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NOEMÍ VILLAGOMEZ and

ANDREA MARTINEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

NOEMI VILLAGOMEZ and ANDREA
MARTINEZ, as individuals and on behalf of
all others similarly situated,

Plaintiff,

vs.

MARCOS & JAVIERS, LLC, a California
limited liability company dba JAVIER'S
CANTINA & GRILL; JAVIER'S-UTC, LLC,
a Nevada limited liability company; and
DOES 1 through 100,

Defendants.

Case No. 30-2020-01131297-CU-OE CXC

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

CX-105

- (1) FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§
1182.12, 1194, 1194.2, 1197);**
- (2) FAILURE TO PAY ALL OVERTIME
WAGES OWED (LABOR CODE §§ 204,
510, 558, 1194, 1198);**
- (3) FAILURE TO PROVIDE MEAL
PERIODS (LABOR CODE §§ 226.7,
512, 558);**
- (4) FAILURE TO AUTHORIZE AND
PERMIT REST PERIODS (LABOR
CODE §§ 226.7, 516, 558);**
- (5) FAILURE TO TIMELY PAY ALL
WAGES UPON TERMINATION
(LABOR CODE §§ 201-203);**

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- (6) FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS (LABOR CODE § 226 *et seq.*);**
- (7) UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*); and**
- (8) CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACTION OF 2004 (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Noemi Villagomez (“Villagomez”) and Plaintiff Andrea Martinez (“Martinez”) 2 (Villagomez and Martinez collectively referred to herein as “Plaintiffs”), on behalf of themselves 3 and all others similarly situated, hereby bring this First Amended Class and Representative Action 4 Complaint (“FAC”) against Marcos & Javiers, LLC, a California limited liability company dba 5 Javier’s Cantina & Grill; Javier’s-UTC, LLC, a Nevada limited liability company, and DOES 1 6 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

7 **JURISDICTION**

8 1. Plaintiffs, on behalf of themselves and all others similarly situated, hereby bring 9 this Complaint for recovery of unpaid wages and penalties under California Business and 10 Professions Code § 17200 *et. seq.*, Labor Code §§ 201-204, 218 *et seq.*, 226 *et seq.*, 226.7, 510, 11 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.* and Industrial Welfare 12 Commission Wage Order 5 (“Wage Order 5”), in addition to seeking declaratory relief and 13 restitution. This FAC is brought pursuant to California Code of Civil Procedure § 382. This Court 14 has jurisdiction over Defendants’ violations of the California Labor Code because the amount in 15 controversy exceeds this Court's jurisdictional minimum.

16 **VENUE**

17 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§ 18 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the 19 County of Orange. Defendants own, maintain offices, transact business, have agent(s) within the 20 County of Orange, and/or otherwise are found within the County of Orange, and Defendants are 21 within the jurisdiction of this Court for purposes of service of process.

22 **PARTIES**

23 3. Plaintiffs are both individuals over the age of eighteen (18). At all relevant times 24 herein, Plaintiffs were and currently are, California residents. During the four years immediately 25 preceding the filing of the lawsuit in this action and within the statute of limitations periods 26 applicable to each cause of action pled herein, Plaintiffs were employed by Defendants as non- 27 exempt employees. Plaintiff were, and are, victims of Defendants’ policies and/or practices 28 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed

1 by Labor Code §§ 201-204, 218 *et seq.*, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194,
2 1194.2, 1197, 1198, 2698 *et seq.*, and California Business and Professions Code § 17200 *et seq.*
3 (“Unfair Competition Law”); and Wage Order 5, which sets employment standards for the public
4 housekeeping industry, which includes the industry in which Plaintiffs worked for Defendants.

5 4. Plaintiffs are informed and believe, and based thereon allege, that during the four
6 years preceding the filing of the lawsuit and continuing to the present, Defendants did (and
7 continue to do) business by serving elevated Mexican cuisine in its self-described friendly and
8 captivating ambiance. Defendants employed Plaintiffs and other, similarly-situated non-exempt
9 employees within, among other counties, Orange County and the state of California and,
10 therefore, were (and are) doing business in Orange County and the State of California.

11 5. Plaintiffs do not know the true names or capacities, whether individual, partner, or
12 corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
13 defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
14 amend this lawsuit when such true names and capacities are discovered. Plaintiffs are informed,
15 and believe, and based thereon allege, that each of said fictitious defendants, whether individual,
16 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
17 and proximately caused Plaintiffs and the Classes (as defined in Paragraph 18) to be subject to
18 the unlawful employment practices, wrongs, injuries and damages complained of herein.

19 6. Plaintiffs are informed, and believe, and thereon allege, that at all times mentioned
20 herein, Defendants were and are the employers of Plaintiffs and all members of the Classes.

21 7. At all times herein mentioned, each of said Defendants participated in the doing
22 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
23 Defendants, and each of them, were the agents, servants, and employees of each and every one of
24 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
25 were acting within the course and scope of said agency and employment. Defendants, and each
26 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
27 omissions complained of herein.

28 8. At all times mentioned herein, Defendants, and each of them, were members of

1 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
2 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
3 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
4 members of the Classes.

5 **GENERAL FACTUAL ALLEGATIONS**

6 9. Plaintiff Villagomez was employed by Defendants as a non-exempt employee
7 from approximately November 2018 until approximately July 12, 2019 at Defendants' La Jolla,
8 California location. During her employment with Defendants, Plaintiff Villagomez held various
9 job positions, including cocktail waitress and server. Plaintiff Villagomez was generally
10 scheduled to work five days a week from 4:00 p.m. to approximately 10:00 p.m. or 11:00 p.m.,
11 and could sometimes work even later.

12 10. Plaintiff Martinez commenced employment with Defendants in or around January
13 2019 at La Jolla and Irvine locations, and she remains currently employed. During her
14 employment with Defendants, Plaintiff Martinez held the position of cocktail waitress. Plaintiff
15 Martinez works approximately 3-4 days per week, and was generally scheduled to work from
16 approximately 4:00 p.m. to approximately 12:00 to 1:00 a.m.

17 11. While working for Defendants, Plaintiffs often worked in excess of eight hours
18 per workday and/or more than 40 hours per workweek, but did not receive overtime compensation
19 equal to one and one-half times her regular rate of pay for all such overtime hours. Specifically,
20 Plaintiffs received "Auto Gratuity," "Incentive Pay," "Miscellaneous Earnings" and/or other
21 forms of pay not excludable as a matter of law when calculating an employee's regular rate
22 (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay").
23 Despite Defendants' payment of Incentive Pay to Plaintiffs, Defendants failed to include all forms
24 of Incentive Pay when calculating Plaintiffs' regular rate of pay, thereby causing Plaintiff to be
25 underpaid all of her required and legally owed overtime wages.

26 12. Throughout Plaintiffs' employment with Defendants, Plaintiffs were not provided
27 all legally required meal periods due to Defendants' meal period policies/practices. During at
28 least a portion of the class period, upon information and belief, Defendants did not have an

Employee Handbook nor any other written meal period policies. Further, due to the work demands imposed by Defendants, at times, Plaintiffs were unable to take meal periods altogether. For example, on March 9, 2019, Plaintiff Villagomez worked from 4:35 p.m. to 11:51 p.m. for a total of 7.27 hours without a meal period. In another example, on June 2, 2019, Plaintiff Villagomez worked from 3:57 p.m. to 10:43 p.m., for a total of 6.77 hours without a meal period. Plaintiff Martinez would often not receive meal periods at all, and her manager/supervisor would get upset if attempted to take one. Further, Plaintiffs are informed and believe, and based thereon allege, that a manager or managers would alter the time records to insert meal periods which were not actually taken. These practices resulted in the failure by Defendants to provide lawful meal periods, and also resulted in the failure to pay wages (including minimum and overtime wages) to Plaintiffs and other non-exempt employees. Furthermore, on occasion, Plaintiffs Villagomez would work a double shift in excess of 10.0 hours and Defendants failed to provide her and other employees working shifts in excess of 10.0 hours with the opportunity to take a second and timely meal period of at least 30 minutes in length as required by applicable law.

13. Although Plaintiffs were not provided with all legally-compliant meal periods to which they were entitled, Defendants failed to compensate Plaintiffs with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to their non-exempt employees.

14. In addition, throughout Plaintiffs' employment with Defendants, Plaintiffs were not authorized and permitted to take legally required rest periods due to Defendants' unlawful rest period policies and practices. Specifically, when Plaintiffs worked shifts in excess of 3.5 hours, they were never provided a paid rest period for every 4-hour period worked, or *major fraction thereof*, because: (i) there was a lack of coverage and/or (ii) the work demands that Defendants imposed on Plaintiffs. This practice resulted in the failure by Defendants to authorize and permit lawful rest periods to Plaintiffs and other non-exempt employees.

1 15. On those occasions when Plaintiffs were not authorized and permitted to take all
2 legally-compliant rest periods to which they were entitled, Defendants failed to compensate
3 Plaintiffs with the required rest period premium for each workday in which they experienced a
4 rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief,
5 during at least a portion of the class period, Defendants maintained no payroll code or other
6 mechanism for paying rest period premiums when Defendants failed to provide a legally
7 compliant rest period.

8 16. As a result of Defendants' failure to pay all minimum and overtime wages, as well
9 as meal and rest period premium wages, Defendants maintained inaccurate payroll records and
10 issued inaccurate wage statements to Plaintiffs.

11 17. As a further result of Defendants' failure to pay all minimum and overtime wages,
12 as well as meal and rest period premium wages, Defendants failed to pay all wages owed to
13 Plaintiff Villagomez upon her separation of employment from Defendants.

14 **CLASS ACTION ALLEGATIONS**

15 18. **Class Definitions:** Plaintiffs bring this action on behalf of herself and the
16 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 17 a. The Minimum Wage Class consists of all of Defendants' current and former non-
18 exempt employees in California who were subjected to Defendants' timekeeping
19 policies/practices, during the four years immediately preceding the filing of the
20 lawsuit through the present.
- 21 b. The Overtime Class consists of all of Defendants' current and former non-exempt
22 employees in California who worked in excess of 8 hours in a work day and/or in
23 excess of 40 hours in a work week, were subjected to Defendants' timekeeping
24 policies and practices and/or received Incentive Pay during a pay period when
25 overtime was also worked, during the four years immediately preceding the filing
26 of the lawsuit through the present.
- 27 c. The Meal Period Class consists of all of Defendants' current and former non-
28 exempt employees who worked at least one shift in excess of 5.0 hours during the
four years immediately preceding the filing of the lawsuit through the present.

- 1 d. The Rest Period Class consists of all of Defendants' current and former non-
2 exempt employees who worked at least one shift in excess of 3.5 hours during the
3 four years immediately preceding the filing of the lawsuit through the present.
- 4 e. The Wage Statement Class consists of all members of the: (i) Minimum Wage
5 Class, (ii) Overtime Class, (iii) Meal Period Class and/or (iv) Rest Period Class,
6 during the one year immediately preceding the filing of the lawsuit through the
7 present.
- 8 f. The Waiting Time Penalty Class consists of Defendants' formerly employed
9 members of the: (i) Minimum Wage Class, (ii) Overtime Class, (iii) Meal Period
10 Class, and/or (iv) Rest Period Class in California, during the three years
11 immediately preceding the filing of the lawsuit through the present.
- 12 g. The UCL Class consists of members of the: (i) Minimum Wage Class; (ii)
13 Overtime Class; (iii) Meal Period Class; (iv) Rest Period Class; (v) Wage
14 Statement Class; and (vi) Waiting Time Penalty Class.

15 19. Plaintiffs reserve the right under Rule 3.765(b) of the California Rules of Court,
16 to amend or modify the description of the various classes with greater specificity or further
17 division into subclasses or limitation to particular issues.

18 20. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
19 joinder of all members would be unfeasible and not practicable. The membership of the Classes
20 is unknown to Plaintiffs at this time; however, it is estimated that the members of the Classes
21 number greater than one hundred (100) individuals. The identity of such membership is readily
22 ascertainable via inspection of Defendants' employment records.

23 21. **Common Questions of Law and Fact Predominate/Well Defined Community**
24 **of Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly
25 situated employees, which predominate over questions affecting only individual members. Those
26 common questions include, without limitation:

- 27 i. Whether Defendants' timekeeping policies and/or practices resulted in the failure
28 to properly compensate members of the Overtime and Minimum Wage Classes for

- all hours actually worked;
- ii. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 510 and 1194 by requiring overtime work and not paying for said work according to the overtime laws of the State of California;
 - iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
 - iv. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
 - v. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;
 - vi. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of their separation of employment were lawful; and
 - vii. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendants owe the classes restitution.

22. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform minimum wage payment, overtime wage payment, and meal and rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

23. **Typicality:** The claims of Plaintiffs are typical of the claims of the Classes because Plaintiffs were/are employed by Defendants as non-exempt employees in California during the statute(s) of limitations period applicable to each cause of action pled in the FAC. As alleged herein, Plaintiffs, like the members of the Classes, were not provided all legally required

1 minimum and overtime wages, were not provided with all required meal periods, were not
2 authorized and permitted to take all required rest periods, did not receive meal and rest period
3 premium wages when they were not provided compliant meal and rest periods, were not provided
4 with accurate, itemized wage statements, and Plaintiff Villagomez was not paid all wages upon
5 termination of her employment.

6 24. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary
7 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
8 Plaintiffs' attorneys are ready, willing and able to fully and adequately represent the members of
9 the Classes and Plaintiffs. Plaintiffs' attorneys have prosecuted and defended numerous wage-
10 and-hour class actions in state and federal courts in the past and are committed to vigorously
11 prosecuting this action on behalf of the members of the Classes.

12 25. **Superiority:** The California Labor Code is broadly remedial in nature and serves
13 an important public interest in establishing minimum working conditions and standards in
14 California. These laws and labor standards protect the average working employee from
15 exploitation by employers who have the responsibility to follow the laws and who may seek to
16 take advantage of superior economic and bargaining power in setting onerous terms and
17 conditions of employment. The nature of this action and the format of laws available to Plaintiffs
18 and members of the Classes make the class action format a particularly efficient and appropriate
19 procedure to redress the violations alleged herein. If each employee were required to file an
20 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
21 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
22 their vastly superior financial and legal resources. Moreover, requiring each member of the
23 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
24 employees who would be disinclined to file an action against their former and/or current employer
25 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
26 employment. Further, the prosecution of separate actions by the individual class members, even
27 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
28 with respect to the individual class members against Defendants herein; and which would

1 establish potentially incompatible standards of conduct for Defendants; and/or legal
2 determinations with respect to individual class members which would, as a practical matter, be
3 dispositive of the interest of the other class members not parties to adjudications or which would
4 substantially impair or impede the ability of the class members to protect their interests. Further,
5 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
6 individual prosecution considering all of the concomitant costs and expenses attending thereto.
7 As such, the Classes identified in Paragraph 18 are maintainable as a Class under § 382 of the
8 Code of Civil Procedure.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY ALL MINIMUM WAGES OWED**

11 **(AGAINST ALL DEFENDANTS)**

12 26. Plaintiffs re-allege and incorporates by reference all previous paragraphs.

13 27. Wage Order 5, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
14 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
15 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
16 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
17 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
18 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
19 its pay practices to the requirements of the law by failing to pay Plaintiffs and members of the
20 Minimum Wage Class for all hours worked, including, but not limited to, all hours they were
21 subject to the control of Defendants and/or suffered or permitted to work under the California
22 Labor Code and Wage Order 5.

23 28. California Labor Code § 1198 makes unlawful the employment of an employee
24 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
25 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
26 those employees the unpaid balance of the unpaid wages as well as liquidated damages in an
27 amount equal to the wages due and interest thereon.

28 29. As a consequence of Defendants' non-payment of minimum wages, Plaintiffs and
members of the Minimum Wage Class seek penalties pursuant to Wage Order 5 § 20(A) and

California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2; attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages and/or penalties pursuant to California Labor Code § 558(a).

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES OWED

(AGAINST ALL DEFENDANTS)

30. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

31. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to all overtime wages and compensation for hours worked, and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

32. At all times relevant herein, Defendants were required to properly compensate non-exempt employees, including Plaintiffs and members of the Overtime Class, for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay" for work in excess of eight hours per workday and/or in excess of forty hours of work in the workweek. Wage Order 5, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiffs to work overtime hours but did not compensate Plaintiffs or members of the Overtime Pay Class at one and one-half times their regular rate of pay for such hours.

33. Defendants' policy/practice of requiring overtime work and not paying at the proper overtime rates for said work violates California Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198; and Wage Order 5.

34. The foregoing policies/practices alleged herein are unlawful and create entitlement to recovery by Plaintiffs and the members of the Overtime Class in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 558,

1194, and 1198; and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(AGAINST ALL DEFENDANTS)

35. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

36. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiffs and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 5, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiffs and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

37. As a result, Defendants are responsible for paying premium compensation for meal period violations pursuant to Labor Code §§ 226.7, 512, and 558, and Wage Order 5, including interest thereon, statutory penalties, civil penalties, and costs of suit.

FOURTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

(AGAINST ALL DEFENDANTS)

38. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

39. Wage Order 5, § 12 and California Labor Code §§ 226.7, 516 and 558 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

40. As alleged herein, Defendants failed to authorize and permit Plaintiffs and members of the Rest Period Class to take all required rest periods.

41. The foregoing violations create an entitlement to recovery by Plaintiffs and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

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FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION

(PLAINTIFF VILLAGOMEZ AGAINST ALL DEFENDANTS)

42. Plaintiff Villagomez re-alleges and incorporates by reference all previous paragraphs.

43. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

44. Plaintiff Villagomez is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff Villagomez and members of the Waiting Time Penalty Class all final wages due to them at their separation from employment, including, unpaid minimum wages, overtime wages, and meal and rest period premium wages.

45. Further, Plaintiff Villagomez is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff Villagomez and members of the Waiting Time Penalty Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.

46. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Plaintiff Villagomez and the members of the Waiting Time Penalty Class their earned wages upon separation from employment results in a continued payment of wages up to thirty days from the time the wages were due.

47. Therefore, Plaintiff Villagomez and members of the Waiting Time Penalty Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

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2 **SIXTH CAUSE OF ACTION**

3 **FAILURE TO ISSUE ACCURATE, ITEMIZED WAGE STATEMENTS**

4 **(AGAINST ALL DEFENDANTS)**

5 48. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

6 49. Plaintiffs are informed and believe, and based thereon allege, that Defendants
7 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiffs
8 and members of the Wage Statement Class with complete and accurate wage statements with
9 respect to their actual regular and overtime hours worked, total gross wages earned, and total net
10 wages earned, in violation of Labor Code § 226 *et seq.* In addition, the wage statements did not
11 include an accurate total of all hours worked.

12 50. Defendants' failures in furnishing Plaintiffs and members of the Wage Statement
13 Class with complete and accurate itemized wage statements resulted in actual injury, as said
14 failures led to, among other things, the non-payment of all earned overtime and minimum wages,
15 and meal and rest period premium wages, and deprived them of the information necessary to
16 identify the discrepancies in Defendants' reported data.

17 51. Defendants' failures create an entitlement to recovery by Plaintiffs and members
18 of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
19 Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and
20 costs of suit according to California Labor Code § 226 *et seq.*

21 **SEVENTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(AGAINST ALL DEFENDANTS)**

24 52. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

25 53. Defendants have engaged and continue to engage in unfair and/or unlawful
26 business practices in California in violation of California Business and Professions Code § 17200
27 *et seq.*, by failing to properly pay all minimum and overtime wages, provide all required meal
28 periods and authorize and permit all required rest periods, or pay premium payments in lieu
thereof, and failing to pay all final wages owed to employees upon their separation from

1 employment with Defendants.

2 54. Defendants' utilization of these unfair and/or unlawful business practices deprived
3 Plaintiffs and continues to deprive members of the Classes of compensation to which they are
4 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
5 over Defendants' competitors who have been and/or are currently employing workers and
6 attempting to do so in honest compliance with applicable wage and hour laws.

7 55. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct
8 alleged herein, Plaintiffs for themselves and on behalf of the members of the Classes, seek full
9 restitution of monies, as necessary and according to proof, to restore any and all monies withheld,
10 acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203
11 and 17208.

12 56. The acts complained of herein occurred within the last four years immediately
13 preceding the filing of the lawsuit in this action.

14 57. Plaintiffs were compelled to retain the services of counsel to file this court action
15 to protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf
16 of Defendants' current non-exempt employees, and to enforce important rights affecting the
17 public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs,
18 which they are entitled to recover under Code of Civil Procedure § 1021.5.

19 **EIGHTH CAUSE OF ACTION**

20 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

21 **(AGAINST ALL DEFENDANTS)**

22 58. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

23 59. Defendants have committed several Labor Code violations against Plaintiffs and
24 other aggrieved employees. Plaintiffs, "aggrieved employees" within the meaning of Labor Code
25 § 2698 *et seq.*, acting on behalf of themselves and other aggrieved employees, bring this
26 representative action against Defendants to recover the civil penalties due to Plaintiffs, the other
27 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
28 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for

1 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
2 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
3 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for
4 each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3)
5 \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor
6 Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00
7 for each subsequent violation per employee per pay period for those violations of the Labor Code
8 for which no civil penalty is specifically provided, based on the following Labor Code violations:

- 9 a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to
10 pay Plaintiffs and other aggrieved employees all overtime compensation earned;
- 11 b) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay
12 Plaintiffs and other aggrieved employees the statutory minimum wage for all
13 hours worked;
- 14 c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all
15 legally required meal periods and failing to pay meal period premiums to
16 Plaintiffs and other aggrieved employees;
- 17 d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to authorize
18 and permit all legally required rest periods and failing to pay rest period
19 premiums to Plaintiffs and other aggrieved employees;
- 20 e) Defendants violated Labor Code § 226 by failing to furnish Plaintiffs and other
21 aggrieved employees with accurate and compliant itemized wage statements;
- 22 f) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay
23 all final wages due to Plaintiff Noemi Villagomez and other aggrieved
24 employees;
- 25 g) Defendants violated Labor Code § 1174 by failing to maintain accurate records
26 on behalf of Plaintiffs and other aggrieved employees; and
27
28

h) Defendants violated Labor Code § 204 by failing to pay Plaintiffs and other aggrieved employees all earned wages at least twice during each calendar month.

60. On February 13, 2020, Plaintiffs notified Defendants via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’ violations of the California Labor Code and Plaintiffs’ intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 59 (a)-(h). Now that sixty-five days have passed from Plaintiffs notifying Defendants of these violations, Plaintiffs have exhausted their administrative requirements for bringing a claim under the Labor Code Private Attorneys General Act with respect to these violations.

61. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiffs have thereby incurred attorneys’ fees and costs, which they are entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiffs pray for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiffs as representatives of the Classes;
3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and

special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 203;

9. Upon the Sixth Cause of Action, for statutory wage statement penalties pursuant to Labor Code § 226 *et seq.*;

10. Upon the Seventh Cause of Action, for restitution to Plaintiffs and members of the Class of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiffs, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations cited in Paragraph 48 (a)-(f) above;

12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

14. For such other and further relief the Court may deem just and proper.

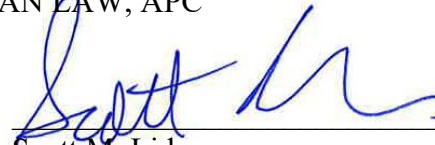
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2 Dated: April 20, 2020

Respectfully submitted,
LIDMAN LAW, APC

3
4 By:



5 Scott M. Lidman
6 Elizabeth Nguyen
7 Milan Moore
8 Attorneys for Plaintiffs
9 NOEMI VILLAGOMEZ and ANDREA
10 MARTINEZ

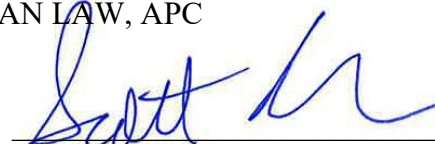
11
12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs hereby demand a jury trial with respect to all issues triable by jury.

14 Dated: April 20, 2020

Respectfully submitted,
LIDMAN LAW, APC

15 By:



16 Scott M. Lidman
17 Elizabeth Nguyen
18 Milan Moore
19 Attorneys for Plaintiffs
20 NOEMI VILLAGOMEZ and ANDREA
21 MARTINEZ
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