. ) **CLASS ACTION**  
19 )  
ORIGINAL MIKE’S ENTERPRISES LLC, ) **FIRST AMENDED COMPLAINT FOR**  
MICHAEL HARRAH, SAS INVESTMENTS, L.P.) **DAMAGES**  
20 , O.M. RESTAURANT MANAGEMENT LLC and)  
DOES 1- 100, INCLUSIVE, ) **1. FAILURE TO PAY WAGES**  
21 Defendants. ) **(VIOLATION OF CALIFORNIA**  
22 ) **LABOR CODE §§204, 204.3, 510,**  
23 ) **1194 and 1198);**  
24 ) **2. FAILURE TO PROVIDE MEAL**  
25 ) **PERIODS (VIOLATION OF**  
26 ) **CALIFORNIA LABOR CODE §§**  
27 ) **226.7 and 512 AND CALIFORNIA**  
28 ) **CODE OF REGULATIONS, TITLE**  
 ) **8, §11050);**  
 ) **3. FAILURE TO PROVIDE REST**  
 ) **PERIODS (VIOLATION OF**  
 ) **CALIFORNIA LABOR CODE §**

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- ) 226.7 CALIFORNIA CODE OF REGULATIONS, TITLE 8, §11050);
- )
- ) 4. FAILURE TO PAY WAGES UPON TERMINATION OF EMPLOYMENT (VIOLATION OF CALIFORNIA LABOR CODE §201, et seq, §203, §208;)
- )
- ) 5. FAILURE TO FURNISH ITEMIZED WAGE STATEMENTS (VIOLATION OF LABOR CODE §226)
- )
- ) 6. UNFAIR COMPETITION (Business and Professions Code section 17200 et. seq.)
- )
- ) 7. BATTERY & SEXUAL BATTERY
- )
- ) 8. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
- )
- ) 9. FEHA Sex Harassment [Hostile Work Environment]
- )
- ) 10. FEHA Sex Discrimination
- )
- ) 11. FAILURE TO TAKE CORRECTIVE ACTION
- )
- ) 12. NEGLIGENT HIRING AND SUPERVISION
- )
- ) REQUEST FOR JURY TRIAL

**ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

1. This is an individual and class action brought pursuant to California Code of Civil Procedure §382 and California Business and Professions Code §17200 et seq. Plaintiff RACHAEL SEGUI (herinafter, “SEGUI,” Plaintiff,” or “Plaintiffs”) brings this action on her own behalf and on behalf of all persons within the class defined herein, and as private attorney general on behalf of the general public.

2. Plaintiff RACHAEL SEGUI ‘S original Complaint was filed on August 15, 2014 as

1 part of the Beasley et al. v. Original Mike's et al action, Orange County Superior Court Case No.  
2 Case No. 30-2014-00725006-CU-HR-CJC . This Complaint is filed by Plaintiff Segui after an  
3 Order of the Court after it severed the claims of plaintiffs Leah York and Rachael Segui from the  
4 operative Beasley Complaint and ordered them to file separate complaints. The allegations in this  
5 Complaint are timely because they relate back to Plaintiff Segui's original lawsuit filed on August  
6 15, 2014.

### 7 **CLASS ALLEGATIONS**

8 3. The Class consists of the following:

9 All current and former employees of ORIGINAL MIKE'S  
10 employed in non-overtime exempt positions on or after August 15,  
11 2010.

### 12 **PLAINTIFF'S GENERAL ALLEGATIONS**

13 4. Plaintiff RACHAEL SEGUI, at all times mentioned was a resident of the Orange  
14 County, California and employed by Defendants in the County of Orange, State of California.

15 5. SEGUI was hired by the Defendants herein to work at Original Mike's as a bar  
16 tender in the summer of 2013. Following a long period of physical and verbal sexual harassment  
17 and being deprived of wages earned and owed to her, SEGUI was terminated by Defendants and  
18 each of them on or about October 25, 2013.

19 6. On or about August 14, 2014 SEGUI filed a claim with the California Department  
20 of Fair Employment and Housing ("DFEH") against ORIGINAL MIKE'S and MICHAEL  
21 HARRAH (hereinafter "HARRAH") and Juan Orozco. True and correct copies of SEGUI's DFEH  
22 Claim # 343670-121555 and Notice of Case Closure and Right to Sue are attached hereto as  
23 Exhibit 1 and incorporated by this reference. SEGUI has exhausted her administrative remedies.

24 7. The persons who comprise the Class (sometimes hereinafter referred to as  
25 "Plaintiffs," "Plaintiff Class" or "Class") are so numerous that the joinder of all such persons is  
26 impracticable and the disposition of their claims as a Class will benefit the parties and the Court.

27 8. The class action claims of Plaintiff are typical of the claims of the Class she seeks  
28

1 to represent.

2 9. Plaintiff will fairly and adequately protect the interests of the Class and Plaintiff  
3 does not have any interests that are antagonistic to the Class.

4 10. Counsel for the Class are experienced, qualified and generally able to conduct  
5 complex class action litigation.

6 11. This Court should permit this action to be maintained as a class action pursuant to  
7 California Code of Civil Procedure §382 because:

8 (a) The questions of law and fact involving wage and hours are common to the Class  
9 predominate over any question affecting only individual members;

10 (b) A class action is superior to any other available method for the fair and efficient  
11 adjudication of the claims of the members of the Class;

12 (c) The Class is so numerous that it is impractical to bring all members of the Class  
13 before the Court;

14 (d) Plaintiff and the Class will not be able to obtain effective and economic legal  
15 redress unless the action is maintained as a class action;

16 (e) There is a community of interest in obtaining appropriate legal and equitable relief  
17 for the common law and statutory violations and other improprieties, and in obtaining adequate  
18 compensation for the damages and injuries which Defendants' actions have inflicted upon Plaintiff  
19 and the Class;

20 (f) There is a community of interest in ensuring that the combined assets and available  
21 insurance of the Defendants are sufficient to adequately compensate the members of the Class for  
22 the injuries sustained;

23 (g) Without class certification, the prosecution of separate actions by individual  
24 members of the Class would create a risk of:

25 (1) Inconsistent or varying adjudications with respect to individual members of  
26 the Class which would establish incompatible standards of conduct for Defendants; and/or

27 (2) Adjudications with respect to the individual members which would, as a  
28 practical matter, be dispositive of the interests of other members not parties to the adjudications, or

1 would substantially impair or impede their ability to protect their interests, including but not  
2 limited to the potential for exhausting the funds available from those parties who are, or may be,  
3 responsible Defendants; and

4 (h) Defendants have acted or refused to act on grounds generally applicable to the  
5 Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

#### 6 **DEFENDANTS**

7 12. Plaintiff is informed and believes and based upon that information and belief  
8 alleges that Defendants ORIGINAL MIKE'S ENTERPRISES LLC, O.M. RESTAURANT  
9 MANAGEMENT LLC who was dismissed from other Actions after filing for bankruptcy, but is  
10 included in this action for its liabilities following the termination of its bankruptcy and SAS  
11 INVESTMENTS, L.P. and DOES 1-30 are now, and at all times mentioned in this Complaint, are  
12 corporations based in the State of California owned and managed by Defendant HARRAH with a  
13 principal place of business in Santa Ana, County of Orange, State of California doing business as  
14 ORIGINAL MIKE'S in Santa Ana, California. These entities are collectively referred to as  
15 "ORIGINAL MIKE'S." Any reference to O.M. RESTAURANT MANAGEMENT LLC during  
16 the period of its bankruptcy is solely made to provide reference for the ostensible ownership and  
17 alter ego claims of Defendants HARRAH, SAS INVESTMENTS, L.P. and Does 1-100 for its  
18 conduct. Plaintiffs are not pursuing any claims against O.M. RESTAURANT MANAGEMENT  
19 LLC that were discharged through its bankruptcy.

20 13. Defendants ORIGINAL MIKE'S ENTERPRISES LLC, O.M. RESTAURANT  
21 MANAGEMENT LLC , HARRAH, SAS INVESTMENTS, L.P. and Does 1-100 (hereinafter  
22 "Defendants" or "Employer Defendants") are and were employers of the Plaintiff and Class  
23 Members engaged in the restaurant industry, who regularly employed more than 5 employees and  
24 or acted as an agent of an employer, and set the hours, directed the duties and controlled the  
25 working conditions of Plaintiff and the Class Members and or directly or indirectly had some other  
26 ownership, agency, joint venture, alter ego, partnership, management, directorship, or employment  
27 type of relationship with the Plaintiff, Class Members and the other defendants (whether named  
28 herein or designated as DOES.)

1           14. Defendant MICHAEL HARRAH (hereinafter, "HARRAH"), SAS  
2 INVESTMENTS, L.P. and DOES 1-100 and each of them, were the owners and/or operators of  
3 ORIGINAL MIKE'S ENTERPRISES LLC, and O.M. RESTAURANT MANAGEMENT LLC  
4 and officers thereof and alter egos and owners thereof and or were joint ventures of, partners with,  
5 agents of or principal for said entities and defendants, whether named herein or designated herein  
6 as DOES.

7           15. Defendants HARRAH, SAS INVESTMENTS, L.P. and DOES 1-100 and each of  
8 them were owners, officers, directors, alter egos, general managers, managers, co-workers and  
9 supervisors of Plaintiff and the Class Members or alter egos of, joint ventures of, partners with,  
10 agents of or principal for the DEFENDANTS herein, whether named herein or designated herein  
11 as DOES and ORIGINAL MIKE'S and O.M. RESTAURANT MANAGEMENT LLC.

12           16. ORIGINAL MIKE'S is a restaurant doing business within the City of Santa Ana,  
13 County of Orange. HARRAH, SAS INVESTMENTS, L.P., ORIGINAL MIKE'S ENTERPRISES  
14 LLC, O.M. RESTAURANT MANAGEMENT LLC and DOES 1-100 and each of them are the  
15 owners and alter egos of ORIGINAL MIKE'S.

16           17. The true names and capacities, whether individual, corporate, partnership, associate  
17 or otherwise of Defendant Does 1 through 100, inclusive, are unknown to the Plaintiff and  
18 Plaintiff therefore sues these Defendants by such fictitious names. Plaintiff will seek leave to  
19 amend this Complaint to allege the true names and capacities of Does 1 through 100 inclusive  
20 when they are ascertained. Plaintiff is informed and believes, and based thereon alleges, that each  
21 of these fictitiously named Defendants is responsible in some manner for the occurrences herein  
22 alleged, and that Plaintiff's damages as herein alleged were legally caused by their conduct.

23           18. Plaintiff is informed and believes, and thereon alleges, that each of the defendants  
24 named in this Complaint, including Does 1 through 100, inclusive, was the agent and employee of  
25 each of the remaining defendants in doing some of the things hereinafter alleged, and was acting  
26 within the scope and course of such agency or employment so that each defendant is vicariously  
27 responsible for the other defendants and/or each defendant is the alter ego of each of the other  
28 defendants whether named herein or designated as a Doe .

1           19. Plaintiff is informed and believes and thereon alleges, that each of the defendants  
2 named in this Complaint, including Defendant HARRAH, SAS INVESTMENTS, L.P.,  
3 ORIGINAL MIKE'S ENTERPRISES LLC and Does 1-100, inclusive were the alter egos of each  
4 of the other Defendants and of ORIGINAL MIKE'S/O.M. RESTAURANT MANAGEMENT  
5 LLC during the period of its bankruptcy. There exists a unity of interest, control and ownership  
6 between defendants HARRAH, SAS INVESTMENTS, L.P. Does 1-100 and each of the other  
7 Defendants and O.M. RESTAURANT MANAGEMENT LLC that separate personalities between  
8 them do not in reality exist and they are responsible for their conduct as alleged in this Complaint.  
9 There would be an inequitable result if HARRAH, SAS INVESTMENTS, L.P. and DOES 1-100  
10 were not held responsible as the alter egos of the other Defendants including O.M.  
11 RESTAURANT MANAGEMENT LLC for their conduct as alleged in this Complaint as O.M.  
12 RESTAURANT MANAGEMENT LLC was bankrupt up to approximately December 16, 2016  
13 and Plaintiff and the Class Members would not be able to collect any judgment from it for the  
14 period of its bankruptcy.

15           20. Defendant HARRAH and SAS INVESTMENTS, L.P. are liable for the debts and  
16 liabilities of O.M. RESTAURANT MANAGEMENT LLC since they are the owners and alter  
17 egos of O.M. RESTAURANT MANAGEMENT LLC and the other Defendants whether named  
18 herein or designated as a Doe:

19           A. HARRAH is the sole owner and officer/managing agent of OM RESTAURANT  
20 MANAGEMENT LLC. and SAS INVESTMENTS, L.P., holds all of its stock and is responsible  
21 for their supervision and management. HARRAH also manages OM RESTAURANT  
22 MANAGEMENT LLC and SAS INVESTMENTS, L.P. from the same offices as he manages his  
23 personal business and other business entities including ORIGINAL MIKE'S ENTERPRISES  
24 LLC;

25           B. HARRAH co-mingled the funds and assets of O.M. RESTAURANT MANAGEMENT  
26 LLC, and SAS INVESTMENTS, L.P. and ORIGINAL MIKE'S ENTERPRISES LLC and his  
27 personal assets and failed to segregate the funds of the separate entities and his personal assets.  
28 (Harrah testified he does not know which of his holding companies was the "employer" of the

1 plaintiff and does not know the names of some of the companies he owns and does not know  
2 where the banks holding the assets of O.M. RESTAURANT MANAGEMENT LLC, and  
3 ORIGINAL MIKE'S ENTERPRISES LLC are located.)

4 C. HARRAH treated the assets of O.M. RESTAURANT MANAGEMENT LLC,  
5 ORIGINAL MIKE'S ENTERPRISES LLC and SAS INVESTMENTS, L.P. as his own. They are  
6 pass through companies to HARRAH and he testified he doesn't even think there are bank  
7 accounts for OM RESTAURANT MANAGEMENT LLC and ORIGINAL MIKE'S  
8 ENTERPRISES LLC;

9 D. HARRAH held himself out as personally liable for the debts of O.M. RESTAURANT  
10 MANAGEMENT LLC., ORIGINAL MIKE'S ENTERPRISES LLC and SAS INVESTMENTS,  
11 L.P. (HARRAH testified that he is personally liable for the debts of OM RESTAURANT  
12 MANAGEMENT LLC.);

13 E. HARRAH has identical equitable ownership with dominion and control over O.M.  
14 RESTAURANT MANAGEMENT LLC, SAS INVESTMENTS, L.P. and ORIGINAL MIKE'S  
15 ENTERPRISES LLC. (Harrah is the sole owner and manager of OM RESTAURANT  
16 MANAGEMENT LLC and ORIGINAL MIKE'S ENTERPRISES LLC. and signed all discovery  
17 responses for both of the LLC's and has directed and controlled the litigation and argued in  
18 Bankruptcy Court that Plaintiffs violated the automatic stay of claims against OM  
19 RESTAURANT MANAGEMENT LLC by continuing the litigation against him in Superior  
20 Court.);

21 F. HARRAH controlled the litigation on behalf of OM RESTAURANT MANAGEMENT  
22 LLC and ORIGINAL MIKE'S ENTERPRISES LLC. HARRAH, OM RESTAURANT  
23 MANAGEMENT LLC and ORIGINAL MIKE'S ENTERPRISES LLC were all represented by  
24 the same attorney hired by and under the direction and control of HARRAH up to the moment OM  
25 RESTAURANT MANAGEMENT LLC filed for bankruptcy at which time HARRAH hired  
26 bankruptcy counsel to represent the bankrupt entity and directed and controlled the bankruptcy  
27 litigation of OM RESTAURANT MANAGEMENT LLC.

28 G. HARRAH failed to adequately capitalize OM RESTAURANT MANAGEMENT LLC



1 and SAS INVESTMENTS, L.P. (They are pass through entities. Harrah testified “Original Mike’s  
2 has no assets,” and he doesn’t think there are even accounts for the companies – they are just  
3 holding companies and as the result of the undercapitalization OM RESTAURANT  
4 MANAGEMENT LLC filed for bankruptcy);

5 H. HARRAH used OM RESTAURANT MANAGEMENT LLC, SAS INVESTMENTS,  
6 L.P. and ORIGINAL MIKE’S ENTERPRISES LLC as a mere shell, instrumentality or conduit  
7 for a single venture or the business of an individual or another corporation. As LLCs they are  
8 merely pass through companies, Harrah has testified OM RESTAURANT MANAGEMENT LLC  
9 and ORIGINAL MIKE’S ENTERPRISES LLC are just holding companies. Harrah is the sole  
10 owner and manager of the LLC’s and runs them as a single venture under his exclusive control;

11 I. HARRAH concealed and misrepresented the identity of responsible ownership,  
12 management and financial interest and or concealed his personal business activities with respect to  
13 O.M. RESTAURANT MANAGEMENT LLC, ORIGINAL MIKE’S ENTERPRISES LLC and  
14 SAS INVESTMENTS, L.P.;

15 J. HARRAH disregarded legal formalities regarding O.M. RESTAURANT  
16 MANAGEMENT LLC, ORIGINAL MIKE’S ENTERPRISES LLC and SAS INVESTMENTS,  
17 L.P. including, but not limited to the failure to maintain minutes or adequate corporate records,  
18 and the confusion of the records of the separate entities and failed to maintain arm's length  
19 relationships among the related entities ;

20 K. HARRAH used the corporate entity O.M. RESTAURANT MANAGEMENT LLC; to  
21 procure labor. (Harrah testified that he hired and is the supervisor of Juan Orozco the GM of  
22 ORIGINAL MIKE’S at the time of Plaintiff’s and the Class Members’ employment);

23 L. HARRAH manipulated the assets and liabilities between himself and O.M.  
24 RESTAURANT MANAGEMENT LLC, ORIGINAL MIKE’S ENTERPRISES LLC and SAS  
25 INVESTMENTS, L.P. so as to concentrate the assets in himself and the liabilities in O.M.  
26 RESTAURANT MANAGEMENT LLC. (Harrah testified he formed OM RESTAURANT  
27 MANAGEMENT LLC to shield himself from liability, it is a pass through entity and has no assets  
28 and declared bankruptcy on the eve of the original trial to avoid liability in this case; and

1 M. HARRAH used the entities O.M. RESTAURANT MANAGEMENT LLC, ORIGINAL  
2 MIKE'S ENTERPRISES LLC and SAS INVESTMENTS, L.P.as a shield against personal  
3 liability. (Harrah testified he formed OM RESTAURANT MANAGEMENT LLC and  
4 ORIGINAL MIKE'S ENTERPRISES LLC to shield himself from liability).

5 21. HARRAH has a unity of interest with O.M. RESTAURANT MANAGEMENT LLC  
6 and SAS INVESTMENTS, L.P. and unjust result would occur if HARRAH was not held liable as  
7 the alter ego of O.M. RESTAURANT MANAGEMENT LLC. O.M. RESTAURANT  
8 MANAGEMENT LLC filed for bankruptcy during a period of time covered by the claims alleged  
9 herein and Plaintiff and the Class Members would not be able to collect any judgment from it for  
10 the time periods covered by its bankruptcy.

11 22. Plaintiff is informed and believes, and based upon that information and belief  
12 alleges, that at all times relevant hereto, each of the defendants and the fictitiously named  
13 defendants acted in concert and in furtherance of each other's interest.

14 23. Plaintiff is informed and believes, and based upon that information and belief  
15 alleges, that each of the Defendants named in this Complaint, including Does 1 through 100,  
16 inclusive are liable for the claims asserted in this Complaint under Labor Code 558.1 which  
17 provides:

18 (a) Any employer or other person acting on behalf of an employer, who violates, or  
19 causes to be violated, any provision regulating minimum wages or hours and days of work in any  
20 order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203,  
21 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

22 (b) For purposes of this section, the term "other person acting on behalf of an employer" is  
23 limited to a natural person who is an owner, director, officer, or managing agent of the employer,  
24 and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the  
25 Civil Code.

26 (c) Nothing in this section shall be construed to limit the definition of employer under  
27 existing law.

28

1 **FIRST CAUSE OF ACTION**

2 **FOR FAILURE TO PAY WAGES – WAGE THEFT**

3 **[California Labor Code §§204, 204.3, 510, 1194, 1198 and 558.1]**

4 (On behalf of Plaintiff and the Class against all Defendants, but not against O.M. RESTAURANT  
5 MANAGEMENT LLC for the period covered by its bankruptcy)

6 24. Plaintiff incorporates by reference all of the allegations of this Complaint as though  
7 set forth in full herein.

8 25. California Labor Code §§1194 and 1198 provide that employees in California shall  
9 not be employed more than eight hours in any work day, and/or more than forty hours in any  
10 workweek, unless they receive additional compensation beyond their regular wages in amounts  
11 specified by law.

12 26. California Labor Code §1194 et. seq. provides that an employee who has not been  
13 paid overtime and regular compensation may recover the unpaid balance of the full amount of  
14 such compensation, together with costs of suit, as well as liquidated damages in an amount equal  
15 to the overtime compensation unlawfully withheld, and interest thereon, in a civil action. The  
16 action may be maintained directly against the employer in his name without first filing a claim  
17 with the Department of Labor Standards and Enforcement.

18 27. At all times relevant hereto, California Code of Regulations Title 8 §§1150 and  
19 IWC Wage Order No. 5 and other applicable Wage Orders applied, and applies, to Plaintiffs' and  
20 the Class' employment with Defendants.

21 28. At all times relevant hereto, Labor Code §§ 510, 1194, 1198, California Code of  
22 Regulations Title 8 §§1190 and 11150 and IWC Wage Orders provided for payment of overtime  
23 wages equal to one and one-half times an employee's regular rate of pay for all hours worked over  
24 8 hours a day and/or forty (40) hours in a work week and for wages equal to one-half times an  
25 employee's regular rate of pay for the first 8 hours of work on the seventh day of work in a given  
26 workweek and for wages of twice the regular rate of pay for any hours in excess of 12 hours in any  
27 given day and any hours in excess of 8 on any seventh day of work in a given workweek.

28 29. Defendants, and each of them, have intentionally and improperly denied overtime

1 and regular compensation to the Plaintiffs and the Class.

2 30. At all times relevant hereto, on a regular basis, the Plaintiffs and the Class were  
3 suffered or required to work worked more than eight hours in a workday, and/or more than forty  
4 hours in a workweek for Defendants failed and refused to pay compensation for those hours.

5 31. At all times relevant hereto, the Defendants knew of the overtime and off the clock  
6 hours being worked by the Plaintiffs and Class yet failed to pay Plaintiffs and the Class all  
7 compensation owed for all of the hours they have worked including, but not limited to overtime  
8 compensation for all hours they have worked in excess of the maximum hours permissible by law  
9 as required by California Labor Code §510, §1194 and §1198 and California Code of Regulations  
10 Title 8 §§1190 and 11150 and the provisions of IWC order No. 5 and other applicable Wage  
11 Orders despite regularly suffering and requiring them to work overtime hours.

12 32. By virtue of Defendants' unlawful failure to pay additional compensation to Plaintiffs  
13 and the Class for their overtime hours, they have suffered, and will continue to suffer, damages in  
14 amounts which are presently unknown but which exceed the jurisdictional limits of this Court and  
15 which will be ascertained according to proof at trial.

16 33. Further, Defendants' failure to pay Plaintiffs and the Class regular and overtime  
17 wages has violated and continues to violate Penal Code §§484 and 532 (obtaining labor through  
18 false pretenses).

19 34. Plaintiffs and the Class are informed and believe, and based upon that information  
20 and belief allege, that Defendants, and each of them, knew or should have known that Plaintiffs  
21 and the Class were not being paid for overtime and regular hours worked and knew or should have  
22 known that Plaintiffs and the Class did not qualify as exempt employees and purposely elected not  
23 to pay them for their labor.

24 35. Defendants, and each of them, acted intentionally, oppressively and maliciously  
25 toward Plaintiffs and the Class with a conscious disregard of their rights, or the consequences to  
26 them, with the intent of depriving Plaintiffs and the Class of property and legal rights and  
27 otherwise causing them injury.

28 36. Plaintiffs and the Class request recovery of regular and overtime compensation

1 according to proof, interest, attorney's fees and costs pursuant to Labor Code §§1194(a) and 510  
2 and applicable wage orders, as well as the assessment of any statutory penalties against  
3 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.  
4 Further, Plaintiffs and the Class are entitled to seek and recover reasonable attorneys' fees and  
5 costs pursuant to California Labor Code §1194.

6 **SECOND CAUSE OF ACTION**

7 **FOR FAILURE TO PROVIDE MEAL PERIODS AND**  
8 **FAILURE TO PAY MEAL PERIOD COMPENSATION**

9 **[California Labor Code §§ 226.7 and 512, 558.1 and California Code of Regulation,**  
10 **Title 8, §11050]**

11 (On behalf of Plaintiff and the Class against all Defendants, but not against O.M. RESTAURANT  
12 MANAGEMENT LLC for the period covered by its bankruptcy)

13 37. Plaintiff incorporates by reference all of the allegations of this Complaint as though  
14 set forth in full herein.

15 38. California Labor Code §512 and California Code of Regulation, Title 8,  
16 §11050(11) and IWC Wage Order 5 §11 and applicable wage orders require that no employer  
17 shall employ any person for a work period of more than five (5) hours without a meal period of  
18 not less than 30 minutes.

19 39. California Labor Code §226.7, California Code of Regulation, Title 8,  
20 §11050(11)(B) and IWC Wage Order 5 §11 and applicable wage orders provide that if an employer  
21 fails to provide an employee a meal period in accordance with this section, the employer shall pay  
22 the employee one (1) hour of pay at the employee's regular rate of compensation for each workday  
23 that the meal period is not provided.

24 40. Defendants, and each of them, have intentionally and improperly denied  
25 meal periods to the Plaintiff and the Class and have failed to pay meal period compensation.

26 41. At all times relevant hereto the Plaintiff and the Class regularly  
27 worked more than five hours in a workday.

28 42. At all times relevant hereto, Defendants, and each of them, failed to

1 provide meal periods as required by California Labor Code §512 and California Code of  
2 Regulation, Title 8, §11090(11) and §11150(11) and IWC Wage Orders 9 and 15 §11 and failed to  
3 pay meal period compensation.

4 43. By virtue of Defendants' unlawful failure to provide meal periods and failure to pay  
5 meal period compensation to Plaintiff and the Class they have suffered, and will continue to  
6 suffer, damages in amounts which are presently unknown but which exceed the jurisdictional  
7 limits of this Court and which will be ascertained according to proof at trial.

8 44. Further, Defendants' failure to provide meal periods has violated and  
9 continues to violate California Penal Code §§484 and 532 (obtaining labor through false  
10 pretenses). HARRAH and the other defendants were made personally aware of these violations  
11 through prior lawsuits, but in conscious disregard of the rights, law, and safety for his employees,  
12 chose to continue to deprive employees of wages, rest and meal breaks in violation of law.

13 45. Plaintiff and the Class are informed and believe, and based upon that  
14 information and belief allege, that Defendants, and each of them, purposely elected not to provide  
15 meal periods.

16 46. Defendants, and each of them, acted intentionally, oppressively and  
17 maliciously toward Plaintiff and the Class with a conscious disregard of their rights, or the  
18 consequences with the intent of depriving Plaintiffs and the Class property and legal rights and  
19 otherwise causing them injury.

20 47. Plaintiff and the Class request recovery of meal period compensation pursuant to  
21 California Labor Code §512 and California Code of Regulation, Title 8, §11050(11) and IWC  
22 Wage Order 5 and Labor Code §226.7, as well as the assessment of any statutory penalties against  
23 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

24 **THIRD CAUSE OF ACTION**

25 **FOR FAILURE TO PROVIDE REST PERIODS**

26 **AND FAILURE TO PAY REST PERIOD COMPENSATION**

27 **[California Labor Code §§226.7, 558.1 and Code of Regulation Title 8, §11050]**

28 (On behalf of Plaintiff and the Class against all Defendants, but not against O.M. RESTAURANT

1 MANAGEMENT LLC for the period covered by its bankruptcy)

2 48. Plaintiff incorporates by reference all of the allegations of this Complaint as though  
3 set forth in full herein.

4 49. California Code of Regulation, Title 8, §11050(12) and IWC Wage Order 5 §12  
5 and applicable wage orders require employers to authorize and permit all employees to take an  
6 uninterrupted ten (10) minute paid rest period during each four hour period of work or major  
7 fraction thereof.

8 50. California Code of Regulation, Title 8, §11050(12)(B), IWC Wage Order 5 §12 and  
9 applicable wage orders and California Labor Code §226.7, require that if an employer fails to  
10 provide an employee rest periods in accordance with this section, the employer shall pay the  
11 employee one (1) hour of pay at the employee's regular rate of compensation for each workday  
12 that the rest period is not provided.

13 51. At all times relevant hereto, Plaintiffs and he Class have worked more than four  
14 hours in a workday.

15 52. At all times relevant hereto, the Defendants, and each of them, failed to  
16 provide rest periods to Plaintiff and he Class as required by California Code of Regulation, Title 8,  
17 §11050(12) and IWC Wage Order 5 §12 and applicable wage orders.

18 53. By virtue of Defendants' unlawful failure to provide rest periods Plaintiff and the  
19 Class have suffered, and will continue to suffer, damages in amounts which are presently  
20 unknown but which exceed the jurisdictional limits of this Court and which will be ascertained  
21 according to proof at trial.

22 54. Plaintiff and the Class request recovery of rest period compensation pursuant to  
23 Labor Code § 226.7 California Code of Regulation, Title 8, §11050(12)(B), as well as the  
24 assessment of any statutory penalties against Defendants, and each of them, in a sum as provided  
25 by the Labor Code and/or other statutes.

26 **FOURTH CAUSE OF ACTION**

27 **FOR FAILURE TO PAY WAGES UPON TERMINATION OF EMPLOYMENT**

28 **[Labor Code §§201 – 203, 208 Seq.]**

1 (On behalf of Plaintiff and the Class against all Defendants, but not against O.M. RESTAURANT  
2 MANAGEMENT LLC for the period covered by its bankruptcy )

3 55. Plaintiff incorporates by reference all of the allegations of this Complaint as though  
4 set forth in full herein.

5 58. Plaintiff and members of the Class quit or were discharged from employment with  
6 Defendants within the applicable statute of limitations.

7 59. However, Defendants willfully failed to pay them all wages owed as defined by  
8 applicable California law upon termination of their employment immediately upon termination if  
9 they were fired or quit with at least 72 hour notice or within 72 hours if they quit without notice.

10 60. Additionally, consistent with their policies and practices of not paying overtime  
11 compensation and meal and rest period compensation, Defendants willfully failed to pay the  
12 Plaintiff and members of the class the overtime compensation, meal and rest period compensation,  
13 mileage reimbursements and other compensation referred to in this complaint upon termination of  
14 their employment and those wages remain unpaid and Defendants failed to pay them their final  
15 pay check at their place of business and within the time and manners required by Labor Code §201  
16 et seq.. Defendants' failure to pay said wages to Plaintiffs and the Class within the time and in the  
17 manners required by Labor Code §201 et seq. was willful.

18 61. Therefore pursuant to Labor Code §203 Plaintiff and all members of the Class who  
19 are former employees of Defendants are entitled to one day's wages for each day they were not  
20 timely paid all wages due upon termination of their employment, up to a maximum of 30 days'  
21 wages plus costs and attorneys' fees.

22 **FIFTH CAUSE OF ACTION**  
23 **FOR FAILURE TO FURNISH ITEMIZED WAGE STATEMENTS, LABOR CODE §§226**  
24 **and 558.1**

25 (On behalf of Plaintiff and the Class against all Defendants, but not against O.M. RESTAURANT  
26 MANAGEMENT LLC for the period covered by its bankruptcy)

27 62. Plaintiff incorporates by reference all of the allegations of this Complaint as though  
28 set forth in full herein.



1           63. Throughout the Class Period, Defendants intentionally failed to furnish Plaintiff  
2 and the Class itemized statements upon each payment of wages accurately showing: all gross  
3 wages earned, total hours worked, all deductions made, net wages earned, inclusive dates of the  
4 period for which the employee is paid, the name and address of the legal entity that is the  
5 employer, and all applicable hourly rates in effect during each pay period and the corresponding  
6 hours worked at each hourly rate by the employee.

7           64. Additionally, such wage statements were incorrect due to Defendant's knowing and  
8 intentional policies of: (1) refusing to pay Plaintiff and the Class Members meal break and rest  
9 break compensation for meal and rest breaks they were not provided; (2) refusing to pay overtime  
10 compensation and forcing Class Members to work off the clock to perform duties by threatening  
11 reprimand if any overtime hours were logged among other conduct. On information and belief,  
12 each of these policies represented a knowing and intentional failure to comply with the applicable  
13 labor codes and thus an intentional failure to comply with Labor Code § 226.

14           65. Plaintiffs and the Class were damaged and suffered injury by these knowing and  
15 intentional failures of the Defendants to comply with Labor Code §226 because, among other  
16 things, the failures to provide the required information on their wage statements deprived them of  
17 the ability to easily determine from the wage statement alone:

18           (i) The amount of the gross wages or net wages paid to the employee during the pay period  
19 or any of the other information required to be provided on the itemized wage statement pursuant  
20 to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

21           (ii) Which deductions the employer made from gross wages to determine the net wages  
22 paid to the employee during the pay period. Nothing in this subdivision alters the ability of the  
23 employer to aggregate deductions consistent with the requirements of item (4) of subdivision  
24 (a).

25           (iii) The name and address of the employer and, if the employer is a farm labor contractor,  
26 as defined in subdivision (b) of Section 1682, the name and address of the legal entity that  
27 secured the services of the employer during the pay period.

28           66. Plaintiffs and the Class were also damaged and suffered injury by these knowing

1 and intentional failures of the Defendants because they led them to believe that they were not  
2 entitled to be paid all regular, overtime and meal and rest period compensation they were owed,  
3 even though they were so entitled and because the failures hindered them from determining the  
4 amounts of wages owed to them.

5 67. Plaintiffs and the Class are entitled to the amounts provided in California Labor  
6 Code §226(e) and §226.3 plus costs and attorneys' fees.

7 **SIXTH CAUSE OF ACTION**  
8 **FOR UNFAIR COMPETITION.**

9 **[California Business & Professions Code§17200 et, seq.]**

10 (On behalf of Plaintiff and the Class against all Defendants, but not against O.M. RESTAURANT  
11 MANAGEMENT LLC for the period covered by its bankruptcy)

12 Plaintiff incorporates by reference all of the allegations of this Complaint as though  
13 set forth in full herein.

14 68. By and through Defendants' conduct described above Plaintiff and the Class have  
15 suffered monetary loss including but not limited to being deprived of the right to be paid overtime  
16 and regular compensation earned by virtue of employment with the Defendants at regular  
17 intervals, in accordance with the requirements of Sections 204, 1194 and 1197 of the California  
18 Labor Code and were deprived of rest and meal periods and rest and meal period compensation in  
19 violation of Labor Code §§ 226.7 and 512 and California Code of Regulations Title 8 §11050 and  
20 IWC Wage Order 5 §11 and 12.

21 69. By and through their unfair, unlawful and/or fraudulent business practices  
22 described herein, Defendants have obtained valuable property, money and services from Plaintiff  
23 and the Class and have deprived Plaintiff and the Class of valuable rights and benefits guaranteed  
24 by law, all to Plaintiff and the Class' detriment.

25 70. All of the acts described herein were violations of the California Labor Code and  
26 Industrial Welfare Commission Wage Orders, are unlawful and in violation of public policy; are  
27 unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or  
28 fraudulent business practices in violation of California Business and Professions Code § 17200 et

1 seq.

2 72. Plaintiff and the Class are entitled to, and seek restitution and/or disgorgement of  
3 all money they have been deprived, by means of the above-described unfair, unlawful and/or  
4 fraudulent business practices of Defendants.

5 **FACTS APPLICABLE TO PLAINTIFF'S INDIVIDUAL CLAIMS**

6 **Defendants' Pattern of Abuse and Discrimination Against Plaintiff**

7 73. During her periods of employment, Plaintiff was supervised by the general  
8 manager of Original Mike's Juan Orozco (hereinafter "OROZCO" who was dismissed after filing  
9 bankruptcy) and HARRAH the owner of ORIGINAL MIKE'S and O.M. RESTAURANT  
10 MANAGEMENT LLC, ORIGINAL MIKE'S ENTERPRISES LLC and SAS INVESTMENTS,  
11 L.P. and was treated differently in part because of her sex.

12 74. OROZCO was the general manager of ORIGINAL MIKE'S and had authority over  
13 plaintiff and exploited his position of authority by requiring plaintiff and other female employees  
14 to kiss and hug him when they reported for duty and before they went home for the day after their  
15 shifts ended and be subjected to inappropriate touching and harassing conduct. HARRAH hired  
16 Orozco and was his supervisor and was the owner and operator of ORIGINAL MIKE'S and had  
17 the power to hire and fire Orozco and other employees of ORIGINAL MIKE'S.

18 75. OROZCO had a pattern and practice in the workplace of hugging and pulling  
19 female employees including the plaintiff close to him so that his body would touch their breasts  
20 and intimate parts of their bodies. OROZCO would grope and touch the side of their breasts and  
21 their buttocks with his hands. Plaintiff is just one of many female employees who OROZCO  
22 improperly touched and groped. HARRAH was aware of the actions of OROZCO which occurred  
23 in the workplace during work hours and was part of the manner in which OROZCO managed and  
24 supervised the female employees and was open and apparent. OROZCO admits to hugging and  
25 kissing the female employees as they reported to work and left work each day and admits doing so  
26 on thousands of occasions. HARRAH was the direct supervisor of OROZCO. HARRAH  
27 approved and ratified the conduct of OROZCO. HARRAH ratified and condoned his employees  
28 engaging in sexual harassment, battery, sexual assault and other improper actions. HARRAH

1 would hug and kiss his female employees as well, and would set an example of tolerating,  
2 ratifying condoning and encouraging hugging or kissing of female employees.

3 76. If Plaintiff refused OROZCO's hugs, kisses and groping OROZCO would  
4 retaliate against her by making comments intended to make her feel threatened and  
5 uncomfortable, would treat her badly and unfairly, would become verbally and psychologically  
6 abusive and would take away her shifts and would cut her work hours. This was a common  
7 pattern and practice that OROZCO engaged in with all female employees that the Employer  
8 Defendants were aware of, but condoned and ratified. (See e.g. lawsuits by other female  
9 employees against the defendants including but not limited to the lawsuits by Leah York and  
10 Lahna Beasley. The Employer Defendants, even after being advised of complaints by female  
11 employees, including the original lawsuit of the Beasley, York and Sequi, did not take any action  
12 against OROZCO, and continue to employ him as the general manager of ORIGINAL MIKE'S  
13 demonstrating ratification for his actions, negligent, willful, wanton, malicious and/or a reckless  
14 disregard for the retention of OROZCO. The Employer Defendants ratified, approved and  
15 condoned of the actions of OROZCO by retaining him, and not taking any action against  
16 OROZCO, even after learning of OROZCO'S harassing actions.

17 77. Plaintiff did not invite or welcome OROZCO's contact. OROZCO exploited his  
18 position of power over Plaintiff her financial dependence to sexually harass, batter and take  
19 advantage of her. The Employer Defendants ratified, approved and condoned of the actions of  
20 OROZCO by retaining him, and not taking any action against OROZCO, even after learning of  
21 OROZCO's harassing actions.

22 78. Defendant HARRAH hired OROZCO and was his supervisor and ratified his  
23 conduct.

24 79. OROZCO continues to remain employed by the Employer Defendants as the  
25 general manager of ORIGINAL MIKE'S under the supervision of Defendant HARRAH.

26 **SEVENTH CAUSE OF ACTION**

27 **(BATTERY AND SEXUAL BATTERY)**

28 (On behalf of Plaintiff SEGUI individually against all Defendants, but not against O.M.)

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RESTAURANT MANAGEMENT LLC due to its bankruptcy)

80. Plaintiff incorporates by reference all of the allegations of this Complaint as though set forth in full herein.

81. OROZCO, as general manager of ORIGINAL MIKE’S, misused and exploited his position of authority over Plaintiffs and committed multiple acts of battery and sexual battery on Plaintiff. OROZCO hugged, kissed, groped, put his arms around her , rubbed his body against her and touched her breasts, buttocks and intimate parts of her body on the premises of Original Mike’s as she attempted to perform her work duties. OROZCO did these acts to Plaintiff with the intent to cause a harmful or offensive contact with her breasts and buttocks and intimate parts of her bodies and caused a harmful and offensive contact with her breasts and buttocks and intimate parts of her body. This conduct was approved and ratified by the Employer Defendants.

82. This conduct by OROZCO was in the course and scope of his employment for the Employer Defendants in the workplace and was part of the manner in which OROZCO managed and supervised the female employees and was open and apparent. OROZCO admits to hugging and kissing the female employees as they reported to work and left work each day and admits doing so on thousands of occasions Orozco’s actions were offensive and of the type to offend a reasonable sense of personal dignity. The actions of OROZCO were a violation of Civil Code Section 43.

83. This conduct was approved of and ratified by the Employer Defendants who are vicariously liable for the actions of OROZCO directly and as employers and the alter egos and owners of ORIGINAL MIKE’S, O.M. RESTAURANT MANAGEMENT LLC and ORIGINAL MIKE’S ENTERPRISES LLC.

84. As a direct and legal result of this conduct by OROZCO, and ratification by the Employer Defendants directly and as the owners and alter egos of ORIGINAL MIKE’S, O.M. RESTAURANT MANAGEMENT LLC and ORIGINAL MIKE’S ENTERPRISES LLC, plaintiff suffered injury, harm and damages and is entitled to general, special and punitive damages and costs of suit in a sum to be proven at time of trial.

**EIGHTH CAUSE OF ACTION**

1                   **(FOR WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY)**

2                   (On behalf of Plaintiff SEGUI individually against all Defendants, but not against O.M.  
3                   RESTAURANT MANAGEMENT LLC due to its bankruptcy)

4                   85.       Plaintiff incorporates by reference all of the allegations of this Complaint as though  
5 set forth in full herein.

6                   86.       On or about October 25, 2013 after Plaintiff SEGUI had resisted OROZCO'S  
7 illegal practices of sexual harassment, requiring her to hug and kiss him when she would report to  
8 work and leave for the day and endure harmful and offensive touching, The Employer Defendants  
9 terminated her employment.

10                  87.       Defendants discharged Plaintiff SEGUI from employment due to her refusal to  
11 submit to the illegal harmful and offensive touching and battery of Original Mike's general  
12 manager OROZCO. The Employer Defendants knew or should of known of the illegal conduct of  
13 OROZCO, instead they condoned and ratified his actions, which is further demonstrated by the  
14 Employer Defendants' receipt and review of the original complaint by plaintiffs Beasley, Segui  
15 and York against the defendants, and their continued failure to take any type of corrective action,  
16 showing a negligent retention of OROZCO, and ratification of OROZCO'S actions. The Employer  
17 Defendants approved of and ratified OROZCO'S actions in conscious disregard of the rights,  
18 health, safety and welfare of the Plaintiff, and all other female employees of the Employer  
19 Defendants at Original Mike's Restaurant. Hence the Defendants and each of them are vicariously  
20 liable for the actions of OROZCO by ratifying and approving his conduct, as well for retaining  
21 him after knowing of his unfitness as a General manager because of his assaults, batteries,  
22 harassment of and retaliation against the Employer Defendants' female employees.

23                  88.       As a proximate result of Defendants' actions, Plaintiff SEGUI has suffered General  
24 and Special damages including loss of income and benefits, past, present and/or future lost  
25 earnings and employment benefits, special damages according to proof, emotional distress, general  
26 damages, increased tax liability, loss of use of money, pre and post judgment interest and will  
27 continue to lose income and benefits in sums according to proof at time of trial.

28                  89.       As a further proximate result of Defendant's actions, Plaintiff SEGUI has suffered

1 anxiety, shame, humiliation, mental, physical and emotional injury, and injury to reputation, and is  
2 entitled to general damages in amounts according to proof at time of trial.

3 90. The actions of Defendants were done intentionally, maliciously, oppressively and  
4 fraudulently and with the intent to vex, annoy, and injure Plaintiff ; they were done with improper  
5 and evil motives amounting to malice and in conscious disregard of Plaintiff's rights. Plaintiff is  
6 therefore entitled to an award of punitive damages.

7 91. Pursuant to California Code of Civil Procedure § 1021.5 and Labor Code 218.5 and  
8 other statutes Plaintiff is entitled to and requests an award of attorney's fees and costs.

9 **NINTH CAUSE OF ACTION**

10 **FOR FEHA SEX HARASSMENT-HOSTILE WORK ENVIRONMENT**

11 (On behalf of Plaintiff SEGUI individually against all Defendants, but not against O.M.  
12 RESTAURANT MANAGEMENT LLC due to its bankruptcy)

13 92. Plaintiff re-alleges and incorporates by reference, all of the allegations of this  
14 Complaint as though fully set forth herein.

15 93. Plaintiff was the employee of Defendants and protected from harassment or  
16 discrimination. Government Code sections 12920, and 12921.

17 94. Defendants and each of them are "employers" for harassment purposes in  
18 accordance with Government Code section 12940G)(4)(A).

19 95. The Employer Defendants and each of them were Plaintiff's supervisors, managers  
20 and/or employers whose positions required them to "use independent judgment" in the direction  
21 and assignments of the Plaintiff. ORIGINAL MIKE'S, HARRAH, the Employer Defendants and  
22 their supervisors knew of the propensity of OROZCO to engage in sexual harassment, sexual  
23 battery and misconduct. Hence the Defendants and each of them are vicariously liable for the  
24 actions of OROZCO by ratifying and approving his conduct, as well for retaining him after  
25 knowing of his unfitness as a General manager because of his assaults, batteries, harassment of  
26 and retaliation against the Employer Defendants female employees.

27 96. The Employer Defendants have engaged in a pattern of harassment against women  
28 as described above. Plaintiff was harassed on a nearly daily basis and sometimes multiple times in

1 a single day. This harassment was so severe and pervasive that it hindered Plaintiff's performance  
2 of her duties and made them more difficult. A reasonable woman in Plaintiff's circumstances  
3 would have considered the environment to be hostile or abusive.

4 97. Plaintiff considered the environment to be hostile. She suffered physical and verbal  
5 abuse and was subjected to sexual harassment due to her sex. The harassment was perpetrated by  
6 her supervisors. The Employer Defendants knew or should have known about the harassment  
7 Plaintiff was subjected to because it was carried out by ORIGINAL MIKE'S general manager  
8 OROZCO in the workplace and was part of the manner in which OROZCO managed and  
9 supervised the female employees and was open and apparent. OROZCO admits to hugging and  
10 kissing the female employees as they reported to work and left work each day and admits doing so  
11 on thousands of occasions. Furthermore, the Employer Defendants had notice of at least one of  
12 OROZCO's past sexual harassment actions, and should have monitored him more closely to make  
13 sure that Plaintiff and other women were not harassed. The Employer Defendants failed to stop  
14 OROZCO from harassing Plaintiff and instead ratified his conduct. OROZCO was a managerial  
15 level employee, and the Employer Defendants are strictly liable for his actions. Thus, the  
16 Employer Defendants as employers and owners and alter egos of ORIGINAL MIKES are strictly  
17 liable for the actions of OROZCO.

18 98. As a direct and legal result of this hostile work environment, Plaintiff suffered  
19 embarrassment, humiliation, distress and chagrin, physical and verbal assaults, and a loss of  
20 earnings, loss of earnings opportunities and employment opportunities. She incurred, or will likely  
21 incur in the future, costs and expenses for medical, nursing, psychiatric, psychological, hospital or  
22 other related health care expenses, incurred litigation costs and attorneys' fees, and suffered other  
23 consequential and actual damages according to proof at time of trial and in excess of the minimum  
24 jurisdiction of this Court. Plaintiff is also entitled to punitive damages against defendants in sums  
25 sufficient to set an example and deter defendants from engaging in such similar despicable  
26 conduct in the future.

27 **TENTH CAUSE OF ACTION**  
28 **(FOR FEHA SEX DISCRIMINATION)**



1 (On behalf of Plaintiff SEGUI individually against all Defendants, but not against O.M.  
2 RESTAURANT MANAGEMENT LLC due to its bankruptcy )

3 99. Plaintiff incorporates by reference all of the allegations of this Complaint as though  
4 set forth in full herein.

5 100. The Fair Employment and Housing Act ("FEHA") establishes that freedom from  
6 job discrimination and harassment on certain grounds, including association with a minority, is a  
7 civil right; discrimination is against public policy, and constitutes an unlawful employment  
8 practice. Matthews v. Superior Court, (1995) 34 Cal. App. 4th 598, 602; Government Code  
9 sections 12920, 12921, & 12940.

10 101. Plaintiff was discriminated against because of her sex. Plaintiff was denied  
11 promotions and fair earnings because of her sex. Since OROZCO was a managerial level  
12 employee, the Employer Defendants are strictly liable for the actions of OROZCO. Thus, the  
13 Employer Defendants as the employers and owners and alter egos of ORIGINAL MIKES are  
14 strictly liable for the actions of OROZCO.

15 102. As a direct and legal result of the discrimination by Defendants and each of them,  
16 Plaintiff suffered injury, harm and damages and is entitled to general, special and punitive  
17 damages, costs of suit, interest, increased taxes for any suit, and attorneys' fees in a sum to be  
18 proven at time of trial.

19 **ELEVENTH CAUSE OF ACTION**

20 **(FOR FAILURE TO TAKE CORRECTIVE ACTION)**

21 (On behalf of Plaintiff SEGUI individually against all Defendants, but not against O.M.  
22 RESTAURANT MANAGEMENT LLC due to its bankruptcy)

23 103. Plaintiff incorporates by reference all of the allegations of this Complaint as though  
24 set forth in full herein.

25 104. The Employer Defendants had an obligation to take corrective action to prevent  
26 further harassment of Plaintiff, but failed to do so in violation of Government Code sections  
27 12940(k) and 12940(j)(1). The Employer Defendants failed to conduct proper investigations,  
28 failed to implement proper policies to prevent discrimination, harassment or retaliation, failed to

1 properly punish those who engaged in misconduct and failed to deter further such actions in the  
2 future.

3 105. As defined in Government Code section 12926(r) The Employer Defendants and  
4 others were supervisors whose positions required them to "use independent judgment" in the  
5 direction and assignments of all the employees at ORIGINAL MIKE'S. The Employer Defendants  
6 including HARRAH and others knew of the propensity for OROZCO to engage in sexual  
7 harassment and misconduct, failed to keep him away from Plaintiff and failed to stop the  
8 harassment and ratified the conduct.

9 106. Furthermore, based on information and belief, The Employer Defendants have not  
10 given Plaintiff's supervisors harassment training as required by Government Code section  
11 12950.1, and in fact, some of those supervisors who should have known better such as OROZCO  
12 were those engaged in harassing conduct against Plaintiff.

13 107. As a direct and legal result of the conduct by Defendants towards Plaintiff, Plaintiff  
14 has suffered economic and non-economic damages, attorneys' fees, litigation costs, and increased  
15 tax liability. The Defendants conduct was so malicious, offensive, and reprehensible that punitive  
16 damages should be imposed in a sum according to proof at time of trial, and in excess of the  
17 minimum jurisdiction of this Court in sums sufficient to punish Defendants and deter similar  
18 despicable conduct in the future.

19 **TWELFTH CAUSE OF ACTION**

20 **NEGLIGENT HIRING AND SUPERVISION**

21 (On behalf of Plaintiff SEGUI individually against all Defendants, but not against O.M.

22 RESTAURANT MANAGEMENT LLC due to its bankruptcy)

23 108. Plaintiff incorporates by reference all of the allegations of this Complaint as though  
24 set forth in full herein.

25 109. The Employer Defendants and each of them, had a custom and practice of  
26 employing or retaining individuals accused of discrimination, harassment or retaliation. The  
27 sexual harassment and batteries on the Plaintiff were not isolated incidents. Other employees of  
28

1 ORIGINAL MIKE'S have been harmed by its employees, or managers including OROZCO.

2 110. The Employer Defendants failed to take proper action to supervise, train or  
3 discipline employees including managers on laws of sexual harassment, discrimination or  
4 retaliation. This failure to train, supervise and discipline and failure to take corrective action  
5 against employees or managers who did engage in sexual harassment, sexual assault, battery  
6 and/or retaliation was a substantial factor in causing the harm and injuries suffered by Plaintiff.

7 111. On repeated occasions, OROZCO, kissed, hugged, rubbed, touched, fondled and  
8 otherwise harassed, battered and sexually assaulted the Plaintiff.

9 112. The Employer Defendants were advised of complaints of the conduct of OROZCO  
10 by the Plaintiff and other female employees, via lawsuits and less formal complaints. The  
11 Employer Defendants negligently retained OROZCO and ratified and approved of his conduct.  
12

13 113. The Employer Defendants' failure to take corrective action, or to properly train and  
14 supervise employees is relevant to the absence of mistake by defendants, their intent, as well as a  
15 conscious disregard of the rights, health and safety of employees, such as the Plaintiff thereby  
16 justifying punitive damages.  
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18 114. OROZCO, was unfit or incompetent to perform the work of a supervisor and or  
19 general manager. He did not have the education or training to perform the work. The Employer  
20 Defendants knew or should have known of the unfitness of OROZCO. There were lawsuits and  
21 complaints so that the Employer Defendants knew or should have known of OROZCO'S  
22 unfitness.  
23

24 115. The Employer Defendants did not train their employees, including OROZCO,  
25 about harassment, discrimination, retaliation or how to prevent same.

26 116. The failure to provide required harassment and retaliation training caused the  
27 escalation of incidents of harassment, battery and sexual assault by OROZCO on female  
28 employees.

1 117. OROZCO, engaged in numerous unjustified acts of harassment, battery and sexual  
2 assault on female employees in the workplace under the supervision of HARRAH and the  
3 Employer Defendants.

4 118. The Employer Defendants knew or should have known that OROZCO, was unfit or  
5 incompetent and that this unfitness or incompetence created a particular risk to others.

6 119. OROZCO'S unfitness or incompetence harmed the Plaintiff. OROZCO engaged in  
7 analogous misconduct towards others up to the present date, but he remains employed by The  
8 Employer Defendants. Employees and managers were not provided training despite the obvious  
9 need and legal requirements.

10 120. The Employer Defendants negligence in hiring, supervising, and retaining  
11 OROZCO, was a substantial factor in causing Plaintiff's harm. The actions of the Employer  
12 Defendants were willful, wanton and malicious justifying punitive damages in addition to  
13 economic damages, non-economic damages, costs of suit and such other relief as is presented at  
14 trial, and those damages are in excess of the minimum jurisdiction of this court.  
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16

17 **PRAYER**

18 WHEREFORE, Plaintiff and the Class prays for judgment against Defendant as follows:

19 1. ON THE FIRST CAUSE OF ACTION:

- 20 (a) For compensatory damages according to proof;  
21 (b) For interest on any compensatory damages; and  
22 (c) For statutory penalties;  
23 (d) For attorneys' fees; and  
24 (e) For costs of suit.

25 2. ON THE SECOND CAUSE OF ACTION:

- 26 (a) For compensatory damages according to proof;  
27 (b) For interest on any compensatory damages; and  
28 (c) For meal period compensation;

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- (d) For statutory penalties;
- (e) For attorneys' fees; and
- (f) For costs of suit.

3. ON THE THIRD CAUSE OF ACTION:

- (a) For compensatory damages according to proof;
- (b) For interest on any compensatory damages; and
- (c) For rest period compensation; and
- (d) For statutory penalties;
- (e) For attorneys' fees; and
- (f) For costs of suit.

4. ON THE FOURTH CAUSE OF ACTION:

- (a) For compensatory damages according to proof;
- (b) For interest on any compensatory damages; and
- (c) For waiting time statutory amounts under Labor Code §203;
- (d) For attorneys' fees; and
- (e) For costs of Suit;

5. ON THE FIFTH CAUSE OF ACTION:

- (a) For all amounts provided in California Labor Code §226(e) and §226.3;
- (b) For statutory penalties;
- (c) For costs of suit; and
- (d) For attorneys' fees;

6. ON THE SIXTH CAUSE OF ACTION:

- (a) For the equitable, injunctive and declaratory relief requested;
- (b) For disgorgement of profits;
- (c) For restitution;
- (d) For attorneys' fees; and
- (e) For costs of suit

1 7. ON THE SEVENTH THROUGH TWELFTH CAUSES OF ACTION

- 2 (a) Damages for the loss of earnings and back pay including any increased tax  
3 liability thereon;
- 4 (b) Damages for the loss of future earnings, promotions, opportunities to be  
5 promoted, front pay and all other employment benefits, such as pension  
6 rights;
- 7 (c) All other lost pension, insurance and other employment benefits;
- 8 (d) Medical, hospital and psychological bills, including past, present and future  
9 bills;
- 10 (e). General damages (pain, suffering, emotional distress and other non-  
11 economic damages);
- 12 (f) Compensatory and statutory damages;
- 13 (g) Punitive damages;
- 14 (h) Litigation costs;
- 15 (i). Attorneys' fees;
- 16 (j) Civil Penalties as authorized by statutes and set out herein;
- 17 (k). Interest;
- 18 (l) Compensation for increased tax liability;

19 And ON ALL CAUSES OF ACTION

20 For prejudgment and post judgment interest; and for such other and further relief as  
21 this Court may deem just and proper.

22 Dated: February 8, 2017

GOLDBERG & GAGE, A Partnership of Professional Law  
Corporations & THE SPENCER LAW FIRM

23  
24 \_\_\_\_\_/S/

25 JEFFREY P. SPENCER &  
26 BRADLEY C. GAGE  
Attorneys for Plaintiff

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**DEMAND FOR JURY TRIAL**

Plaintiff individually and on behalf of the Class hereby demands a trial by jury of all issues in this action.

Dated: February 8, 2017      SPENCER LAW FIRM

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/s/  
JEFFREY P. SPENCER  
Attorneys for Plaintiffs

# **EXHIBIT NO. 1**



1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**

2 **BEFORE THE STATE OF CALIFORNIA**

3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**

4 **Under the California Fair Employment and Housing Act**  
5 **(Gov. Code, § 12900 et seq.)**

6 In the Matter of the Complaint of  
7 Rachael Segui, Complainant.

DFEH No. 343670-121555

8 vs.

9 Michael Harrah Original Mike`s Respondent.  
10 100 S. Main  
11 Santa Ana, California 92701

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12  
13 Complainant alleges:

14 1. Respondent **Original Mike`s** is a **Private Employer** subject to suit under the California Fair Employment  
15 and Housing Act (FEHA) (Gov. Code, § 12900 et seq.). Complainant believes respondent is subject to the  
16 FEHA.

17 2. On or around **Oct 25, 2013**, complainant alleges that respondent took the following adverse actions against  
18 complainant: **Harassment, Retaliation Denied a work environment free of discrimination and/or**  
19 **retaliation, Laid-off, Other, Subjected to sexual harassment**. Complainant believes respondent committed  
20 these actions because of their: **Sex- Gender** .

21 3. Complainant **Rachael Segui** resides in the City of **Anaheim**, State of **California**. If complaint includes co-  
22 respondents please see below.

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**Co-Respondents:**

Original Mike`s  
Juan Orozco  
100 S. Main  
Santa Ana California 92701

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**Additional Complaint Details:**

Claimant was subjected to sexual harassment and retaliation by her supervisor Juan Orozco due to her sex, including but not limited to inappropriate touching, hugging and kissing, due to her sex and was denied shifts and laid off when she rejected his advances.

1 VERIFICATION

2 I, **Rachael Segui**, am the Complainant in the above-entitled complaint. I have read the foregoing complaint  
3 and know the contents thereof. The same is true of my own knowledge, except as to those matters which are  
4 therein alleged on information and belief, and as to those matters, I believe it to be true.

5 On Aug 14, 2014, I declare under penalty of perjury under the laws of the State of California that the foregoing  
6 is true and correct.

7 **Anaheim, California**  
8 **Rachael Segui**  
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**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

DIRECTOR PHYLLIS W. CHENG

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 | TTY 800-700-2320  
www.dfeh.ca.gov

Aug 14, 2014

Rachael Segui  
1940 W. Chateau Ave.  
Anaheim California 92804

**RE: Notice of Case Closure and Right to Sue**

DFEH Matter Number: 343670-121555

Right to Sue: Segui / Michael Harrah Original Mike`s

Dear Rachael Segui,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective Aug 14, 2014 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing



**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

DIRECTOR PHYLLIS W. CHENG

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 | TTY 800-700-2320  
www.dfeh.ca.gov

Enclosures

cc: Original Mike`s Juan Orozco