

Adrian Byrne (SBN 304020)
THE BYRNE LAW GROUP
840 Apollo Street, Suite 311
El Segundo, California 90245
Telephone: (800) 805-4002
Facsimile: (213) 805-6515
Email: adrian@thebyrnelawgroup.com

Nina Baumler (SBN 256728)
THE LAW OFFICE OF NINA BAUMLER
840 Apollo St., Suite 311
El Segundo, CA 90245
Tel: (424) 269-0624
Email: nina@baumlerlaw.com

Attorney for Plaintiff and Similarly Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – UNLIMITED JURISDICTION**

EDGAR GAMBOA ROCHA, an individual,
on behalf of himself and Similarly Aggrieved
Employees,

Plaintiff,

vs.

KYL BBQ, INC a California corporation
doing business as LA VACA BRAZILIAN
GRILL; MAK BBQ, INC a California
corporation; KEEGAN LEE, an individual;
HEE YOUNG LEE, an individual; and DOES
1 through 50, inclusive,

Defendants.

Case No.: 19STCV31362

*[Assigned for all purposes to Hon. Teresa A.
Beaudet, Dept. 50]*

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

1. Failure to Pay Overtime Wages (Labor Code §§ 510, 1194; IWC Wage Order 5);
2. Failure to Provide Meal Periods (Labor Code §§ 226.7, 512; IWC Wage Order 5);
3. Failure to Authorize and Permit Rest Periods (Labor Code § 226.7; IWC Wage Order 5);
4. Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226; IWC Wage Order 5);
5. Continuing Wages Penalty (Labor Code §§ 201, 202, 203, 203);
6. Civil Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 et seq.);
7. Unfair Competition (Business and Professions Code § 17200 et seq.)

DEMAND FOR JURY TRIAL

Plaintiff Edgar Gamboa Rocha alleges as follows:

NATURE OF ACTION

1. Plaintiff, Edgar Gamboa Rocha, on behalf of himself and similarly aggrieved employees, (“Plaintiff”), bring this action against Defendants KYL BBQ, Inc a California corporation doing business as LA VACA BRAZILIAN GRILL; MAK BBQ, Inc a California corporation; KEEGAN LEE, an individual; HEE YOUNG LEE, an individual; and DOES 1 through 50, inclusive, (collectively “Defendants”) seeking damages and penalties for failure to pay overtime compensation, failure to provide meal periods, failure to authorize and permit rest periods, failure to provide accurate itemized wage statements, failure to pay all wages due upon termination, civil penalties under the Private Attorneys General Act of 2004, and injunctive relief, and restitution pursuant to California Business and Professions Code §17200, *et seq.*

PRELIMINARY ALLEGATIONS

2. At all times herein mentioned Plaintiff Edgar Gamboa Rocha resided in the County of Los Angeles, within the State of California. Between approximately 2013 and August 12, 2019, Plaintiff was employed and worked as a cook, food preparer, and cashier for Defendants.

3. Defendant KYL BBQ, Inc is a California corporation doing business under the fictitious business name LA VACA BRAZILIAN GRILL, whose registered address is located in the County of Los Angeles, California.

4. Defendant MAK BBQ, Inc is a California corporation, whose registered address is located in the County of Los Angeles, California.

5. Plaintiff is informed and believes that MAK BBQ, Inc is doing business under the fictitious business name LA VACA BRAZILIAN GRILL.

6. Plaintiff is informed and believes that at all times herein mentioned Defendant KEEGAN LEE was an individual who resides in Los Angeles County, California.

7. Plaintiff is informed and believes that at all times herein mentioned Defendant HEE YOUNG LEE was an individual who resides in Los Angeles County, California.

1 8. The true names and capacities of the Defendants sued herein as DOES 1
2 through 50 are unknown to the Plaintiff, and therefore Plaintiff sues these Defendants by such
3 fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities
4 when ascertained. Plaintiff is informed and believes and on that basis alleges that each of the
5 fictitiously-named Defendants are responsible for the occurrences and injuries to Plaintiff as
6 herein alleged. Each reference in this Complaint to “Defendant,” “Defendants,” or a
7 specifically named Defendant refers to, and includes all Defendants sued under fictitious
8 names.

9 9. Plaintiff is informed and believes, and thereon alleges, that, at all times herein
10 mentioned, each of the defendants sued herein were the agents and employees of each of the
11 remaining defendants and were at all times acting within the purpose and scope of such
12 agency and employment.

13 10. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants Keegan Lee and Hee Young Lee acted as the alter ego of KYL BBQ,
15 Inc and MAK BBQ, Inc; and that KYL BBQ, Inc and MAK BBQ, Inc act as the alter ego of
16 Defendants Keegan Lee and Hee Young Lee. Defendant Keegan Lee is the owner of, and is in
17 complete control of, KYL BBQ, Inc; and Defendant Hee Young Lee is the owner of, and is in
18 complete control of, MAK BBQ, Inc. Plaintiff believes that there exists a unity of interest and
19 ownership between KYL BBQ, Inc and MAK BBQ, Inc on the one hand and Defendants
20 Keegan Lee and Hee Young Lee on the other hand, such that the separate personalities of
21 KYL BBQ, Inc and MAK BBQ, Inc do not exist, that KYL BBQ, Inc and MAK BBQ, Inc are
22 inadequately capitalized, that corporate formalities of KYL BBQ, Inc and MAK BBQ, Inc are
23 disregarded, and that KYL BBQ, Inc and MAK BBQ, Inc are operated and managed by and
24 through Defendants Keegan Lee and Hee Young Lee. It would be inequitable and unjust not
25 to hold Defendants Keegan Lee and Hee Young Lee jointly liable along with Defendants KYL
26 BBQ, Inc and MAK BBQ, Inc for all the illegal actions alleged in this pleading.

27 11. Defendants Keegan Lee and Hee Young Lee are the owners, directors and
28 officers of KYL BBQ, Inc and MAK BBQ, Inc; and acted on behalf of KYL BBQ, Inc and

1 MAK BBQ, Inc at all times relevant to this complaint. Accordingly, Defendants Keegan Lee
2 and Hee Young Lee are individually liable for damages alleged in this action pursuant to
3 Labor Code Section 558.1 during all time periods said statute was legally operative.

4 12. In addition, the community property of Defendants Keegan Lee and Hee Young
5 Lee are liable for the legal liability of Defendants, or any of them.

6 13. At all times relevant to this action, Defendants owned, controlled and operated
7 Defendants' restaurant businesses.

8 14. During the relevant time period, Defendants suffered and permitted Plaintiff to
9 work daily hours which regularly exceeded 8 hours per day, and 40 hours per week.

10 15. During the relevant time period, Defendants failed to compensate Plaintiff for
11 his overtime hours at the applicable premium rates.

12 16. During the relevant time period, Defendants failed to provide Plaintiff with a
13 thirty (30) minute duty-free meal break when Plaintiff worked five (5) hours or more in a
14 workday, and failed to pay Plaintiff with the required premium pay for such denied duty-free
15 meal breaks.

16 17. During the relevant time period, Defendants failed to authorize and permit
17 Plaintiff to take a paid ten (10) minute duty-free rest break when Plaintiff worked four (4)
18 hours, or major fraction thereof, in a workday, and failed to pay Plaintiff with the required
19 premium pay for such denied duty-free rest breaks.

20 18. During the relevant time period, Defendants failed to furnish Plaintiff with
21 accurate itemized wage statements showing his regular rates of pay, overtime rates of pay,
22 meal period premiums, rest period premiums, and the number of hours worked at each
23 applicable rate of pay.

24 19. At the time of discharge, Defendants failed to pay Plaintiff all wages due upon
25 his termination of employment.

26 20. During the time period Plaintiff was employed by Defendants, KYL BBQ, Inc
27 and MAK BBQ, Inc were the entities identified as the legal employers on pay checks and
28 wage statements provided to Plaintiff.

1 21. On September 5, 2019, pursuant to California Labor Code § 2699.3, Plaintiff
2 filed notice with California's Labor and Workforce Development Agency ("LWDA"), and
3 posted by certified mail to Defendants notice of the specific provisions of the Labor Code that
4 have been violated, including the facts and theories to support the violations.

5 22. The LWDA has failed to notify Plaintiff of its intent to investigate these
6 penalty claims within sixty-five (65) days.

7 23. Thus, Plaintiff has exhausted his administrative remedies under PAGA's Labor
8 Code § 2699.3(a)(2)(A) and may pursue PAGA civil penalties in a representative capacity as a
9 matter of right.

10 **JURISDICTION AND VENUE**

11 24. Pursuant to Article VI, § 10 of the California Constitution, subject matter
12 jurisdiction is proper in the Superior Court of California, County of Los Angeles, State of
13 California.

14 25. Pursuant to §§ 395 and 395.5 of the California Code of Civil Procedure, venue
15 is proper in the Superior Court of California for the County of Los Angeles, State of
16 California, because this is where Plaintiff was employed, it is where the wrongful misconduct
17 alleged occurred, and it is where Defendants do business and/or reside.

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME WAGES**

20 **[Cal. Labor Code §§ 510, 1194, 558.1, and IWC Wage Order 5]**

21 **(Plaintiff Against All Defendants)**

22 26. Plaintiff re-alleges and incorporates into this cause of action each of the
23 preceding paragraphs.

24 27. During each and every pay period while employed by Defendants, Plaintiff was
25 required, suffered and permitted to work overtime hours for which he was not properly paid in
26 accordance with California law.

27 28. Defendants failed to compensate Plaintiff for his overtime hours at the
28 applicable premium rates.

1 owing, on designated days, no less frequently than twice a month. Because Defendants failed
2 timely to pay Plaintiff all compensation legally owing, including compensation for meal
3 periods not received, Defendants are liable for prejudgment interest in an amount to be proved
4 at trial.

5 36. Defendants Keegan Lee and Hee Young Lee, while acting as owners, officers,
6 directors and managing agents of Defendants KYL BBQ, Inc and MAK BBQ, Inc caused said
7 corporation to violate provisions of California Industrial Welfare Commission Wage Order 5
8 as well as Labor Code § 226.7 with respect to Plaintiff. Therefore, pursuant to Labor Code §
9 558.1, Defendants Keegan Lee and Hee Young Lee are jointly and severally liable along with
10 Defendants KYL BBQ, Inc and MAK BBQ, Inc for unpaid meal period premiums, pursuant to
11 Labor Code § 226.7.

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

14 **[CAL. LAB. CODE §§ 226.7, 558.1, and IWC Wage Order 5]**

15 **(Plaintiff Against All Defendants)**

16 37. Plaintiff re-alleges and incorporates into this cause of action each of the
17 preceding paragraphs.

18 38. Pursuant to Labor Code § 226.7, and California Industrial Welfare Commission
19 Wage Order 5, each workday Plaintiff was entitled to one off-duty rest period (no less than 10
20 minutes in duration) for every 4 hours worked, or major fraction thereof. Defendants, and
21 each of them, contrary to law, did not provide Plaintiff the off-duty rest periods to which
22 Plaintiff was entitled and also did not pay Plaintiff one extra hour of pay for each day Plaintiff
23 did not receive all legally required rest periods.

24 39. As a result, Defendants, and each of them, are liable for unpaid compensation
25 pursuant to Labor Code § 226.7.

26 40. Pursuant to Labor Code § 204, Plaintiff was entitled to receive all wages
27 owing, on designated days, no less frequently than twice a month. Because Defendants failed
28 timely to pay Plaintiff all compensation legally owing, including compensation for rest

1 periods not received, Defendants are liable for prejudgment interest in an amount to be proved
2 at trial.

3 41. Defendants Keegan Lee and Hee Young Lee, while acting as owners, officers,
4 directors and managing agents of Defendants KYL BBQ, Inc and MAK BBQ, Inc caused said
5 corporation to violate provisions of California Industrial Welfare Commission Wage Order 5
6 as well as Labor Code § 226.7 with respect to Plaintiff. Therefore, pursuant to Labor Code §
7 558.1, Defendants Keegan Lee and Hee Young Lee are jointly and severally liable along with
8 Defendants KYL BBQ, Inc and MAK BBQ, Inc for unpaid rest period premiums, pursuant to
9 Labor Code § 226.7.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

12 **[Cal. Labor Code §§ 226, 558.1, and IWC Wage Order 5]**

13 **(Plaintiff Against All Defendants)**

14 42. Plaintiff re-alleges and incorporates into this cause of action each of the
15 preceding paragraphs.

16 43. Defendants were obligated by California Labor Code § 226, and California
17 Industrial Welfare Commission Wage Order 5, to keep accurate records of Plaintiff's and
18 similarly aggrieved employees' days and hours worked and to provide Plaintiff, each time he
19 was paid, an accurate statement of (among other things) the total hours he worked in the
20 applicable pay period and total gross wages paid. Each and every pay period, Defendants
21 knowingly and intentionally failed to provide Plaintiff with accurate wage statements. As a
22 result, Plaintiff was denied the accurate wage statements to which he was legally entitled and
23 Plaintiff cannot promptly and easily determine the exact hours he worked during each pay
24 period. In addition, Plaintiff will incur costs attempting to obtain information which
25 Defendants should have provided in accurate pay statements.

26 44. Accordingly, Plaintiff is entitled to the penalty specified in Labor Code §
27 226(e) in the amount of \$4,000.00.

45. In addition, Defendants are liable to Plaintiff for reasonable attorney's fees and costs, which are hereby demanded, in an amount to be proved according to law.

46. Defendants Keegan Lee and Hee Young Lee, while acting as owners, officers, directors and managing agents of Defendants KYL BBQ, Inc and MAK BBQ, Inc caused said corporation to violate provisions of California Industrial Welfare Commission Wage Order 5 as well as Labor Code §§ 226 and 226.3 with respect to Plaintiff. Therefore, pursuant to Labor Code § 558.1, Defendants Keegan Lee and Hee Young Lee are jointly and severally liable along with Defendants KYL BBQ, Inc and MAK BBQ, Inc for penalties and attorney's fees, pursuant to Labor Code § 226.

FIFTH CAUSE OF ACTION

CONTINUING WAGES PENALTY

[Cal. Labor Code §§ 201, 202, 203, and 558.1]

(Plaintiff Against All Defendants)

47. Plaintiff re-alleges and incorporates into this cause of action each of the preceding paragraphs.

48. Pursuant to Labor Code § 201 and Labor Code § 202, upon termination of their employment, Plaintiff and similarly aggrieved employees were entitled to receive timely payment of all earned wages, including overtime compensation, and compensation for failure to provide meal periods and failure to authorize and permit rest periods. Because Defendants failed to pay such wages, Plaintiff is entitled to continuing wages set forth in California Labor Code § 203.

49. Defendants Keegan Lee and Hee Young Lee, while acting as owners, officers, directors and managing agents of Defendants KYL BBQ, Inc and MAK BBQ, Inc caused said corporation to violate Labor Code § 203 with respect to Plaintiff. Therefore, pursuant to Labor Code § 558.1, Defendants Keegan Lee and Hee Young Lee are jointly and severally liable along with Defendants KYL BBQ, Inc and MAK BBQ, Inc for waiting time penalties of thirty (30) days wages, pursuant to Labor Code § 203.

SIXTH CAUSE OF ACTION

**FOR CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL ACT 2004
[Cal. Labor Code §§ 558, 558.1, and 2698 ET SEQ.]
(Plaintiff on Behalf of Himself and All Similarly Aggrieved Employees
of Defendants, Against All Defendants)**

50. Plaintiff and all similarly aggrieved employees re-allege and incorporate into this cause of action each of the preceding paragraphs.

51. At all times relevant to this action, Defendants devised, formulated, implemented and enforced the following policies and procedures:

- Defendants have required, suffered, and permitted Plaintiff and similarly aggrieved non-exempt employees to work overtime hours of more than eight (8) hours per workday or forty (40) hours per workweek and have failed to pay such similarly aggrieved employees overtime compensation for all overtime hours worked.
- Defendants have failed to provide Plaintiff and similarly aggrieved non-exempt employees with mandatory meal periods of thirty (30) minutes in duration for every five (5) hours worked.
- Defendants have failed to pay Plaintiff and similarly aggrieved non-exempt employees the premium compensation required by Labor Code § 226.7 for each day such similarly aggrieved employees did not receive a mandatory meal period.
- Defendants have failed to authorize or permit Plaintiff and similarly aggrieved non-exempt employees to take mandatory rest periods of ten (10) minutes duration for every four (4) hours worked, or major fraction thereof.
- Defendants have failed to pay Plaintiff and similarly aggrieved non-exempt employees the premium compensation required by Labor Code § 226.7 for each day such similarly aggrieved employees did not receive mandatory rest periods.

- 1 • Defendants have failed to provide Plaintiff and similarly aggrieved non-exempt
2 employees complete and accurate pay statements required by Labor Code § 226
3 each time they were paid.
- 4 • Defendants have failed to pay Plaintiff and similarly aggrieved non-exempt
5 employees who have separated from their employment, penalties in the form of
6 continued compensation up to thirty (30) workdays for willfully failing to pay
7 compensation to such persons promptly upon discharge or resignation as
8 required by Labor Code § 203.

9 52. Through their policies, Defendants repeatedly violated Labor Code Section 201
10 (which requires employers to pay discharged employees the full amount of all wages owing at
11 the time of termination), Labor Code Sections 202 (which requires employers to pay
12 employees who quit the full amount of all wages owing within 72 hours of termination),
13 Labor Code Section 203 (requiring payment of 30 days of continuing wages when employees
14 are not paid all wages owing timely following termination of employment), Labor Code
15 Section 204 (requiring employers to pay all wages owing no less frequently than twice a
16 month), Labor Code Section 206 (requiring employers to pay unconditionally all wages
17 owing), Labor Code Section 208 (requiring employers to pay at the place of discharge all
18 wages owing), Labor Code Section 226 (requiring employers to provide employees accurate
19 pay statements stating (among other things) the total hours worked and total wages paid
20 during the applicable pay period each and every time wages are paid), Labor Code Section
21 226.7 (requiring employers to pay premium compensation to employees who were not
22 provided off-duty meal periods), Labor Code Section 226.7 (requiring employers to pay
23 premium compensation to employees who were not provided off-duty rest periods), Labor
24 Code Section 510 (requiring employers to pay overtime compensation at legally mandated
25 rates for all hours worked in excess of 8 hours in a work day and hours worked in excess of 40
26 hours in a workweek), Labor Code Section 512 (requiring employers to provide employees
27 off-duty 30 minute meal periods every five hours worked), and Labor Code Section 558
28 (requiring employers to adhere to statutes and California Industrial Welfare Commission

1 Wage Order requirements dealing with the payment of overtime compensation, meal periods,
2 rest periods, and record-keeping).

3 53. On September 5, 2019, pursuant to California Labor Code § 2699.3, Plaintiff,
4 through his counsel, provided the California Labor and Workforce Development Agency
5 written notice of the specific provisions of the Labor Code that are alleged to have been
6 violated, including the facts and theories to support such violations. (**See Exhibit A**). A copy
7 of said notice was also posted to Defendants by certified mail pursuant to the requirements of
8 Labor Code § 2699.3.

9 54. The LWDA has failed to notify Plaintiff of its intent to investigate these
10 penalty claims within sixty-five (65) days.

11 55. Thus, Plaintiff has exhausted administrative remedies under PAGA's Labor
12 Code § 2699.3(a)(2)(A).

13 56. Pursuant to Labor Code Section 2699, Plaintiff in a representative capacity is
14 entitled to recover in connection with himself, and in connection with each and every current
15 and former similarly aggrieved non-exempt employee of Defendants, for each and every pay
16 period in which a Labor Code violation occurred:

17 (A) A penalty not less than \$100 for each initial violation, and a penalty of not less
18 than \$200 for each subsequent violation, of California Labor Code Sections
19 201, 202, 204, 206, 208, 226.7 (Labor Code Section 2699(f)); and

20 (B) A penalty of not less than \$50 for each initial violation, and a penalty of not
21 less than \$100 for each subsequent violation, of California Labor Code
22 Sections 510, 512, 551, 552 (Labor Code Section 558); and

23 (C) A penalty in the amount calculated in accordance with the provisions of Labor
24 Code Sections 203 and 226.

25 57. In addition, Plaintiff is entitled to reasonable attorney's fees and costs pursuant
26 to Labor Code § 2699(g).

27 **SEVENTH CAUSE OF ACTION**

28 **VIOLATIONS OF THE UNFAIR COMPETITION ACT**

1 [Cal. Bus. & Prof. Code §§ 17200-17208]

2 (Plaintiff Against All Defendants)

3 58. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set
4 forth herein.

5 59. Defendants, and each of them, are “persons” as defined by Business and
6 Professions Code § 17201.

7 60. By this cause of action, Plaintiff seeks to enforce important rights affecting the
8 public interest. Plaintiff sues for his own interests as a former employee of the Defendants and
9 as parties harmed by Defendants’ unfair business practices.

10 61. Plaintiff suffered injuries-in-fact and has lost money as a result of Defendants’
11 unfair competition alleged herein.

12 62. Defendants have previously or continue to engage in unlawful, unfair, and/or
13 fraudulent business practices in violation of California Business and Professions Code §
14 17200, et seq. by, inter alia:

15 a. Failing to pay Defendants’ employees, including Plaintiff, legally
16 required overtime premiums;

17 b. Failure to provide legally required meal breaks to Defendants’
18 employees, including Plaintiff;

19 c. Failure to authorize and permit legally required rest breaks to
20 Defendants’ employees, including Plaintiff;

21 d. Failing to furnish timely and accurate wage statements to Defendants’
22 employees, including Plaintiff;

23 e. Failing to pay all wages due at termination or resignation to Defendants’
24 former employees, including Plaintiff; and

25 f. Failing to maintain accurate records of Defendants’ employees, including
26 Plaintiff.

27 63. Defendants, and each of them, in both a corporate and individual capacity, have
28 personally and intentionally participated in, assisted, and/or conspired to commit these

1 unlawful, unfair, and fraudulent business practices.

2 64. Defendants, and each of them, have profited from these unlawful, unfair, and
3 fraudulent business practices at the expense of Plaintiff, at the expense of law-abiding
4 businesses, and at the expense of the public.

5 65. As a direct and proximate result of Defendants' unfair and unlawful business
6 practices as alleged herein, Plaintiff has sustained injury and damages, including unpaid
7 overtime, unpaid meal period premium pay, unpaid rest period premium pay, receipt of
8 inaccurate wage statements, and unpaid waiting time penalties, in an amount to be established
9 at trial.

10 66. Defendants, and each of them, should therefore be ordered to immediately
11 cease from engaging in the unlawful, unfair, and fraudulent conduct alleged herein, and
12 restore as restitution to Plaintiff those amounts accrued during the relevant claim period, and
13 not otherwise awarded in connection with the previous causes of action, as follows:

14 (A) Unpaid overtime compensation required by California law, in an
15 amount to be proven at trial;

16 (B) Unpaid compensation for meal periods not received in accordance with
17 California law, in an amount to be proven at trial;

18 (C) Unpaid premium pay for rest periods not received in accordance with
19 California law, in an amount to be proven at trial;

20 (D) Penalties for failure to issue accurate wage statements in accordance
21 with California law, in an amount to be proven at trial;

22 (E) Waiting time penalties of 30 days wages not received in accordance
23 with California law, in an amount to be proven at trial;

24 67. Plaintiff seeks restitution of wages from all Defendants in an amount to be
25 proven at trial, and an injunction prohibiting Defendants from engaging in the unlawful,
26 unfair, and fraudulent conduct alleged herein.

27 68. In addition, Defendants are jointly and severally liable to Plaintiff for
28 reasonable attorney's fees and costs, which are respectfully requested, in an amount to be
proved according to law.

1 **PRAYER**

2 WHEREFORE Plaintiff prays judgment be entered against Defendants as follows:

3 **ON THE FIRST CAUSE OF ACTION**

- 4 A. For unpaid overtime compensation pursuant to California Labor Code § 1194 in
5 an amount to be proven at trial;
6 B. For restitution of unpaid overtime compensation owing pursuant to California
7 law in an amount to be proven at trial;
8 C. For attorneys' fees, costs, and interest;

9 **ON THE SECOND CAUSE OF ACTION**

- 10 D. For compensation for meal periods not received pursuant to Labor Code § 226.7
11 in an amount to be proven at trial;
12 E. For restitution of unpaid compensation for meal periods not received pursuant to
13 California law in an amount to be proven at trial;

14 **ON THE THIRD CAUSE OF ACTION**

- 15 F. For compensation for rest periods not received pursuant to Labor Code § 226.7
16 in an amount to be proven at trial;
17 G. For restitution of unpaid compensation for rest periods not received pursuant to
18 California law in an amount to be proven at trial;

19 **ON THE FOURTH CAUSE OF ACTION**

- 20 H. For the penalty specified in Labor Code § 226(e) in an amount to be proven at
21 trial of not less than \$4,000.00;
22 I. For attorneys' fees, costs, and interest;

23 **ON THE FIFTH CAUSE OF ACTION**

- 24 J. For the penalty specified in Labor Code § 203 in an amount to be proven at trial;

25 **ON THE SIXTH CAUSE OF ACTION**

- 26 K. For civil penalties owing Plaintiff and similarly aggrieved employees, pursuant
27 to Labor Code § 2698 et seq., and reasonable attorney's fees and costs, in an
28 amount according to proof at trial;

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

- 7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

3
4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

3
4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

5
6
7
8
9
20
21
22
23
24
25
26
27
28

9
20
21
22
23
24
25
26
27
28

20
21
22
23
24
25
26
27
28

22
23
24
25
26
27
28

22
23
24
25
26
27
28

24
25
26
27
28

EXHIBIT A

September 5, 2019

VIA – CERTIFIED MAIL

KYL BBQ, Inc
Agent for Service of Process: Keegan Lee
10250 Santa Monica Blvd Ste FC5
Los Angeles CA 90067

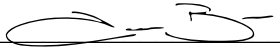
**Re: EDGAR GAMBOA ROCHA v. KYL BBQ, Inc, et al.
Notice of PAGA Filing**

Dear KYL BBQ, Inc, et al.:

Enclosed please find a PAGA Notice that is being served on you today by certified mail, pursuant to the requirements of California Labor Code §2699.3 (a)(1)(A).

Sincerely,

THE BYRNE LAW GROUP



Adrian C. Byrne, Esq.

cc. VIA - CERTIFIED MAIL

MAK BBQ, Inc
Agent for Service of Process: Hee Young Lee
6600 Topanga Canyon Blvd #FC01
Canoga Park CA 91303

VIA - CERTIFIED MAIL

Keegan Lee
779 Starlight Heights Dr
La Canada Flintridge, CA 91011

VIA - CERTIFIED MAIL

Hee Young Lee
981 Calle La Primavera
Glendale, CA 91208

1 Adrian Byrne (SBN 304020)
THE BYRNE LAW GROUP
2 840 Apollo St., # 311
El Segundo, CA 90245
3 Tel: (800) 805-4002
4 Email: adrian@thebyrnelawgroup.com

5 (Attorney for Edgar Gamboa Rocha and
6 Similarly Aggrieved Employees)

7
8 **STATE OF CALIFORNIA**
9 **LABOR AND WORKFORCE DEVELOPMENT AGENCY**

10
11 EDGAR GAMBOA ROCHA, an individual,
on behalf of himself and all Aggrieved
12 Employees,

13 v.

14 KYL BBQ, INC a California corporation
15 doing business as LA VACA BRAZILIAN
GRILL; MAK BBQ, INC a California
16 corporation; KEEGAN LEE, an individual;
and HEE YOUNG LEE, an individual, an
17 individual,

18 Employers and Responsible Persons.
19

NOTICE PURSUANT TO CALIFORNIA
LABOR CODE § 2699.3 (CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004)

1 **NOTICE PURSUANT TO CALIFORNIA LABOR CODE SECTION 2699**

2 **I. INTRODUCTION**

3 The undersigned represents Mr. Edgar Gamboa Rocha and all similarly aggrieved employees.
4 Mr. Gamboa Rocha is an “aggrieved employee” within the meaning of California Labor Code § 2699.
5 This document constitutes the notice required by California Labor Code § 2699.3.

6 **II. FACTS**

7 **A. The Employers**

8 During the time period relevant to this notice, Defendant KYL BBQ, Inc has operated a
9 restaurant business under the fictitious business name “La Vaca Brazilian Grill” in Los Angeles
10 County, California. Keegan Lee is the owner of, and is in complete control of, KYL BBQ, Inc. The
11 registered address of KYL BBQ, Inc in California is 10250 Santa Monica Blvd, Ste FC5 Los Angeles
12 CA 90067. Defendant MAK BBQ, Inc has operated a restaurant business at Los Angeles County,
13 California. Hee Young Lee is the owner of, and is in complete control of, MAK BBQ, Inc. The
14 registered address of MAK BBQ, Inc in California is 6600 Topanga Canyon Blvd FC12, Canoga Park
15 CA 91303.

16 Hereinafter, Keegan Lee, Hee Young Lee, KYL BBQ, Inc doing business as La Vaca Brazilian
17 Grill, and MAK BBQ, Inc are referred to collectively as “the Employers.”

18 **B. The Aggrieved Employees**

19 Between approximately 2013 to August 12, 2019, Mr. Gamboa Rocha was employed by the
20 Employers as a Cook, Food Preparer, and Cashier at the La Vaca Brazilian Grill restaurant located at
21 10250 Santa Monica Blvd, Ste FC5 Los Angeles CA 90067 and at the La Vaca Brazilian Grill
22 restaurant located at 6600 Topanga Canyon Blvd FC12, Canoga Park CA 91303, operated by MAK
23 BBQ, Inc.

24 In violation of the California Labor Code, during the relevant time period, the Employers (a)
25 did not pay Mr. Gamboa Rocha and similarly aggrieved non-exempt employees overtime wages for
26 all overtime hours worked, (b) failed to provide Mr. Gamboa Rocha and similarly aggrieved non-
27 exempt employees legally mandated and legal compliant meal and rest periods, (c) failed to pay Mr.

1 Gamboa Rocha and similarly aggrieved non-exempt employees the premium compensation required
2 by Wage Order 5 and Labor Code § 226.7 for having been denied all legally mandated meal and rest
3 periods, (d) failed to provide Mr. Gamboa Rocha Rocha and similarly aggrieved non-exempt
4 employees with legally compliant wage statements accurately reflecting gross wages earned and the
5 total hours worked, and (e) failed to pay all wages due to Mr. Gamboa Rocha and similarly aggrieved
6 non-exempt employees upon his separation of employment.

7 **III. EMPLOYER PRACTICES AND LABOR CODE VIOLATIONS**

8 **A. Company-Wide Employer Practices**

9 During the relevant time period, including the present, the Employers have routinely and
10 systematically failed to comply with California's wage and hour statutes with respect to Mr. Gamboa
11 Rocha Rocha and all similarly aggrieved non-exempt employees at the Employers' restaurants
12 throughout California. Specifically:

13 **a. Overtime:**

- 14 • The Employers have required Mr. Gamboa Rocha Rocha and all similarly aggrieved
15 non-exempt employees at the Employers' restaurants throughout California, including
16 but not limited to those employed as cooks, food preparers, cashiers, and similar
17 positions, to work more than eight (8) hours per workday or forty (40) hours per
18 workweek.
- 19 • The Employers have required, suffered, or permitted Mr. Gamboa Rocha Rocha and all
20 similarly aggrieved non-exempt employees at the Employers' restaurants throughout
21 California to work daily and weekly overtime hours and have failed to pay such
22 persons overtime compensation for all overtime hours worked.

23 **b. Meal and Rest Periods:**

- 24 • The Employers have failed to provide Mr. Gamboa Rocha and all similarly aggrieved
25 non-exempt employees at the Employers' restaurants throughout California, including
26 but not limited to those employed as cooks, food preparers, cashiers, and similar
27 positions, with legally compliant meal periods of thirty (30) minutes in duration for
28

every five (5) hours worked. Specifically, the Employers have implemented a uniform policy and practice of preventing Mr. Gamboa Rocha and similarly aggrieved employees at the Employers restaurants in California from taking their first and second 30-minute meal periods when they worked more than five (5) hours or ten (10) hours in a workday.

- The Employers have failed to pay Mr. Gamboa Rocha and all similarly aggrieved non-exempt employees at the Employers restaurants throughout California, including but not limited to those employed as cooks, food preparers, cashiers, and similar positions, premium compensation required by Labor Code § 226.7 for each day they did not receive a mandatory first or second 30-minute meal period for working more than five (5) hours or ten (10) hours in a workday.
- The Employers have failed to provide Mr. Gamboa Rocha and all similarly aggrieved non-exempt employees at the Employers' restaurants throughout California, including but not limited to those employed as cooks, food preparers, cashiers, and similar positions, with legally compliant rest periods of ten (10) minutes duration for every four (4) hours worked, or major fraction thereof.
- The Employers have failed to pay Mr. Gamboa Rocha and all similarly aggrieved non-exempt employees at the Employers restaurants throughout California, including but not limited to those employed as cooks, food preparers, cashiers, and similar positions, premium compensation required by Labor Code § 226.7 for each day they did not receive mandatory rest periods.

c. Failure to Maintain Accurate Records:

- The Employers have failed to maintain and retain accurate and legitimate time records showing when the persons they have employed as cooks, food preparers, cashiers, and similar positions (including Mr. Gamboa Rocha and similarly aggrieved employees at the Employers' restaurants in California) started and ended all work periods and meal periods, as required by Industrial Welfare Commission Wage Order 5-2001 § 7 (A)(3).

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 2
3
4
5
6
7
8
9
0
1

2

- 3
4
5
6
7
8

9

20
21
22

23
24
25
26
27

1 Labor Code § 202: The Employers violated Labor Code § 202 by failing to pay Mr. Gamboa
2 Rocha and similarly aggrieved non-exempt employees at the Employers' restaurants throughout
3 California who have separated from their employment the correct amount of all wages owing within
4 72 hours of the termination.

5 Labor Code § 203: The Employers violated Labor Code § 203 by failing to pay thirty (30)
6 days of continuing wages to Mr. Gamboa Rocha and similarly aggrieved non-exempt employees at the
7 Employers' restaurants throughout California who are owed unpaid overtime compensation, and
8 unpaid premium wages for meal and rest periods not received.

9 Labor Code § 204: The Employers have violated, and continues to violate, Labor Code § 204
10 by failing to pay *all* wages owing to Mr. Gamboa Rocha and similarly aggrieved non-exempt
11 employees at the Employers' restaurants throughout California including overtime compensation and
12 premium wages for meal and rest periods not received, no less frequently than twice a month.

13 Labor Code § 206: The Employers have violated, and continues to violate, Labor Code § 206
14 by failing to pay unconditionally all wages owing to Mr. Gamboa Rocha and similarly aggrieved non-
15 exempt employees at the Employers' restaurants throughout California, including: overtime
16 compensation and premium wages for meal and rest periods not received, which were not, and are not,
17 disputed in good faith by the Employers.

18 Labor Code § 226: The Employers have violated, and continue to violate, Labor Code § 226
19 by failing to provide Mr. Gamboa Rocha and similarly aggrieved non-exempt employees at the
20 Employers' restaurants throughout California, with wage statements each time wages have been paid,
21 which accurately provide all the information required by the statute, including (but not limited to) the
22 total hours worked during the applicable pay period, and meal and rest period premiums for missed or
23 untimely meal and rest periods.

24 Labor Code § 226.7: The Employers have violated, and continue to violate, Labor Code §
25 226.7 by failing to pay premium compensation to Mr. Gamboa Rocha and similarly aggrieved non-
26 exempt employees at the Employers' restaurants throughout California for failing to provide
27 mandatory legally compliant off-duty meal periods.
28

1 Labor Code § 226.7: The Employers have violated, and continues to violate, Labor Code §
2 226.7 by failing to pay premium compensation to Mr. Gamboa Rocha and similarly aggrieved non-
3 exempt employees at the Employers' restaurants throughout California for failing to permit mandatory
4 legally compliant off-duty rest periods.

5 Labor Code § 510: The Employers have violated, and continues to violate, Labor Code § 510
6 by failing to pay overtime compensation to Mr. Gamboa Rocha and similarly aggrieved non-exempt
7 employees at the Employers' restaurants throughout California at legally mandated rates for all hours
8 worked in excess of 8 hours in a work day and all hours worked in excess of 40 hours in a workweek.

9 Labor Code § 512: The Employers have violated, and continue to violate, Labor Code § 512,
10 by failing to provide Mr. Gamboa Rocha and similarly aggrieved non-exempt employees at the
11 Employers' restaurants throughout California off-duty 30-minute meal periods every five hours
12 worked.

13 Labor Code § 558: The Employers have violated, and continue to violate, Labor § 558 by
14 failing to adhere to statutes and Wage Order requirements dealing with the payment of overtime
15 compensation, meal periods, rest periods and record-keeping with respect to Mr. Gamboa Rocha and
16 similarly aggrieved non-exempt employees at the Employers' restaurants throughout California.

17 **C. Parties Liable for Penalties**

18 During the relevant time period KYL BBQ, Inc was the entity identified as the legal employer
19 of Mr. Gamboa Rocha and similarly aggrieved non-exempt employees at the Employers' restaurants
20 throughout California. Upon information and belief, MAK BBQ, Inc also operated Employers'
21 restaurants throughout California during the relevant claim period. Therefore, KYL BBQ, Inc and
22 MAK BBQ, Inc were at all relevant times employers of cooks, food preparers, cashiers and similarly
23 aggrieved non-exempt employees within the meaning of Wage Order 5.

24 Mr. Gamboa Rocha is informed and believes, and thereon alleges, that at all times herein
25 mentioned, Defendants Keegan Lee and Hee Young Lee acted as the alter ego of KYL BBQ, Inc and
26 MAK BBQ, Inc; and that KYL BBQ, Inc and MAK BBQ, Inc act as the alter ego of Defendants
27 Keegan Lee and Hee Young Lee.

1 Defendant Keegan Lee is the owner of, and is in complete control of, KYL BBQ, Inc; and
2 Defendant Hee Young Lee is the owner of, and is in complete control of, MAK BBQ, Inc. Mr.
3 Gamboa Rocha believes that there exists a unity of interest and ownership between KYL BBQ, Inc
4 and MAK BBQ, Inc on the one hand and Defendants Keegan Lee and Hee Young Lee on the other
5 hand, such that the separate personalities of KYL BBQ, Inc and MAK BBQ, Inc do not exist, that
6 KYL BBQ, Inc and MAK BBQ, Inc are inadequately capitalized, that corporate formalities of KYL
7 BBQ, Inc and MAK BBQ, Inc are disregarded, and that KYL BBQ, Inc and MAK BBQ, Inc are
8 operated and managed by and through Defendants Keegan Lee and Hee Young Lee.

9 It would be inequitable and unjust not to hold Defendants Keegan Lee and Hee Young Lee
10 jointly liable along with Defendants KYL BBQ, Inc and MAK BBQ, Inc for all the illegal actions
11 alleged herein.

12 In addition, during the relevant time period, the Employers actively, knowingly and
13 intentionally, enforced the illegal policies, practices and procedures described above and thus caused
14 the Labor Code violations identified in this notice.

15 **IV. CONCLUSION**

16 The undersigned respectfully requests that the California Labor and Workforce Development
17 Agency respond to this notification in accordance with law.

18
19 Date: September 5, 2019

THE BYRNE LAW GROUP

20
21 By:  _____

22 ADRIAN BYRNE
23 Attorney for Edgar Gamboa Rocha
24
25
26
27
28