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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Nancy Fabian, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

GIZELLE RIVERA,

Plaintiff,

v.

VEGA-ALBELA, INC., dba HACIENDA DE
VEGA; ALONSO VEGA-ALBELA; and
DOES 1-100, inclusive,

Defendants.

CASE NO.: 37-2020-00000626-CU-OE-NC

COMPLAINT

1. Private Attorneys General Act Claim – LC § 2699
2. Failure to Pay Wages Including Minimum Wages – LC § 1194
3. Failure to Pay Overtime Wages – LC § 1194
4. Failure to Provide Meal Periods – LC § 226.7
5. Failure to Provide Paid Rest Periods – LC § 226.7
6. Unlawful Deducting of Wages – LC § 221
7. Unlawful Taking of Gratuity – LC § 351
8. Failure to Provide Proper Wage Statements and Keep Records – LC § 226
9. Waiting Time Penalties – LC § 203
10. Unfair Business Practices – BPC § 17200

1 Plaintiff GIZELLE RIVERA hereinafter (“Plaintiff” or “Rivera”), for causes of action
2 against Defendants VEGA-ALBELA, INC., dba HACIENDA DE VEGA; ALONSO VEGA-
3 ALBELA; and DOES 1-100, inclusive (hereinafter collectively referred to as “Defendants”),
4 alleges as follows:

5 JURISDICTION

6 1. This action arises out of acts, representations and events occurring within the
7 jurisdiction of the County of San Diego and the San Diego Judicial District.

8 2. Plaintiff is, and at all times mentioned herein was, an individual residing in the
9 state of California, County of San Diego.

10 3. Defendants, at all times mentioned herein, were doing business in San Diego
11 County.

12 4. Whenever in this Complaint reference is made to any act, deed, or conduct of
13 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through
14 one or more of their officers, directors, agents, employees, or representatives, who were actively
15 engaged in the management, direction, control, or transaction of the ordinary business and affairs
16 of Defendants.

17 5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,
18 associate or otherwise, of the Defendants sued herein as DOES 1-100, inclusive and therefore sues
19 said Defendants (the “Doe Defendants”) by such fictitious names. Plaintiff will amend this
20 Complaint to plead the true names and capacities of the Doe Defendants at such
21 time as the identities of the Doe Defendants have been ascertained.

22 6. Plaintiff is informed and believes, and thereon alleges, that Defendants VEGA-
23 ALBELA, INC., dba HACIENDA DE VEGA; ALONSO VEGA-ALBELA; and DOES 1-100,
24 inclusive, are the partners, agents, or principals and co-conspirators of Defendants, and of each
25 other; that named Defendants and the Doe Defendants performed the acts and conduct herein
26 alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified,
27 and accepted the benefits of such acts and conduct, and therefore each of the named Defendants
28 and Doe Defendants are liable to Plaintiff to the extent of the liability of the Defendants as alleged

1 herein.

2 7. Plaintiff is further informed and believes, and thereon alleges, that at all times herein
3 material, VEGA-ALBELA, INC., dba HACIENDA DE VEGA was completely dominated and
4 controlled by ALONSO VEGA-ALBELA and DOES 1-100, inclusive, and each was the alter ego
5 of the other in a single enterprise. At those times, a unity of interest and ownership between VEGA-
6 ALBELA, INC., dba HACIENDA DE VEGA on the one hand and ALONSO VEGA-ALBELA
7 and DOES 1-100, inclusive, on the other hand existed such that the separate personalities of the
8 entities did not in reality exist. Additionally, Plaintiff would suffer an inequitable harm if the actions
9 of VEGA-ALBELA, INC., dba HACIENDA DE VEGA are not treated as the acts of all
10 Defendants. Plaintiff is further informed and believes, and thereon alleges, that at all times relevant
11 to this action VEGA-ALBELA, INC., dba HACIENDA DE VEGA, *inter alia*, failed to observe the
12 requisite corporate formalities, was inadequately capitalized, and its ownership and control were
13 inappropriately concentrated in ALONSO VEGA-ALBELA and DOES 1-100, inclusive.

14 8. Plaintiff is further informed and believes, and thereon alleges, that at all times herein
15 material, each defendant, was completely dominated and controlled by its co-defendants and each
16 was the alter ego of the other. Whenever and wherever reference is made in this Complaint to any
17 conduct by Defendants, such allegations and references shall also be deemed to mean the conduct
18 of each of the Defendants, acting individually, jointly and severally. Whenever and wherever
19 reference is made to individuals who are not named as defendants in this Complaint, but were
20 employees/agents of, such individuals at all relevant times acted on behalf of Defendants named in
21 this Complaint within the scope of their respective employments.

22 9. Whenever and wherever reference is made in this Complaint to any conduct by a
23 defendant or Defendants, such allegations and references shall also be deemed to mean the conduct
24 of each of the Defendants, acting individually, jointly and severally. Whenever and wherever
25 reference is made to individuals who are not named as defendants in this Complaint, but were
26 employees or agents of, such individuals at all relevant times acted on behalf of Defendants named
27 in this Complaint within the scope of their respective employments.

GENERAL ALLEGATIONS

10. At all times relevant to the present Complaint, Plaintiff was an “employee” (as defined by section 350 of the Labor Code) of Defendants and was paid wages (as defined by section 200 of the Labor Code) by Defendants. Defendants VEGA-ALBELA, INC., dba HACIENDA DE VEGA; ALONSO VEGA-ALBELA; and DOES 1-100, inclusive, were doing business as Hacienda De Vega at a restaurant in Encinitas, California, and a restaurant in Carlsbad, California.

11. Defendants hired Plaintiff as a restaurant server (aka waiter) in or around March 2018. Plaintiff is informed, believes, and estimates that Defendants employed over 35 employees at Defendants’ Encinitas location, and over 60 employees at Defendants’ Encinitas and Carlsbad locations combined, in any given pay period during Plaintiff’s duration of employment for Defendants. Also, Plaintiff is informed and believes that many of Defendants’ employees worked at both Defendant’ Encinitas and Carlsbad locations.

12. Plaintiff was non-exempt while employed by Defendants. Plaintiff normally worked for Defendants approximately 6 workdays per week. Plaintiff regularly worked shifts exceeding 5 hours, especially on Sundays. On occasion, Plaintiff worked overtime.

13. Defendants adopted and implemented unlawful policies and practices of paying employees less than California’s minimum wage. For example, Defendants paid Plaintiff the regular hourly rate of \$11.50 per hour in 2019 even though the legally applicable minimum wage in California was \$12.00 per hour. Also, Defendants paid Plaintiff an overtime rate of \$17.25 per hour in 2019 even though the legally applicable minimum overtime rate in California was \$18.00 per hour. Plaintiff is informed and believes that all of Defendants other employees were also victims of Defendants’ unlawful minimum wage and overtime pay policies and practices.

14. Additionally, Defendants have repeatedly paid wages to Plaintiff several days past the days designated as regular pay day deadlines and failed to pay Plaintiff wages within seven calendar days following the close of the payroll period. On one occasion, Plaintiff complained to Defendants about overdue unpaid wages and Defendants instructed Plaintiff not

1 to speak to other coworkers or managers about the unpaid wages or wages Defendants paid
2 Plaintiff. Plaintiff is informed and believes that Defendants may have issued one or more bad
3 paychecks to employees which bounced and were not negotiable or payable in cash at the time
4 Defendants issued the paychecks. Plaintiff is also informed and believes that all of Defendants'
5 other employees were also victims of these unlawful policies and practices.

6 15. In or around January 2019, Defendants began claiming that they mistakenly
7 overpaid Plaintiff over \$1,000 in wages. Defendants informed Plaintiff that Defendants would
8 be taking amounts from Plaintiff's wages to reimburse themselves for the alleged overpayment.
9 Defendants then began making regular deductions from all of her pay checks in various
10 amounts over a hundred dollars without any itemized explanation on Plaintiff's wage
11 statements or written authorization from Plaintiff. On several wage statements it appeared that
12 Defendants may have taken the unauthorized reimbursement deductions through taking
13 Plaintiff's credit card tips and gratuities which patrons left for Plaintiff.

14 16. As a result, Plaintiff is informed and believes that Defendants have unlawfully
15 failed to timely pay Plaintiff wages including minimum wages for all hours worked; failed to
16 pay sufficient overtime rates; took unauthorized deductions from Plaintiff's wages and tips;
17 took Plaintiff's gratuities; failed to provide properly itemized accurate wage statements; and
18 failed to keep accurate payroll records showing the hours worked daily by and the wages paid
19 to employees, deductions, and properly itemized wage statements. Plaintiff is informed and
20 believes that all of Defendants' other employees were also victims of these unlawful policies
21 and practices.

22 17. Defendants adopted and implemented unlawful policies and practices of not
23 authorizing or permitting employees to take 30-minute uninterrupted off duty meal breaks
24 before exceeding a work period of 5 hours in a workday, contrary to California law.
25 Defendants never informed Plaintiff that Plaintiff had a right to take meal breaks, or that
26 California law required meal breaks. As a result, Defendants did not provide, and Plaintiff did
27 not take, compliant meal breaks before exceeding 5 hours of work in a work period. Further, on
28 Sundays it was not even possible for Plaintiff to take meal breaks because she was typically the

1 only server on the clock during her shifts. Defendants also never paid Plaintiff an additional
2 hour of wages for each workday with a missed meal break. Plaintiff is informed and believes
3 that all of Defendants other employees were also victims of Defendants' unlawful meal break
4 policies and practices, and that Defendants failed to record meal breaks as required by
5 California law.

6 18. Defendants adopted and implemented policies and practices of not authorizing
7 or permitting employees, who work shifts of at least 3 and 1/2 hours, to take a 10-minute
8 uninterrupted off duty rest break, contrary to California law. Defendants also adopted and
9 implemented policies and practices of not authorizing additional 10-minute uninterrupted off
10 duty rest breaks for every major fraction (more than 2 hours) of a 4-hour work period after an
11 initial 4 hours work period, contrary to California law. Defendants also never informed
12 Plaintiff that Plaintiff had a right to take rest breaks. As a result, Defendants did not provide,
13 and Plaintiff did not take, compliant rest breaks. Defendants also never paid Plaintiff an
14 additional hour of wages for each workday with a missed rest break. Plaintiff is informed and
15 believes that all of Defendants other employees were also victims of Defendants rest break
16 violations in the same manner.

17 19. More than 30 days have passed since Plaintiff's employment for Defendants has
18 ended and Defendants continue to fail to pay Plaintiff all earned wages which were due no later
19 than 72 hours after the employment relationship ended. Defendant has also willfully refused to
20 pay Plaintiff all wages due and payable after Plaintiff demanded payment. Plaintiff is informed
21 and believes that Defendants systematically engaged in these same unlawful wage and hour
22 policies and practices alleged above and throughout this Complaint with respect to all
23 Defendants other employees and former employees who no longer work for Defendants and
24 still have not been paid all earned wages.

25 20. Plaintiff is informed and believes that all of Defendants unlawful conduct was
26 directed by Defendants ALONSO VEGA-ALBELA and DOES 1-100, inclusive, who were all
27 owners, directors, officers, or managing agents of VEGA-ALBELA, INC., dba HACIENDA
28 DE VEGA, that exercised substantial independent authority and judgment in their corporate

1 decision making such that their decisions ultimately determined the entity's corporate policy.

2 21. Plaintiff is informed and believes that Plaintiff will meet the Private Attorneys
3 General Act ("PAGA") notice requirement with the Labor and Workforce Development
4 Agency ("LWDA") 65 calendar days after Plaintiff filed Plaintiff's PAGA Claim Notice under
5 LWDA Case No. LWDA-CM-764814-20 on January 6, 2020 by uploading it to California's
6 website on dir.ca.gov. A true and correct copy of the PAGA Claim Notice attached hereto as
7 Exhibit "1" and incorporated by reference.

8 **FIRST CAUSE OF ACTION**

9 **(Private Attorneys General Act Claim – LC § 2699)**

10 **(Against all Defendants)**

11 22. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
12 this section as though fully set forth herein.

13 23. Labor Code section 2699 states that, "(a) Notwithstanding any other provision of
14 law, any provision of this code that provides for a civil penalty to be assessed and collected by
15 the Labor and Workforce Development Agency or any of its departments, divisions,
16 commissions, boards, agencies, or employees, for a violation of this code, may, as an
17 alternative be recovered through a civil action brought by an aggrieved employee on behalf of
18 himself or herself and other current or former employees pursuant to the procedures specified
19 in Section 2699.3."

20 24. As a result of the acts alleged above, Plaintiff brings this action on Plaintiff's
21 own behalf, and in Plaintiff's representative capacity on behalf of all aggrieved employees who
22 are current or former employees of Defendants, for civil penalties pursuant to Labor Code
23 sections 7 and 2699 for Defendants' violations of IWC Wage Orders including, but not limited
24 to, Wage Order 5-2001, sections 3, 4, 7, 8, 11, 12, and 20; Minimum Wage Orders MW-2017
25 and MW-2019; and the enumerated Labor Code sections including, but not limited to, sections
26 98, 201, 202, 203, 204, 210, 212, 215, 216, 221, 224, 225, 225.5, 226, 226.3, 226.7, 232, 232.5
27 246, 256, 351, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1175, 1182.11, 1182.12, 1194, 1194.2,
28 1197, 1197.1, 1198, 1199, 2802, and 2699. Some non-exhaustive highlights follow below.

1 25. Labor Code section 210 states that, “(a) In addition to, and entirely independent
2 and apart from, any other penalty provided in this article, every person who fails to pay the
3 wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5,
4 and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one
5 hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent
6 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to
7 pay each employee, plus 25 percent of the amount unlawfully withheld.”

8 26. Labor Code section 225.5 states that, “...every person who unlawfully withholds
9 wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a
10 civil penalty as follows: (a) For any initial violation, one hundred dollars (\$100) for each failure
11 to pay each employee. (b) For each subsequent violation, or any willful or intentional violation,
12 two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
13 amount unlawfully withheld.”

14 27. Labor Code section 226.3 states that, “Any employer who violates subdivision
15 (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars
16 (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per
17 employee for each violation in a subsequent citation, for which the employer fails to provide
18 the employee a wage deduction statement or fails to keep the records required in subdivision
19 (a) of Section 226. The civil penalties provided for in this section are in addition to any other
20 penalty provided by law.”

21 28. Code section 256 states that, “The Labor Commissioner shall impose a civil
22 penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section
23 203.”

24 29. Labor Code section 558 states that, “(a) Any employer or other person acting on
25 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
26 provision regulating hours and days of work in any order of the Industrial Welfare Commission
27 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
28 each underpaid employee for each pay period for which the employee was underpaid in

1 addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation,
2 one hundred dollars (\$100) for each underpaid employee for each pay period for which the
3 employee was underpaid in addition to an amount sufficient to recover underpaid wages... (d)
4 The civil penalties provided for in this section are in addition to any other civil or criminal
5 penalty provided by law.”

6 30. Labor Code section 1174.5 states that, “Any person employing labor who
7 willfully fails to maintain the records required by subdivision (c) of section 1174 or accurate
8 and complete records required by subdivision (d) of Section 1174, or to allow any member of
9 the commission or employees of the division to inspect records pursuant to subdivision (b) of
10 Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

11 31. Labor Code section 1197.1 states that, “(a) Any employer or other person acting
12 either individually or as an officer, agent, or employee of another person, who pays or causes to
13 be paid to any employee a wage less than the minimum fixed by an order of the commission shall
14 be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee,
15 and any applicable penalties imposed pursuant to Section 203 as follows: (1) For any initial
16 violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee
17 for each pay period for which the employee is underpaid. This amount shall be in addition to an
18 amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2,
19 and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation
20 for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for
21 each pay period for which the employee is underpaid regardless of whether the initial violation is
22 intentionally committed. This amount shall be in addition to an amount sufficient to recover
23 underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties
24 imposed pursuant to Section 203...”

25 32. Labor Code section 2802 states that, “(a)[a]n employee shall indemnify his or
26 her employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties...(d) In addition to recovery of penalties
28 under this section in a court action or proceedings pursuant to Section 98, the commissioner

1 may issue a citation against an employer or other person acting on behalf of the employer who
2 violates reimbursement obligations for an amount determined to be due to an employee under
3 this section. The procedures for issuing, contesting, and enforcing judgments for citations or
4 civil penalties issued by the commissioner shall be the same as those set forth in Section
5 1197.1”

6 33. Labor Code section 2699 states that, “(f) For all provisions of this code except
7 those for which a civil penalty is specifically provided, there is established a civil penalty for a
8 violation of these provisions, as follows: (1) If, at the time of the alleged violation, the person
9 does not employ one or more employees, the civil penalty is five hundred dollars (\$500). (2) If,
10 at the time of the alleged violation, the person employs one or more employees, the civil
11 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
12 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
13 aggrieved employee per pay period for each subsequent violation.”

14 34. Plaintiff is informed and believes that Defendants knowingly and willfully failed
15 to timely pay their employees all wages earned which were due at least twice each calendar
16 month by issuing bad paychecks to employees that bounced because they were not negotiable
17 or payable when Defendants issued them, or by failing to timely issue paychecks checks on
18 days designated as regular paydays; instructed Plaintiff not to talk about Plaintiff’s unpaid
19 wages, wages Defendants paid, and working conditions, in response to Plaintiff complaining to
20 Defendants about unpaid wages; failed to pay employees wages including legally applicable
21 minimum wages for all hours worked; failed to pay legally applicable minimum overtime rates
22 to employees for overtime hours worked; took employees’ tips or gratuities; made unauthorized
23 deductions from employees’ wages; failed to pay employees an additional one hour of wages
24 for each workday with a missed meal break which was required by Labor Code section 226.7;
25 and failed to pay employees the additional one hour of wages for each workday with a missed
26 rest break which was required by Labor Code section 226.7. Further, Plaintiff is informed and
27 believes that Defendants may have failed to indemnify employees for business expenditures,
28 expenses, and losses while discharging their duties for Defendants.

1 35. Plaintiff is also informed and believes that Defendants failed to provide
2 employees accurate sufficiently itemized wage statements to employees; and failed to keep
3 required payroll records showing hours worked by and the wages paid to employees, records of
4 deductions, records of accurate sufficiently itemized wage statements, and records of meal
5 breaks employees took (if any) in violation of Labor Code sections 226, 1174, 1174.1, 1174.5,
6 and Wage Order 5-2001 section 7.

7 36. Plaintiff is informed and believes that Defendants intentionally failed to pay
8 former employees all earned and unpaid wages within 72 hours after their employment
9 relationships ended with Defendants, Defendants continue to fail to pay those earned wages and
10 the waiting time penalties of up to 30 days of additional daily wages which are authorized by
11 Labor Code sections 203 and 256, and Defendants willfully refused to pay all wages due and
12 payable after receiving demands for the wages.

13 37. Code section 558.1 states that, “(a) Any employer or other person acting on
14 behalf of an employer, who violates, or causes to be violated, any provision regulating
15 minimum wages or hours and days of work in any order of the Industrial Welfare Commission,
16 or violates, or causes to be violated, sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
17 held liable as the employer for such violations.

18 38. Defendants ALONSO VEGA-ALBELA and DOES 1-100, inclusive, as owners,
19 directors, officers, and managing agents of Defendants VEGA-ALBELA, INC., dba
20 HACIENDA DE VEGA and entity Doe Defendants, were employers or other persons acting on
21 behalf of Defendants VEGA-ALBELA, INC., dba HACIENDA DE VEGA and entity Doe
22 Defendant, who violated or caused to be violated the Labor Code and IWC Wage Orders as
23 alleged above. Accordingly, all Defendants including, but not limited to, ALONSO VEGA-
24 ALBELA and DOES 1-100, inclusive, are individually and personally liable along with
25 VEGA-ALBELA, INC., dba HACIENDA DE VEGA and entity Doe Defendants for all of the
26 above described violations pursuant to Labor Code sections 558, 558.1, and 1197.1 for all civil
27 penalties, interest, attorney fees, costs, and other recoverable remedies which Plaintiff pursues
28 through a Labor Code section 2699 et al. PAGA claim.

1 **SECOND CAUSE OF ACTION**

2 **(Failure to Pay Wages Including Minimum Wages – LC § 1194)**

3 **(Against all Defendants)**

4 39. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
5 this section as though fully set forth herein.

6 40. Pursuant to Labor Code section 200, “wages” includes all amounts for labor
7 performed by employees of every description, whether the amount is fixed or ascertained by
8 the standard of time, task, piece, commission basis or other method of calculation. Under
9 California law through Minimum Wage Order(s) MW-2014, MW-2017, and MW-2019, and
10 Labor Code sections 1182.12 and 1194, and Wage Order 5-2001, every employer shall pay to
11 each employee wages not less than the applicable minimum wage for all hours worked.
12 Pursuant to Labor Code sections 98, 204, 218.5, 218.6, 1194, 1194.2, a Plaintiff has a right to
13 recover all unpaid wages, damages, and liquidated damages from an employer.

14 41. The applicable minimum wage in 2019 for Defendants to pay because they
15 employed many more than 26 employees was \$12.00 per hour, but Defendants only paid
16 Plaintiff \$11.50 per hour. Plaintiff is informed and believes that Defendants also failed to pay
17 Plaintiff all earned wages from all hours worked, overtime rates, missed meal periods, missed
18 rest periods, gratuities Defendants took, and unauthorized deductions of Plaintiff’s wages, as
19 further described in the causes of action above and throughout this Complaint. Also,
20 Defendants have made it difficult for Plaintiff to determine what wages Plaintiff earned, what
21 wages Defendants still owe, and what deductions Defendants took from Plaintiff’s wages
22 because Defendants failed to provide compliant accurate sufficiently itemized wage statements.

23 42. Further Defendants have repeatedly paid wages to Plaintiff several days past the
24 days designated as regular pay day deadlines and failed to pay Plaintiff wages within seven
25 calendar days following the close of the payroll period. Plaintiff is also informed and believes
26 that Defendants also issued one or more paychecks to employees that bounced and were not
27 negotiable or payable in cash at the time Defendants issued the paychecks or declined to issue
28 paychecks for wages altogether. When Plaintiff complained to Defendants about unpaid wages,

1 Defendants told Plaintiff not to talk about the unpaid wages with any other coworkers or
2 managers.

3 43. Plaintiff is further informed and believes that Defendants committed the acts
4 stated herein knowingly and willfully. Plaintiff is informed and believes that all of Defendants'
5 other employees were also victims of these unlawful policies and practices.

6 44. Accordingly, Plaintiff seeks damages, liquidated damages, interest, penalties,
7 attorney fees, and costs available pursuant to the Labor Code and IWC Wage Orders.

8 45. Defendants ALONSO VEGA-ALBELA and DOES 1-100, inclusive, as owners,
9 directors, officers, and managing agents of Defendants VEGA-ALBELA, INC., dba
10 HACIENDA DE VEGA and entity Doe Defendants, were employers or other persons acting on
11 behalf of Defendants VEGA-ALBELA, INC., dba HACIENDA DE VEGA and entity Doe
12 Defendant, who violated or caused to be violated the Labor Code and IWC Wage Orders as
13 alleged above. Accordingly, all Defendants including, but not limited to, ALONSO VEGA-
14 ALBELA and DOES 1-100, inclusive, are individually and personally liable along with
15 VEGA-ALBELA, INC., dba HACIENDA DE VEGA and entity Doe Defendants for all of the
16 above described violations pursuant to Labor Code sections 558, 558.1, and 1197.1 for all civil
17 penalties, interest, attorney fees, costs, and other recoverable remedies which Plaintiff pursues
18 through a Labor Code section 2699 et al. PAGA claim.

19 **THIRD CAUSE OF ACTION**

20 **(Failure to Pay Overtime Wages – LC § 1194)**

21 **(Against all Defendants)**

22 46. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
23 this section as though fully set forth herein.

24 47. Pursuant to Labor Code section 200, “wages” includes all amounts for labor
25 performed by employees of every description, whether the amount is fixed or ascertained by
26 the standard of time, task, piece, commission basis or other method of calculation. Under
27 California law through Labor Code sections 510 and 1194, and Wage Order 5-2001, employers
28 are required to pay nonexempt employees the rate of one and one-half times employees’ regular

1 rate for all hours worked in excess of eight (8) hours in a workday, in excess of forty (40) hours
2 in a workweek, and the first eight (8) hours in a workday on the seventh consecutive workday
3 in a workweek. Under California law through Labor Code sections 510 and 1194, and Wage
4 Order 5-2001, employers are required to pay nonexempt employees the rate of two times
5 employees' regular rate for all hours worked in excess of eight (12) hours in a workday, in
6 excess of forty (40) hours in a workweek, and for all hours worked in excess of eight (8) hours
7 in a workday on the seventh consecutive workday in a workweek. Pursuant to Labor Code
8 sections 98, 204, 218.5, 218.6, 1194, 1194.2, a Plaintiff has a right to recover all unpaid wages,
9 damages, and liquidated damages from an employer.

10 48. Defendants employed Plaintiff as a nonexempt server, entitling her to overtime
11 rates. Plaintiff occasionally worked over 8 hours in a workday or 40 hours in a workweek,
12 entitling Plaintiff to overtime pay. The applicable minimum wage overtime rate in 2019 for
13 Defendants to pay because they employed many more than 26 employees was \$18.00 per hour,
14 but Defendants only paid Plaintiff \$17.25 per hour. Plaintiff is informed and believes that as a
15 result of these acts which Defendants committed herein knowingly and willfully, Defendants
16 failed to pay Plaintiff overtime.

17 49. Further Defendants have repeatedly paid wages to Plaintiff several days past the
18 days designated as regular pay day deadlines and failed to pay Plaintiff wages within seven
19 calendar days following the close of the payroll period. Plaintiff is also informed and believes
20 that Defendants also issued one or more paychecks to employees that bounced and were not
21 negotiable or payable in cash at the time Defendants issued the paychecks or declined to issue
22 paychecks for wages altogether. When Plaintiff complained to Defendants about unpaid wages,
23 Defendants told Plaintiff not to talk about the unpaid wages with any other coworkers or
24 managers.

25 50. Plaintiff is further informed and believes that Defendants committed the acts
26 stated herein knowingly and willfully. Plaintiff is informed and believes that all of Defendants'
27 other employees were also victims of these unlawful policies and practices.

28 51. Accordingly, Plaintiff seeks damages, liquidated damages, interest, penalties,

1 attorney fees, and costs available pursuant to the Labor Code and IWC Wage Orders.

2 52. Defendants ALONSO VEGA-ALBELA and DOES 1-100, inclusive, as owners,
3 directors, officers, and managing agents of Defendants VEGA-ALBELA, INC., dba
4 HACIENDA DE VEGA and entity Doe Defendants, were employers or other persons acting on
5 behalf of Defendants VEGA-ALBELA, INC., dba HACIENDA DE VEGA and entity Doe
6 Defendant, who violated or caused to be violated the Labor Code and IWC Wage Orders as
7 alleged above. Accordingly, all Defendants including, but not limited to, ALONSO VEGA-
8 ALBELA and DOES 1-100, inclusive, are individually and personally liable along with
9 VEGA-ALBELA, INC., dba HACIENDA DE VEGA and entity Doe Defendants for all of the
10 above described violations pursuant to Labor Code sections 558, 558.1, and 1197.1 for all civil
11 penalties, interest, attorney fees, costs, and other recoverable remedies which Plaintiff pursues
12 through a Labor Code section 2699 et al. PAGA claim.

13 **FOURTH CAUSE OF ACTION**

14 **(Failure to Provide Meal Periods – LC § 226.7)**

15 **(Against all Defendants)**

16 53. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
17 this section as though fully set forth herein.

18 54. Pursuant to California Labor Code sections 226.7, 512 and the IWC Wage
19 Orders section 11, off duty uninterrupted meal periods of no less than thirty (30) minutes are
20 required for all non-exempt employees who work at least five (5) hours in a work period per
21 day

22 55. Plaintiff was a non-exempt employee. Defendants implemented a policy and
23 practice of not authorizing and permitting employees to take meal breaks, and not paying
24 employees an additional one hour of wages for each workday with a missed meal break.
25 Defendants failed to provide Plaintiff with compliant meal breaks during work periods
26 exceeding five (5) hour. Defendants also did not pay Plaintiff missed meal break wage
27 premiums.

28 56. At all times mentioned herein, Defendants violated Labor Code sections 226.7

1 and 512, and IWC Wage Orders section 11 by failing to authorize and permit Plaintiff to take
2 uninterrupted meal breaks and failing to pay an additional hour of wages for each workday with
3 a missed meal break

4 57. Accordingly, Plaintiff seeks damages, liquidated damages, interest, penalties,
5 attorney fees, and costs available pursuant to the Labor Code and IWC Wage Orders.

6 58. Defendants ALONSO VEGA-ALBELA and DOES 1-100, inclusive, as owners,
7 directors, officers, and managing agents of Defendants VEGA-ALBELA, INC., dba
8 HACIENDA DE VEGA and entity Doe Defendants, were employers or other persons acting on
9 behalf of Defendants VEGA-ALBELA, INC., dba HACIENDA DE VEGA and entity Doe
10 Defendant, who violated or caused to be violated the Labor Code and IWC Wage Orders as
11 alleged above. Accordingly, all Defendants including, but not limited to, ALONSO VEGA-
12 ALBELA and DOES 1-100, inclusive, are individually and personally liable along with
13 VEGA-ALBELA, INC., dba HACIENDA DE VEGA and entity Doe Defendants for all of the
14 above described violations pursuant to Labor Code sections 558, 558.1, and 1197.1 for all civil
15 penalties, interest, attorney fees, costs, and other recoverable remedies which Plaintiff pursues
16 through a Labor Code section 2699 et al. PAGA claim.

17 **FIFTH CAUSE OF ACTION**

18 **(Failure to Provide Paid Rest Periods – LC § 226.7)**

19 **(Against all Defendants)**

20 59. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
21 this section as though fully set forth herein.

22 60. Pursuant to California Labor Code sections 226.7 and the IWC Wage Orders
23 section 12, every employer shall authorize and permit all employees to take paid rest periods,
24 which insofar as practicable shall be in the middle of each work period. The authorized rest
25 period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
26 rest time per four (4) hours or major fraction thereof.

27 61. Plaintiff was a non-exempt employee. Defendants implemented a policy and
28 practice of not authorizing and permitting employees to take paid rest breaks, and not paying

1 employees an additional one hour of wages for each workday with a missed rest break.

2 Defendants failed to provide Plaintiff with a compliant paid rest break within each four (4) hour
3 work period. Defendants also did not pay Plaintiff missed rest break wage premiums.

4 62. At all times mentioned herein, Defendants violated Labor Code section 226.7
5 and IWC Wage Orders section 12 by not authorizing and permitting Plaintiff to take
6 uninterrupted rest breaks and failing to pay an additional hour of wages for each workday with
7 a missed rest break.

8 63. Accordingly, Plaintiff seeks damages, liquidated damages, interest, penalties,
9 attorney fees, and costs available pursuant to the Labor Code and IWC Wage Orders.

10 64. Defendants ALONSO VEGA-ALBELA and DOES 1-100, inclusive, as owners,
11 directors, officers, and managing agents of Defendants VEGA-ALBELA, INC., dba
12 HACIENDA DE VEGA and entity Doe Defendants, were employers or other persons acting on
13 behalf of Defendants VEGA-ALBELA, INC., dba HACIENDA DE VEGA and entity Doe
14 Defendant, who violated or caused to be violated the Labor Code and IWC Wage Orders as
15 alleged above. Accordingly, all Defendants including, but not limited to, ALONSO VEGA-
16 ALBELA and DOES 1-100, inclusive, are individually and personally liable along with
17 VEGA-ALBELA, INC., dba HACIENDA DE VEGA and entity Doe Defendants for all of the
18 above described violations pursuant to Labor Code sections 558, 558.1, and 1197.1 for all civil
19 penalties, interest, attorney fees, costs, and other recoverable remedies which Plaintiff pursues
20 through a Labor Code section 2699 et al. PAGA claim.

21 **SIXTH CAUSE OF ACTION**

22 **(Unlawful Deducting of Wages – LC § 221)**

23 **(Against Vega-Albela, Inc., dba Hacienda de Vega and Does 1-100, inclusive)**

24 65. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
25 this section as though fully set forth herein.

26 66. Pursuant to California Labor Code section 221, it is “unlawful for any employer
27 to collect or receive from an employee any part of wages theretofore paid by said employer to
28 said employee.”

1 67. Pursuant to California Labor Code section 224, it is unlawful for an employer to
2 withhold or divert any portion of an employee's wages unless the employer is required or
3 authorized to do so by law or express writing by the employee.

4 68. Defendants have made it difficult for Plaintiff to determine what wages and tips
5 Plaintiff earned, what wages and tips Defendants still owe Plaintiff, what deductions
6 Defendants took from Plaintiff's wages and tips, and Defendants' reasons for taking deductions
7 from Plaintiff's wages and tips because Defendants failed to provide compliant accurate
8 sufficiently itemized wage statements. Further, Defendants engaged in unlawful self-help
9 without written authorization from Plaintiff by taking deductions from Plaintiff's wages and
10 credit card charged tips in paychecks to purportedly reimburse Defendants for an alleged
11 mistaken overpayment Defendants claim they made to Plaintiff in or around January 2019.
12 Plaintiff is informed and believes that as a result of these acts which Defendants committed
13 herein knowingly and willfully, Defendants unlawfully took Plaintiff's gratuities and made
14 unlawful deductions from Plaintiff's paychecks for earned wages and gratuities.

15 69. Accordingly, Plaintiff seeks damages, liquidated damages, interest, penalties,
16 attorney fees, and costs available pursuant to the Labor Code and IWC Wage Orders.

17 **SEVENTH CAUSE OF ACTION**

18 **(Unlawful Taking of Gratuity – LC § 351)**

19 **(Against Vega-Albela, Inc., dba Hacienda de Vega and Does 1-100, inclusive)**

20 70. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
21 this section as though fully set forth herein.

22 71. Pursuant to Labor Code section 351, "[n]o employer or agent shall collect, take,
23 or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a
24 patron, or deduct any amount of wages due an employee on account of a gratuity, or require an
25 employee to credit the amount, or any part thereof, of a gratuity against and as a part of the
26 wages due the employee from the employer. Every gratuity is hereby declared to be the sole
27 property of the employee or employees to whom it was paid, given or left for."

28 72. Defendants have made it difficult for Plaintiff to determine what wages and tips

1 Plaintiff earned, what wages and tips Defendants still owe Plaintiff, what deductions
2 Defendants took from Plaintiff's wages and tips, and Defendants' reasons for taking deductions
3 from Plaintiff's wages and tips because Defendants failed to provide compliant accurate
4 sufficiently itemized wage statements. Further, Defendants engaged in unlawful self-help
5 without written authorization from Plaintiff by taking deductions from Plaintiff's wages and
6 credit card charged tips in paychecks to purportedly reimburse Defendants for an alleged
7 mistaken overpayment Defendants claim they made to Plaintiff in or around January 2019.
8 Plaintiff is informed and believes that as a result of these acts which Defendants committed
9 herein knowingly and willfully, Defendants unlawfully took Plaintiff's gratuities and made
10 unlawful deductions from Plaintiff's paychecks for earned wages and gratuities.

11 73. Accordingly, Plaintiff seeks damages, liquidated damages, interest, penalties,
12 attorney fees, and costs available pursuant to the Labor Code and IWC Wage Orders.

13 **EIGHTH CAUSE OF ACTION**

14 **(Failure to Provide Proper Wage Statements and Keep Records – LC § 226)**

15 **(Against all Defendants)**

16 74. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
17 this section as though fully set forth herein.

18 75. Pursuant to Labor Code section 226(a), every "employer, semimonthly or at the
19 time of each payment of wages, shall furnish to his or her employee,... an accurate itemized
20 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee
21 ..., (4) all deductions..., (5) net wages earned ..., and (9) all applicable hourly rates in effect
22 during the pay period and the corresponding number of hours worked at each hourly rate by the
23 employee..."

24 76. Labor Code section 226(a) further provides that, "...a copy of the statement and
25 the record of deductions shall be kept on file by the employer for at least three years at the
26 place of employment or at a central location within the State of California." Labor Code section
27 226(e) provides that, "[a]n employee suffering injury as a result of a knowing and intentional
28 failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of

1 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs
2 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
3 exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an
4 award of costs and reasonable attorney's fees.”

5 77. Labor Code section 226(f) provides that, “[a] failure by an employer to permit a
6 current or former employee to inspect or receive a copy of records within [21 calendar days
7 from the date of request] entitles the current or former employee or Labor Commissioner to
8 recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.”

9 78. Pursuant to Labor Code section 226(a) and 1174(d), employers must keep
10 payroll records at a central location showing the hours worked daily by and the wages paid to
11 employees employed at the establishment for no less than 3 years.

12 79. Wage Order 5-2001 section 7 requires that “[e]very employer shall keep
13 accurate information with respect to each employee including the following:… (3) Time
14 records showing when the employee begins and ends each work period. Meal periods, split
15 shift intervals and total daily hours worked shall also be recorded.”

16 80. Defendants failed to provide Plaintiff compliant accurate sufficiently itemized
17 wage statements, because the wage statements did not accurately include the correct legally
18 applicable minimum wage rate in effect, applicable overtime rate in effect, gross wages, net
19 wages, or explanations for all of the deductions and especially the deductions purportedly for
20 Defendants’ self-help reimbursement of alleged overpayments to Plaintiff. Defendants have
21 also made it difficult for Plaintiff to determine what wages and credit card tips Plaintiff earned,
22 what wages Defendants still owe Plaintiff, what deductions Defendants took from Plaintiff’s
23 wages, and why Defendants’ took those deductions, which has caused Plaintiff’s damages.
24 Defendants committed these unlawful acts herein knowingly and willfully.

25 81. Further, Plaintiff is informed and believes that as a result of Defendants failure
26 to pay Plaintiff all earned wage, failure to pay Plaintiff all applicable overtime rates, failure to
27 pay missed rest break wage premiums, failure to pay missed meal break wage premiums,
28 unlawful taking of tips through requiring employees to share tips with Defendants’ General

1 Manager, and making unlawful deductions from Plaintiff's wages, all records and wages
2 statements Defendants have, if any, are inaccurate.

3 82. As a result of Defendants' wrongful conduct, Plaintiff has been damaged in
4 amount according to proof at trial. Accordingly, Plaintiff seeks damages, liquidated damages,
5 interest, penalties, attorney fees, and costs available pursuant to the Labor Code and IWC Wage
6 Orders

7 83. Plaintiff is also informed and believes that Defendants have failed to keep
8 accurate records of the hours Plaintiff worked and her compliant payroll records for 3 years at a
9 central location.

10 84. Accordingly, Plaintiff seeks damages, liquidated damages, interest, penalties,
11 attorney fees, and costs available pursuant to the Labor Code and IWC Wage Orders.

12 85. Defendants ALONSO VEGA-ALBELA and DOES 1-100, inclusive, as owners,
13 directors, officers, and managing agents of Defendants VEGA-ALBELA, INC., dba
14 HACIENDA DE VEGA and entity Doe Defendants, were employers or other persons acting on
15 behalf of Defendants VEGA-ALBELA, INC., dba HACIENDA DE VEGA and entity Doe
16 Defendant, who violated or caused to be violated the Labor Code and IWC Wage Orders as
17 alleged above. Accordingly, all Defendants including, but not limited to, ALONSO VEGA-
18 ALBELA and DOES 1-100, inclusive, are individually and personally liable along with
19 VEGA-ALBELA, INC., dba HACIENDA DE VEGA and entity Doe Defendants for all of the
20 above described violations pursuant to Labor Code sections 558, 558.1, and 1197.1 for all civil
21 penalties, interest, attorney fees, costs, and other recoverable remedies which Plaintiff pursues
22 through a Labor Code section 2699 et al. PAGA claim.

23 **NINTH CAUSE OF ACTION**

24 **(Waiting Time Penalties – LC § 203)**

25 **(Against all Defendants)**

26 86. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
27 this section as though fully set forth herein.

28 87. Pursuant to Labor Code sections 201 to 203, Plaintiff was entitled to wages

1 earned and unpaid no later than 72 hours after Plaintiff's employment with Defendants
2 terminated

3 88. Defendants failed to pay Plaintiff all wages and sums owed to Plaintiff from
4 missed meal periods, missed rest periods, taken gratuities, failure to pay minimum wage rates,
5 failure to pay minimum overtime rates, and unauthorized deductions, as further described in the
6 causes of action above and throughout this Complaint, within 72 hours after Plaintiff's
7 employment for Defendants ended. More than 30 days have passed since the wages were due
8 and Defendants continue to fail to pay Plaintiff the outstanding earned wages. Defendants
9 committed the acts stated herein knowingly and willfully, entitling Plaintiff to waiting time
10 penalties as provided by Labor Code sections 201 to 203.

11 89. Therefore, pursuant to Labor Code section 203, Plaintiff is entitled to receive
12 from Defendants 30 days of Plaintiff's daily wage rate.

13 90. Accordingly, Plaintiff seeks damages, interest, penalties, attorney fees, and costs
14 available pursuant to the Labor Code and IWC Wage Orders.

15 91. Defendants ALONSO VEGA-ALBELA and DOES 1-100, inclusive, as owners,
16 directors, officers, and managing agents of Defendants VEGA-ALBELA, INC., dba
17 HACIENDA DE VEGA and entity Doe Defendants, were employers or other persons acting on
18 behalf of Defendants VEGA-ALBELA, INC., dba HACIENDA DE VEGA and entity Doe
19 Defendant, who violated or caused to be violated the Labor Code and IWC Wage Orders as
20 alleged above. Accordingly, all Defendants including, but not limited to, ALONSO VEGA-
21 ALBELA and DOES 1-100, inclusive, are individually and personally liable along with
22 VEGA-ALBELA, INC., dba HACIENDA DE VEGA and entity Doe Defendants for all of the
23 above described violations pursuant to Labor Code sections 558, 558.1, and 1197.1 for all civil
24 penalties, interest, attorney fees, costs, and other recoverable remedies which Plaintiff pursues
25 through a Labor Code section 2699 et al. PAGA claim.

26 **TENTH CAUSE OF ACTION**
27 **(Unfair Business Practices – BPC § 17200)**
28 **(Against all Defendants)**

1 92. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
2 this section as though fully set forth herein.

3 93. The acts, omissions, and practices of Defendants as alleged throughout this
4 Complaint for violations of the Labor Code constitute unlawful and unfair business acts and
5 practices within the meaning of sections 17200, et seq. of the Business & Professions Code.

6 94. Plaintiff is informed and believes Defendants have engaged in “unlawful”
7 business acts and practices by their failure to pay wages for all hours worked including
8 minimum wages, failure to pay minimum wage rates, failure to pay overtime rates, failure to
9 pay wages timely, failure to provide meal breaks, failure to pay wage premiums for missed
10 meal breaks, failure to authorize and permit paid rest breaks, failure to pay wage premiums for
11 missed rest breaks, unlawful deductions of wages, unlawful taking of employees’ gratuities,
12 failure to provide proper wage statements, and failure to keep proper payroll records at a central
13 location. These failures are all in violation of the statutes and regulations referenced throughout
14 this Complaint.

15 95. Defendants “unfair” business acts and practices, alleged above, caused harm to
16 Plaintiff and other employees which outweighs the utility of such conduct. Such conduct
17 offends public policy, is unethical and dishonest, caused and continues to cause substantial
18 injury to Plaintiff and Defendants’ other employees, and provides Defendants with an unfair
19 competitive advantage over those employers that abide by the law.

20 96. As a result of the conduct described above, Defendants have been and will be
21 unjustly enriched at the expense of Plaintiff and Defendants other employees. Specifically,
22 Defendants have been unjustly enriched by the retention of a significant sum of dollars in
23 wages earned and wrongfully withheld from Plaintiff.

24 97. Pursuant to section 17203 of the Business & Professions Code, Plaintiff requests
25 that this Court order Defendants to disgorge all ill-gotten gains and award Plaintiff full
26 restitution of all monies wrongfully acquired by Defendants by such “unfair” business act and
27 practices as outlined herein above, plus interest and attorneys’ fees pursuant to, *inter alia*,
28 section 1021.5 of the California Code of Civil Procedure. Plaintiff additionally request that

1 such funds be impounded by the Court or that an asset freeze or constructive trust be imposed
2 upon such revenues and profits to avoid dissipation and or fraudulent transfers or concealment
3 of such monies by Defendants. Plaintiff may be irreparably harmed and/or denied an effective
4 and complete remedy if such an order is not granted.

5 98. Pursuant to section 17203 of the California Business & Professions Code,
6 Plaintiff further seeks an order of this Court for equitable or injunctive relief in the form of
7 requiring Defendants to correct their unfair business acts and practices by way of properly
8 paying at least minimum wage rates; paying at least minimum overtime rates; paying all earned
9 wages timely; providing required meal and rest breaks or wage premiums in lieu thereof;
10 refraining from unlawful wage deductions; ceasing taking employees' tips; etc. Plaintiff
11 reserves the right to allege other violations of law which constitute unlawful acts or practices.

12 99. Accordingly, Plaintiff seeks injunctive relief, restitution, damages, interest,
13 penalties, attorney fees, and costs available pursuant to the Labor Code, Business & Professions
14 Code, and IWC Wage Orders.

15 **PRAYER**

16 WHEREFORE, Plaintiff prays for judgment against Defendants in an amount exceeding
17 \$25,000 as follows:

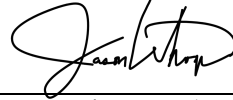
- 18 1. For civil penalties in an amount to be proven at trial
- 19 2. For compensatory damages in an amount to be proven at trial;
- 20 3. For liquidated damages in an amount to be proven at trial;
- 21 4. For penalties in an amount to be proven at trial;
- 22 5. For attorney fees in an amount to be proven at trial;
- 23 6. For costs of suit in an amount to be proven at trial;
- 24 7. For interest;
- 25 8. For injunctive relief;
- 26 9. For declaratory relief; and
- 27 10. For such other and further and relief as the court may deem just and proper.

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Dated: 01/06/2020

Respectfully submitted,



Jason Whooper (SBN 279972)
W LAW
Counsel for Plaintiff Gizelle Rivera

EXHIBIT 1

EXHIBIT 1

January 6, 2020

UPLOADED VIA DIR WEBSITE

Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
dir.ca.gov

W LAW
1916 3rd Ave
San Diego, CA 92101
Tel: (619) 432-2836
Fax: (619) 717-2111
Email: info@wlawinc.com

Re: *PAGA notice to LWDA for Gizelle Rivera v. Vega-Albela, Inc., dba Hacienda De Vega; Alonso Vega-Albela; and Does 1-100, inclusive,*

To Whom It May Concern:

My office represents Gizelle Rivera (“Plaintiff”) individually and in pursuit of civil penalties on behalf of all aggrieved employees, who are either former or current employees of Vega-Albela, Inc., dba Hacienda de Vega; Alonso Vega-Albela; and Does 1-100, inclusive, (hereinafter referred to collectively as “Defendants”). Pursuant to Labor Code § 2699.3, this letter constitutes written notice of Defendants’ Labor Code and Wage Order violations, and of Plaintiff’s intent to recover civil penalties under the Labor Code Private Attorneys General Act (“PAGA”) of 2004. Plaintiff alleges that all of Defendants’ former and current employees, including Plaintiff, during the statute of limitations period became aggrieved employees from Defendants’ violations of the applicable Labor Codes and Wages Orders.

GENERAL ALLEGATIONS

Plaintiff is informed and believes that Alonso Vega-Albela and unknown doe defendants were owners, directors, officers, and managing agents of Vega-Albela, Inc., dba Hacienda de Vega and Does 1-100, inclusive, which were doing business under the name Hacienda de Vega (hereinafter referred to as the “Restaurant”) in California. Plaintiff is further informed and believes that Alonso Vega-Albela and unknown doe defendants made all policy decisions for the Restaurant and also managed the day to day operations of the Restaurant

At all relevant times, Plaintiff and all aggrieved employees, were “employee[s]” (as defined by Labor Code section 350) of Defendants and were paid “wages” (as defined by Labor Code section 200) by Defendants.

In or around March 2018, Defendants hired Plaintiff to work as a server or waiter for the Restaurant. Plaintiff is informed, believes, and estimates that Defendants employed over 60 employees at Defendants’ Carlsbad and Encinitas locations combined, in any given pay period during Plaintiff’s employment for Defendants. Plaintiff typically worked for Defendants 6 workdays per workweek and regularly worked shifts exceeding 5 hours, especially on Sundays. On occasion, Plaintiff worked overtime.

Defendants adopted and implemented unlawful policies and practices of paying employees less than California’s legally applicable minimum wage. For example, Defendants

paid Plaintiff the regular hourly rate of \$11.50 per hour in 2019 even though the applicable minimum wage in California for an employer who has more than 25 employees in that year was \$12.00 per hour. Also, Defendants paid Plaintiff an overtime rate of \$17.25 per hour in 2019 even though the legally applicable minimum overtime rate was \$18.00 per hour.

Additionally, Defendants repeatedly paid wages late to Plaintiff several days past the days designated as regular pay day deadlines and failed to pay Plaintiff wages within seven calendar days following the close of the payroll period. Plaintiff complained to Defendants about overdue unpaid wages and Defendants instructed Plaintiff not to speak to other coworkers or managers about unpaid wages, wages Defendants paid Plaintiff, and working conditions. Plaintiff is informed and believes that Defendants may have also issued one or more bad paychecks to employees which were not negotiable or payable in cash at the time Defendants issued the paychecks.

In or around January 2019, Defendants began claiming that they mistakenly overpaid Plaintiff over \$1,000 in wages. Defendants informed Plaintiff that Defendants would be taking amounts from Plaintiff's wages to reimburse themselves for their alleged mistaken overpayment. Defendants then began making regular deductions from Plaintiff's pay checks in various amounts over one hundred dollars each without any itemized explanation on Plaintiff's wages statements. On several wage statements it appeared that Defendants may have also taken unauthorized reimbursement deductions through taking Plaintiff's credit card tips and gratuities which patrons left for Plaintiff. Defendants never obtained written authorization from Plaintiff to take these deductions from Plaintiff's earned wages and tips.

As a result of Defendants' unlawful conduct alleged above, Plaintiff is informed and believes that Defendants have unlawfully failed to timely pay Plaintiff wages including legally applicable minimum wages for all hours worked; failed to pay legally applicable minimum overtime rates; took unauthorized deductions from Plaintiff's wages and tips; took Plaintiff's gratuities; failed to provide properly itemized accurate wage statements; and failed to keep accurate payroll records showing the hours worked daily by the wages paid to employees, deductions, and properly itemized wage statements.

Defendants adopted and implemented unlawful policies and practices of not authorizing or permitting employees to take 30-minute uninterrupted off duty meal breaks before exceeding a work period of 5 hours in a workday. Defendants also never informed Plaintiff that Plaintiff had a right to take meal breaks, or that California law required meal breaks. As a result, Defendants did not provide, and Plaintiff did not take, compliant meal breaks before exceeding 5 hours of work in a work period when Plaintiff worked shifts longer than 5 hours. Defendants also never paid Plaintiff an additional hour of wages for each workday with a missed meal break. Additionally, Defendants failed to record meal breaks.

Defendants adopted and implemented policies and practices of not authorizing or permitting employees, who work shifts of at least 3 and ½ hours, to take a 10-minute uninterrupted off duty rest break. Defendants also adopted and implemented policies and practices of not authorizing additional 10-minute uninterrupted off duty rest breaks for every major fraction (more than 2 hours) of a 4-hour work period after an initial 4-hour work period. Defendants also never informed Plaintiff that Plaintiff had a right to take rest breaks. As a result,

Defendants did not provide, and Plaintiff did not take, compliant rest breaks. Defendants also never paid Plaintiff an additional hour of wages for each workday with a missed rest break.

More than 30 days have passed since Plaintiff's employment for Defendants ended and all unpaid wages were due, and Defendants continue to fail to pay Plaintiff all earned wages which were due no later than 72 hours after Plaintiff's employment relationship ended, even after Plaintiff demanded payment of all wages due.

Plaintiff is informed and believes that Defendants also engaged in all of the same unlawful policies and practices described against Plaintiff above, which violate the Labor Code and Wage Orders, with respect to all of Defendants' other employees too who are now all collectively aggrieved employees with Plaintiff.

STATUTORY VIOLATIONS

Labor Code section 2699 states that, "(a) [n]otwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

As a result of the acts alleged above, Plaintiff brings this action on Plaintiff's own behalf, and in Plaintiff's representative capacity on behalf of all aggrieved employees who are current or former employees of Defendants, for civil penalties pursuant to Labor Code section 2699 for Defendants' violations of the IWC Wage Orders including, but not limited to, Wage Order 5-2001, sections 3, 4, 7, 11, 12, 20, and enumerated Labor Code sections including, but not limited to, sections 98, 201, 202, 203, 204, 210, 212, 215, 216, 221, 224, 225, 225.5, 226, 226.3, 226.7, 232, 232.5, 246, 256, 351, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and 2699. Some non-exhaustive highlights follow below.

Labor Code section 210 states that, "(a) [i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

Labor Code section 225.5 states that, "...every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

Labor Code section 226.3 states that, “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.”

Labor Code section 256 states that, “[t]he Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.”

Labor Code section 558 states that, “(a) [a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages... (d) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

Labor Code section 1174.5 states that, “[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Labor Code section 1197.1 states that, “(a) [a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203...”

Labor Code section 2802 states that, “(a) [a]n employee shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties...(d) In addition to recovery of penalties under this section in a court action or proceedings pursuant to Section 98, the commissioner may issue a citation against an employer or other person acting on behalf of the employer who violates

reimbursement obligations for an amount determined to be due to an employee under this section. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the commissioner shall be the same as those set forth in Section 1197.1”

Labor Code section 2699 states that, “(f) [f]or all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: (1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500). (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each aggrieved employee per pay period for each subsequent violation.”

Plaintiff is informed and believes that Defendants knowingly and willfully failed to timely pay all aggrieved employees all wages earned which were due at least twice each calendar month by issuing bad paychecks to aggrieved employees that bounced because they were not negotiable or payable when Defendants issued the checks or by failing to issue paychecks, failing to pay aggrieved employees wages including at least legally applicable minimum wages for all hours worked, failing to pay legally applicable minimum overtime rates to aggrieved employees for overtime hours worked, taking aggrieved employees’ tips or gratuities, making unauthorized deductions from aggrieved employees’ wages, failing to pay aggrieved employees an additional one hour of wages for each workday with a missed meal break, and failing to pay aggrieved employees an additional one hour of wages for each workday with a missed rest break. Further, Plaintiff is informed and believes that Defendants may have failed to indemnify aggrieved employees for business expenditures, expenses, and losses incurred discharging their duties for Defendants.

Plaintiff also is informed and believes that Defendants failed to provide accurate sufficiently itemized wage statements to aggrieved employees; and failed to keep required payroll records showing hours worked by and the wages paid to aggrieved employees, records of deductions, records of accurate sufficiently itemized wage statements, and records of meal breaks aggrieved employees took (if any) in violation of Labor Code sections 226, 1174, 1174.1, 11174.5, and Wage Order 5-2001 section 7.

Plaintiff is informed and believes that Defendants failed to pay aggrieved employees all earned wages within 72 hours after their employment relationships ended with Defendants, Defendants continue to fail to pay those earned wages and the waiting time penalties of up to 30 days of additional daily wages which are authorized by Labor Code sections 203 and 256, and Defendants willfully refused to pay all wages due and payable after receiving demands for the wages.

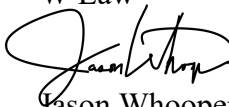
Labor Code section 558.1 states that, “(a) [a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violations. Accordingly, Defendants Alonso Vega-Albela and Does 1-100, inclusive, as owners, directors, officers, and managing agents of Defendant Vega-Abela, Inc., dba Hacienda de Vega and entity Doe Defendants, who violated or caused to be violated the

Labor Code and IWC Wage Orders as alleged above. Accordingly, all Defendants including, but not limited to, Alonso Vega-Albela and Does 1-100, inclusive, are individually and personally liable along with Defendant Vega-Albela, Inc., dba Hacienda de Vega for all of the above described violations pursuant to Labor Code sections 558, 558.1, and 1197.1 for all civil penalties, interest, attorney fees, costs, and other recoverable remedies which Plaintiff pursues through a Labor Code section 2699 et al. PAGA claim.

In sum, Plaintiff alleges Defendants' employment practices implicate numerous wage orders violations and remedies including, but not limited to, those found in Wage Order 5-2001 sections 3, 4, 7, 8, 11, 12, and 20; Minimum Wage Orders MW-2017 and MW-2019; and implicate numerous Labor Code violations and remedies including, but not limited to, those found in California Labor Code sections 98, 201, 202, 203, 204, 210, 216, 221, 224, 225, 225.5, 226, 226.3, 226.7, 246, 256, 351, 512, 516, 558, 558.1, 1174, 1174.5, 1175, 1194, 1194.2, 1197.1, 1198, 1199, 2502, 2802, and 2699.

Accordingly, Plaintiff respectfully requests that the Labor & Workforce Development Agency ("LWDA") decline to pursue an enforcement action in favor of this office pursuing enforcement privately on behalf of California for all aggrieved employees. If the LWDA declines to pursue enforcement, Plaintiff will pursue these claims for civil penalties for violations against Plaintiff and all other aggrieved employees in a Superior Court action and submit to the LWDA's its 75% share of any recovered civil penalties.

If you have any questions or concerns regarding the above, please do not hesitate to contact my office.

Sincerely,
W Law

Jason Whooper

cc:

SENT VIA CERTIFIED U.S. MAIL

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