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RUFFO PASTOR DIAZ, JAIME TORRES, and EDGAR GOMEZ

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

**RUFFO PASTOR DIAZ; JAIME TORRES; and
EDGAR GOMEZ,**

Plaintiffs,

v.

**DOS COYOTES DEVELOPMENT COMPANY,
LLC; DOS COYOTES SUNRISE, INC.; DOS
COYOTES CONCORD, INC.; EAST BAY
COYOTES, INC.; COLTAM, INC.; COLMAX LLC;
TRUMAX, LLC; COYOTE SUNSHINE, LLC;
COYOTE R15, INC.; ROBERT H. DAVIDSON;
JASON WOLENIK; MICHAEL TOPF; and DOES 1
through 25, inclusive,**

Defendants.

**ELECTRONICALLY
FILED**

10/12/2021

**K. BIEKER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA - MARTINEZ
A.Stewart, DEPUTY CLERK**

Case No.: CIVMSC20-01670

**THIRD AMENDED CLASS ACTION
COMPLAINT**

- (1) FAILURE TO PAY ALL HOURS
WORKED**
- (2) FAILURE TO PAY ALL OVERTIME
HOURS WORKED**
- (3) FAILURE TO PERMIT MEAL
PERIODS**
- (4) FAILURE TO PERMIT REST
PERIODS**
- (5) FAILURE TO FURNISH ACCURATE
WAGE STATEMENTS**
- (6) WAITING TIME PENALTIES**
- (7) PRIVATE ATTORNEYS GENERAL
ACT ("PAGA")**
- (8) UNFAIR COMPETITION IN
VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE §§ 17200 ET. SEQ**

JURY TRIAL DEMANDED

1 1. Plaintiffs RUFFO PASTOR DIAZ (hereinafter "PASTOR"), JAIME TORRES
2 (hereinafter "TORRES"), and EDGAR GOMEZ (hereinafter "GOMEZ") (collectively "PLAINTIFFS")
3 submit this Complaint on behalf of themselves and others similarly situated, against Defendants DOS
4 COYOTES DEVELOPMENT COMPANY, LLC (hereinafter "DC DEVELOPMENT COMPANY");
5 DOS COYOTES SUNRISE, INC. (hereinafter "DC SUNRISE"); DOS COYOTES CONCORD, INC.
6 (hereinafter "DC CONCORD"); EAST BAY COYOTES, INC. (hereinafter "DC SAN RAMON");
7 COLTAM, INC. (hereinafter "COLTAM"); COLMAX LLC (hereinafter "COLMAX"); TRUMAX,
8 LLC (hereinafter "TRUMAX"); COYOTE SUNSHINE, LLC (hereinafter "COYOTE SUNSHINE");
9 COYOTE R15, INC. (hereinafter "COYOTE R15"); ROBERT H. DAVIDSON (hereinafter
10 "DAVIDSON"); JASON WOLENIK (hereinafter "WOLENIK"); MICHAEL TOPF (hereinafter
11 "TOPF"); and DOES 1 through 25, inclusive (collectively "DEFENDANTS"). The allegations below
12 are made on PLAINTIFFS' information and belief:
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14 **I. INTRODUCTION & JURISDICTION**

15 2. PLAINTIFFS bring this action against DEFENDANTS on behalf of themselves and the
16 class of similarly situated current and former aggrieved employees of DEFENDANTS, for
17 compensatory damages, statutory damages, prejudgment interest, attorney's fees and costs, restitution,
18 and other appropriate and just relief.
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20 3. Plaintiff PASTOR only also brings this action under the Private Attorneys General Act
21 of 2004 ("PAGA") codified in Cal. Labor Code § 2698, et seq., allowing a private citizen to pursue
22 civil penalties on behalf of the State of California Labor & Workforce Development Agency
23 ("LWDA"). The aggrieved employee is allowed to seek civil penalties not only for violations that he or
24 she personally suffered but also for violations of "other current or former employees" pursuant to Cal.
25 Labor Code § 2699(a).
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4. With respect to the seventh cause of action, Plaintiff PASTOR only brings this action against Defendants DOS COYOTES DEVELOPMENT COMPANY, LLC; DOS COYOTES SUNRISE, INC.; EAST BAY COYOTES, INC.; DOS COYOTES CONCORD, INC.; JASON WOLENIK; MICHAEL TOPF; and ROBERT H. DAVIDSON only (collectively “PAGA DEFENDANTS”), on behalf of himself and the class of similarly situated current and former aggrieved employees of PAGA DEFENDANTS for civil penalties and attorney’s fees.

5. Jurisdiction is proper in this Court because the alleged damages exceed \$25,000.00.

6. Venue is proper because the actions or inactions hereby alleged occurred within the County of Contra Costa. DEFENDANTS conduct business and PASTOR and GOMEZ were employed by DEFENDANTS within the County of Contra Costa.

7. The “CLASS PERIOD” is August 26, 2016, four years preceding the filing of this action, through the entry of final judgment in this action.

8. The “PAGA PERIOD” is April 7, 2019 through the entry of final judgment in this action.

II. PARTIES

9. PLAINTIFFS are individuals.

10. COLMAX is a California limited liability company formed in 1996. The principal business office of COLMAX is located at 1784 Picasso Avenue, Suite B, Davis. COLMAX does business as Dos Coyotes Border Cafe. COLMAX is licensed to sell alcohol at DEFENDANTS' restaurants located at 2191 Cowell Blvd., Davis; 2030 Douglas Blvd., #4, Roseville; and 13385 Folsom Blvd., #100, Folsom. DAVIDSON is a manager and member of COLMAX. Kevin Rash ("Rash") is Accountant of COLMAX.

11. TRUMAX is a limited liability company formed in 2004. The principal business office of TRUMAX is located at 1784 Picasso Avenue, Suite B, Davis. TRUMAX does business as Dos

1 Coyotes Border Cafe. TRUMAX is licensed to sell alcohol at DEFENDANTS' restaurant located at
2 8519 Bond Road, #100, Elk Grove. DAVIDSON is a manager and member of TRUMAX. Rash is
3 Accountant of TRUMAX. Mark Casale ("Casale") is a member and stockholder of TRUMAX and
4 Executive Chef of DEFENDANTS.

5 12. COYOTE SUNSHINE is a limited liability company formed in 2005. COYOTE
6 SUNSHINE does business as Dos Coyotes Border Café. COYOTE SUNSHINE is licensed to sell
7 alcohol at DEFENDANTS' restaurant located at 6450 Folsom Blvd., #110, Sacramento. DAVIDSON
8 is a manager of COYOTE SUNSHINE. Trevor Sanders ("Sanders") is the agent for service of process,
9 and manager and member of COYOTE SUNSHINE. Angela Green ("Green") is Controller of
10 TRUMAX.
11

12 13. COLTAM is a California corporation formed in 2010. The principal business office of
13 COLTAM is located at 1784 Picasso Avenue, Suite B, Davis. COLTAM does business as Dos Coyotes
14 Border Cafe. COLTAM is licensed to sell alcohol at DEFENDANTS' restaurants located at 1735
15 Arden Way, #230, Sacramento, and 1411 W. Covell Blvd., Davis. DAVIDSON is the President and
16 stockholder of COLTAM. Rash is Accountant of COLTAM.
17

18 14. DC DEVELOPMENT COMPANY is a Nevada limited liability company formed in
19 2012. DC DEVELOPMENT COMPANY is composed of three (3) managers, including DAVIDSON.
20 DC DEVELOPMENT COMPANY'S office is located at 1784 Picasso Avenue, Suite B, Davis.
21 DEVELOPMENT COMPANY does business as Dos Coyotes Border Café.
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23 15. COYOTE R15 is a California corporation formed in 2013. COYOTE R15 does business
24 as Dos Coyotes Border Cafe. COYOTE R15 is licensed to sell alcohol at DEFENDANTS' restaurant
25 located at 2701 Del Paso Road, #160, Sacramento. DAVIDSON is a Director and stockholder of
26 COYOTE R15. Green is Director, Controller, and agent for service of process for COYOTE R15.
27 Sanders is an officer of COYOTE R15.
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1 16. DC CONCORD is a California corporation formed in 2015. The principal business
2 office of DC CONCORD is located at 1784 Picasso Avenue, Suite B, Davis. DC CONCORD does
3 business as Dos Coyotes Border Cafe. DC CONCORD is licensed to sell alcohol at DEFENDANTS'
4 restaurant located at 1975 Diamond Blvd, Concord. DEFENDANTS' restaurant at this address is no
5 longer operational. DAVIDSON is the Chief Executive Officer, President, and agent for service of
6 process for DC CONCORD. DC CONCORD was a joint venture between DAVIDSON, WOLENIK,
7 and TOPF. DAVIDSON, WOLENIK, and TOPF are stockholders of DC CONCORD. Rash is
8 Controller and Accountant for DC CONCORD.
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10 17. DC SUNRISE is a California corporation formed in 2016. The principal business office
11 of DC SUNRISE is located at 1784 Picasso Avenue, Suite B, Davis. DC SUNRISE does business as
12 Dos Coyotes Border Cafe. DC SUNRISE is licensed to sell alcohol at DEFENDANTS' restaurant
13 located at 5450 Sunrise Blvd, Citrus Heights, California. DAVIDSON is the President and a
14 stockholder of DC SUNRISE. Rash is Chief Financial Officer, Director, and Controller of DC
15 SUNRISE. Casale is a Director of DC SUNRISE.
16

17 18. DC SAN RAMON is a California corporation formed in 2016. DC SAN RAMON does
18 business as Dos Coyotes Border Cafe. DC SAN RAMON is licensed to sell alcohol at
19 DEFENDANTS' restaurant located at 3191 Crow Canyon Place, San Ramon, California.
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21 19. DAVIDSON is an individual, also known as Bobby Coyote. DAVIDSON is
22 individually liable for PLAINTIFFS' claims pursuant to Labor Code §§ 558, 558.1 because he is a
23 person acting on behalf of an employer, who violated, or caused to be violated Labor Code provisions
24 regulating the minimum wages or hours and days of work of PLAINTIFFS and putative class members.
25 He also violated or caused to be violated IWC Wage Order 5, Labor Code §§ 201-204, 226, 226.7, 512,
26 558, 558.1, 500, 510, 1194, 2698 et seq., and Business and Professions Code § 17200 et seq.
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1 20. WOLENIK is an individual. WOLENIK is the Secretary of DC CONCORD.
2 WOLENIK is the agent for service of process, Secretary, and Director of DC SAN RAMON.
3 WOLENIK is individually liable for PLAINTIFFS' claims pursuant to Labor Code §§ 558, 558.1
4 because he is a person acting on behalf of an employer, who violated, or caused to be violated Labor
5 Code provisions regulating the minimum wages or hours and days of work of PLAINTIFFS and
6 putative class members. He also violated or caused to be violated IWC Wage Order 5, Labor Code §§
7 201-204, 226, 226.7, 512, 558, 558.1, 500, 510, 1194, 2698 et seq., and Business and Professions Code
8 § 17200 et seq.
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10 21. TOPF is an individual. TOPF is the Chief Financial Officer of DC CONCORD. TOPF
11 is the Chief Executive Officer, Chief Financial Officer, and Director of DC SAN RAMON. TOPF is
12 individually liable for PLAINTIFFS' claims pursuant to Labor Code §§ 558, 558.1 because he is a
13 person acting on behalf of an employer, who violated, or caused to be violated Labor Code provisions
14 regulating the minimum wages or hours and days of work of PLAINTIFFS and putative class members.
15 He also violated or caused to be violated IWC Wage Order 5, Labor Code §§ 201-204, 226, 226.7, 512,
16 558, 558.1, 500, 510, 1194, 2698 et seq., and Business and Professions Code § 17200 et seq.
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18 22. DEFENDANTS own and operate restaurants at the following locations: (1) 5450
19 Sunrise Blvd, Citrus Heights, California; (2) 3191 Crow Canyon Place, San Ramon, California; (3)
20 1200 Athens Avenue, Lincoln, California; (4) 2701 Del Paso Road, #160, Sacramento, California; (5)
21 1411 W. Covell Blvd., Davis, California; (6) 1735 Arden Way, #230, Sacramento, California; (7) 2030
22 Douglas Blvd., #4, Roseville, California; (8) 2191 Cowell Blvd., Davis, California; (9) 13385 Folsom
23 Blvd., #100, Folsom, California; (9) 8519 Bond Road, #100, Elk Grove, California; and (10) 6450
24 Folsom Blvd., #110, Sacramento, California (hereinafter "Dos Coyotes Border Café Restaurants").
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26 23. DEFENDANTS are joint employers of PLAINTIFFS in that they exercised direct
27 control over the wages, hours, and working conditions of PLAINTIFFS.
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1 24. DEFENDANTS are an integrated enterprise and integrated employer of PLAINTIFFS in
2 that DEFENDANTS share common management, interrelationship between operations, centralized
3 control of labor relations, and common and/or financial control. DAVIDSON is a common officer and
4 owner of DEFENDANTS. DEFENDANTS have a common principal office address, which serves as a
5 corporate office and human resource office for DEFENDANTS. DEFENDANTS share common
6 management of business operations and employer-employee relations. Online catering orders for all
7 DEFENDANTS get processed at DEFENDANTS' corporate office by calling the corporate phone
8 number or by submitting an online request form. Online ordering for all of DEFENDANTS'
9 restaurants can be done on DEFENDANTS' website. DEFENDANTS' website has job descriptions for
10 DEFENDANTS' restaurants, including general manager, kitchen manager, assistant manager,
11 cashier/expediter, and prep and line cook positions, including an employment form that is submitted to
12 DEFENDANTS' corporate office. DEFENDANTS share a common employment manual and
13 personnel documents. DEFENDANTS harassment policy calls for its employees, including employees
14 at DC SAN RAMON, to immediately report incidents of harassment directly to DAVIDSON by calling
15 the corporate phone number or by emailing him directly. Other policies of DEFENDANTS call for its
16 employees, including DC SAN RAMON employees, to contact DEFENDANTS' corporate office.

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19 25. The actions of PLAINTIFFS' supervisors, managers, and/or other employees of
20 DEFENDANTS were ratified by DEFENDANTS. At all relevant times, the employees, owners,
21 supervisors, agents, and managers of DEFENDANTS acted within the course and scope of their
22 employment.

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24 26. DEFENDANTS were, at all relevant times, PLAINTIFFS' employer covered by
25 California's Labor Code and Industrial Welfare Commission Wage Order No. 5.

26 27. PLAINTIFFS are ignorant as to the true names and capacities of defendants sued herein
27 as "DOES 1 – 25, inclusive" and therefore sue these by such fictitious names and capacities.
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1 PLAINTIFFS will seek leave of court to amend this Complaint to include the actual names of these
2 fictitiously named DOE defendants if and when they are ascertained.

3 **III. STATEMENT OF FACTS**

4 28. Since 1991, PASTOR has worked for DEFENDANTS at multiple Dos Coyotes Border
5 Café locations.

6 29. Between 2015 and 2016, PASTOR worked for DEFENDANTS at several Dos Coyotes
7 Border Café locations, including the Sacramento International Airport and 1735 Arden Way, #230,
8 Sacramento.
9

10 30. On or about 2016, DEFENDANTS transferred PASTOR to work at DEFENDANTS'
11 Concord restaurant. PASTOR'S job title was Kitchen Manager. PLAINTIFF was paid by the hour for
12 hours worked. PASTOR regularly worked more than eight (8) hours per day for DEFENDANTS at its
13 Concord restaurant.
14

15 31. On or about April 2017, DEFENDANTS transferred PASTOR to work at its San Ramon
16 restaurant. PASTOR'S job title was Kitchen Manager. PASTOR worked between five (5) to seven (7)
17 days per week. PASTOR regularly worked more than eight (8) hours per day. During the first two (2)
18 months working at DEFENDANTS' San Ramon restaurant, PASTOR worked from approximately ten
19 (10) to fifteen (15) hours per day, seven (7) days per week. Thereafter, PASTOR worked approximately
20 nine to ten (10) hours per day, six days per week. On days when PASTOR had to cover for employees
21 who did not show up for work, PASTOR averaged approximately twelve (12) to thirteen (13) hours
22 worked per day. From approximately April 2017 to sometime in 2018, DEFENDANTS did not
23 authorize nor provide PASTOR the opportunity to track his hours worked at its San Ramon restaurant.
24 DEFENDANTS paid PASTOR as a exempt salaried employee for worked performed at its San Ramon
25 restaurant, irrespective of PASTOR'S actual hours worked. Initially, DEFENDANTS paid PASTOR a
26 gross amount of \$2,384.62 per pay period. On or about May 2017, DEFENDANTS paid PASTOR
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1 \$2,500.00 per pay period. By compensating PASTOR as a exempt salaried employee, DEFENDANTS
2 failed to properly compensate PLAINTIFF for all overtime and double time hours worked.

3 32. DEFENDANTS improperly compensated PASTOR as a exempt salaried employee for
4 hours worked at its San Ramon restaurant. PASTOR did not customarily and regularly exercise
5 discretion and independent judgment. If PASTOR exercised any discretion, it was with respect to
6 matters of insignificance. During the course of his employment, PASTOR was primarily engaged in
7 non-exempt duties, including cooking, prep cooking, and other manual, non-exempt duties. More than
8 fifty (50) percent of his time was spent performing non-exempt duties. PASTOR'S tasks were routine
9 and based upon following a rigid set of guidelines and instructions from his supervisors, as opposed to
10 choosing between several alternative courses of conduct. When PASTOR ordered food supplies for
11 DEFENDANTS' kitchen, he did so from a prescribed list provided by DEFENDANTS, and made
12 purchases only from the vendors selected by DEFENDANTS. PASTOR learned how to perform his
13 duties based on knowledge and skills acquired by working for DEFENDANTS since 1991. PASTOR
14 did not have the authority to vary the hours of operation of DEFENDANTS, DEFENDANTS' menu,
15 ingredients in any of DEFENDANTS' menu items, or method of preparation of menu items. PASTOR
16 did not prepare employee performance reports, approve pay increases or adjust rates of pay, ensure
17 licensing compliance, control the kitchen budget, do payroll, maintain food costs percentages, maintain
18 labor percentages, or approve sick day requests. PASTOR did not have authority to hire and fire
19 employees. PASTOR does not have a high school degree. Any job schedules that PASTOR proposed
20 had to be approved by DEFENDANTS' general managers. At no point was PASTOR subject to a
21 performance evaluation by DEFENDANTS. PASTOR does not have a higher education degree or a
22 culinary degree. PASTOR has never attended executive or managerial training. PASTOR has never
23 been provided with sexual harassment training. PASTOR'S primary language is Spanish. PASTOR
24 has limited English reading, writing, and speaking ability. PASTOR was paid on an hourly basis at
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1 other restaurants of DEFENDANTS where his title was Kitchen Manager. There was always a General
2 Manager on shift to exercise discretion and independent judgement over kitchen operations and matters
3 of significance. Rash, former General Manager at DC SAN RAMON, was PLAINTIFF'S supervisor.
4 Casale was also PASTOR'S supervisor when he worked and visited DC SAN RAMON. On or about
5 mid-2019, Simon, last name unknown, became General Manager at the San Ramon location and
6 PLAINTIFF'S supervisor.

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8 33. On or about December 16, 2019, PASTOR'S employment with DEFENDANTS ended.

9 34. On or about 1994, TORRES was hired by DEFENDANTS to work at its restaurant
10 located at 1735 Arden Way, #230, Sacramento. On or about 2010, TORRES worked for
11 DEFENDANTS at its restaurant located at 2030 Douglas Blvd., #4, Roseville. TORRES was hired by
12 DEFENDANTS as a cook.

13 35. TORRES worked six (6) or more hours per day for DEFENDANTS. TORRES worked
14 six (6) days per week for DEFENDANTS. On several occasions, TORRES worked more than forty
15 (40) hours per week for DEFENDANTS.
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17 36. On or about June 2020, TORRES' employment with DEFENDANTS ended.

18 37. On or about 2017, GOMEZ was hired by DEFENDANTS as a cook. GOMEZ worked
19 for DEFENDANTS' restaurant located at 3191 Crow Canyon Place, San Ramon, California.

20 38. During the course of his employment, GOMEZ worked five (5) to six (6) days per week
21 for DEFENDANTS. GOMEZ worked approximately five (5) to (6) hours per day for DEFENDANTS.
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23 39. On or about December 2019, GOMEZ' employment with DEFENDANTS ended.

24 40. During the course of their employment, PLAINTIFFS, and similarly situated current and
25 former employees of DEFENDANTS, were not authorized nor provided an opportunity to take all
26 proper rest breaks for every four (4) hours worked or major fraction thereof that they were entitled to
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1 take. PLAINTIFFS, and similarly situated current and former employees, were not provided with rest
2 breaks. PLAINTIFFS, and similarly situated current and former employees, did not receive rest breaks.

3 41. During the course of their employment, DEFENDANTS failed to pay PLAINTIFFS,
4 and similarly situated current and former employees, one hour at their regular hourly rate of pay for
5 each rest period that PLAINTIFFS, and similarly situated current and former employees, were not
6 provided nor allowed to take.

7 42. During the course of their employment, PLAINTIFFS, and similarly situated current and
8 former employees, were not provided an opportunity to take all proper meal breaks when their shifts
9 were over five (5) hours.
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11 43. PASTOR' and TORRES' meal breaks were regularly interrupted in order to process food
12 orders. Additionally, DEFENDANTS had an unlawful policy and practice of having its employees work
13 periods of more than five (5) hours per day, but less than six (6) hours per day, without providing
14 employees with meal periods and without mutual waiver of such meal periods by its employees.
15 PLAINTIFFS are aware of other employees who worked more than six (6) hours per day and were not
16 provided with meal breaks.
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18 44. On several occasions, TORRES was required to clock in for meal breaks but was
19 required to continue working. DEFENDANTS did not compensate TORRES for hours worked while
20 clocked out for meal breaks.

21 45. During the course of his employment, GOMEZ was not authorized nor provided with
22 meal breaks. On several occasions, GOMEZ was forced to take five (5) minutes or less to eat while
23 working.
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25 46. During the course of their employment, DEFENDANTS failed to pay PLAINTIFFS,
26 and similarly situated current and former employees, one hour at PLAINTIFFS' regular hourly rate of
27 pay for each meal period that they were not properly provided nor allowed to take.
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1 47. DEFENDANTS provided PLAINTIFFS, and similarly situated current and former
2 employees, with inaccurate wage statements. DEFENDANTS issued wage statements that failed to
3 show all actual hours worked, all actual gross and net wages earned, and all rest and meal break
4 premiums owed.

5 48. PLAINTIFFS are aware of other employees of DEFENDANTS who were required to
6 purchase their work uniform and were not reimbursed for this expense. PLAINTIFFS are aware of other
7 employees of DEFENDANTS who were required to pay for the replacement work uniforms and were not
8 reimbursed for this expense. This includes TORRES who was required to pay out of pocket for
9 DEFENDANTS' t-shirts and hats.
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11 49. During the course of their employment, DEFENDANTS had a policy and practice of
12 unlawfully deducting the cost of PLAINTIFFS' work uniform from employees' first paycheck instead of
13 employees' last paycheck.

14 50. DEFENDANTS willfully failed to pay all wages and premiums due to PLAINTIFFS,
15 and other similarly situated former employees of DEFENDANTS, who were discharged or quit,
16 entitling them to receive statutory penalties in the form of wages from DEFENDANTS for each
17 violation committed.
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19 51. PLAINTIFFS' allegations apply to all Dos Coyote Border Cafe Restaurants.
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21 **IV. CLASS ACTION ALLEGATIONS**

22 52. **DEFINITION:** PLAINTIFFS bring this action on behalf of themselves and a putative
23 class of similarly situated employees pursuant to California Code of Civil Procedure § 382. The class
24 is defined as:
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26 53. "All current and former hourly or non-exempt employees of DEFENDANTS who
27 worked in the State of California at any time from four years from the date of the filing of this action
28 through the entry of final judgment in this action."

1 54. **NUMEROSITY AND ASCERTAINABILITY:** The members of the class are so
2 numerous that joinder of all members would be impractical, if not impossible. PLAINTIFFS are
3 informed and believe that there are over one hundred (100) employees working for DEFENDANTS in
4 California at any one time. The identity of putative class members is readily ascertainable by review of
5 DEFENDANTS' records. Notice can be provided to DEFENDANTS' employees using techniques and
6 a form of notice similar to those customarily used in class action lawsuits.

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8 55. PLAINTIFFS are informed, believe, and based thereon allege that DEFENDANTS'
9 employees are denied:

- 10 a) Compensation for all hours worked;
11 b) Missed or improper rest period compensation;
12 c) Missed or improper meal period compensation;
13 d) Accurate itemized wage statements; and
14 e) Waiting time penalties.

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16 56. **ADEQUACY OF REPRESENTATION:** PLAINTIFFS are members of the putative
17 class. PLAINTIFFS do not have any conflicts of interest with other putative class members and will
18 prosecute the case vigorously on behalf of the putative class. PLAINTIFFS will fairly and adequately
19 represent and protect the interests of putative class members. PLAINTIFFS' counsel is competent and
20 experienced in litigating wage and hour class actions.

21
22 57. **SUPERIORITY OF CLASS ACTION:** A class action is superior to all other available
23 means of fair and efficient adjudication of this controversy. Individual joinder of all putative class
24 members is not practicable, and questions of law and fact common to the putative class predominate
25 over any questions affecting only individual members of the class. DEFENDANTS' employees have
26 been damaged and are entitled to recovery by reason of DEFENDANTS' unlawful policies and/or
27 practices described herein. Because the damages suffered by individual putative class members may be
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1 relatively small, albeit significant, the expense and burden of individual litigation make it impractical
2 for most putative class members to seek individual redress for the wrongful conduct alleged. Class
3 action treatment will allow those similarly situated persons to litigate their claims in the manner that is
4 most efficient and economical for the parties and the judicial system.

5 58. The Labor Code and IWC Wage Order No. 5, are broadly remedial in nature. These
6 laws and labor standards serve an important public interest in establishing minimum working
7 conditions and standards in California. These laws and labor standards protect the average working
8 employee from exploitation by employers who may seek to take advantage of superior economic
9 conditions and bargaining power in setting onerous terms and conditions of employment.

10 59. The nature of this action and the format of laws available to PLAINTIFFS and members
11 of the putative class identified herein make the class action format a particularly efficient and
12 appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an
13 individual lawsuit, the corporate DEFENDANTS would necessarily gain an unconscionable advantage
14 since it would be able to exploit and overwhelm the limited resources of each individual plaintiff with
15 their vastly superior financial and legal resources. Requiring each putative class member to pursue an
16 individual remedy would also discourage the assertion of lawful claims by employees who would be
17 disinclined to file an action against their former and/or current employer for real and justifiable fear of
18 retaliation and permanent damage to their careers at subsequent employment.

19 60. The prosecution of separate actions by individual putative class members, even if
20 possible, would create a substantial risk of: (a) Inconsistent or varying adjudications with respect to
21 individual putative class members against the DEFENDANTS, which would establish potentially
22 incompatible standards of conduct for the DEFENDANTS; and/or (b) Adjudications with respect to
23 individual putative class members which would, as a practical matter, be dispositive of the interest of
24 the other putative class members not parties to the adjudications, or which would substantially impair
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1 or impede the ability of DEFENDANTS' aggrieved employees to protect their interests. Further, the
2 claims of the individual members of the putative class are not sufficiently large to warrant vigorous
3 individual prosecution considering all of the concomitant costs and expenses.

4 61. **COMMON QUESTION OF LAW AND FACT:** There are questions of law and fact
5 common to putative class members that predominate over any questions affecting only individual
6 members of the class. These common questions of law and fact include:

7 62. Whether DEFENDANTS have failed to pay employees wages for all hours worked,
8 including all overtime hours worked;

9 63. Whether DEFENDANTS have failed to provide compensation to employees who were
10 not provided rest periods in accordance with applicable law;

11 64. Whether DEFENDANTS have failed to provide compensation to employees who were
12 not provided meal periods in accordance with applicable law;

13 65. Whether wage statements provided to DEFENDANTS' employees are adequate under
14 applicable law, and whether employees are entitled to receive statutory penalties from DEFENDANTS
15 for each wage statement violation committed; and

16 66. Whether DEFENDANTS willfully failed to pay all wages due to DEFENDANTS'
17 employees who were discharged or quit, and whether such employees are entitled to receive statutory
18 penalties from DEFENDANTS for each violation committed.

19 67. **TYPICALITY:** PLAINTIFFS' claims are typical to the claims of all members of the
20 putative class. PLAINTIFFS are members of the putative class and have suffered the alleged, class-
21 wide violations described herein.
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V. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

By PLAINTIFFS and the Putative Class Against DEFENDANTS

(Failure To Pay All Hours Worked)

68. PLAINTIFFS reallege and incorporate the above allegations by reference.

69. Pursuant to the IWC Wage Order 5 and Cal. Labor Code §§ 201 and 204, DEFENDANTS were required to compensate PLAINTIFFS, and similarly situated current and former employees, for all hours worked.

70. During the CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFFS, and similarly situated current and former employees, for all hours worked.

71. DEFENDANTS have a policy and practice of inaccurately tracking and compensating the hours worked of PLAINTIFFS, and similarly situated current and former employees. This illegal practice systematically undercompensates PLAINTIFFS, and similarly situated current and former employees of DEFENDANTS, by not paying them for all minutes or hours worked. DEFENDANTS also engage in a rounding practice that results in the underpayment of wages.

72. DEFENDANTS have a policy and practice of misclassifying PASTOR, and similarly situated current and former employees, as exempt salaried employees. This illegal practice systematically undercompensates PASTOR, and similarly situated current and former employees of DEFENDANTS, for overtime hours worked.

73. As a result of DEFENDANTS' unlawful acts, PLAINTIFFS, and similarly situated current and former employees, have been deprived of compensation for all hours worked in an amount to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, under Labor Code §§ 218.5.

1 74. By violating IWC Wage Order 5 and Labor Code §§ 201 and 204, DEFENDANTS are
2 liable for attorneys' fees and costs under Labor Code §§ 218.5 and 1194.

3 75. PLAINTIFFS, on behalf of themselves and similarly situated current and former
4 employees of DEFENDANTS, request relief as described below.

5 **SECOND CAUSE OF ACTION**

6 By PASTOR, TORRES and the Putative Class Against DEFENDANTS

7 *(Failure to Pay Overtime Compensation)*

8 76. PASTOR and TORRES reallege and incorporate the above allegations by reference.
9

10 77. Pursuant to Wage Order # 5 and Labor Code §§ 500, 510, and 1194, PASTOR,
11 TORRES, and similarly situated current and former employees, are owed premium compensation for
12 all overtime hours worked for DEFENDANTS.

13 78. DEFENDANTS failed to pay PASTOR, TORRES, and similarly situated current and
14 former employees, overtime compensation when they worked more than eight (8) hours per day or
15 more than forty (40) hours per week, or the first eight (8) hours on the seventh day of work.
16

17 79. DEFENDANTS failed to pay PASTOR, TORRES, and similarly situated current and
18 former employees, double time compensation when they worked more than twelve (12) hours per day
19 or more than eight (8) hours on the seventh day of work.

20 80. As a result of DEFENDANTS' unlawful acts, PASTOR, TORRES, and similarly
21 situated current and former employees of DEFENDANTS, have been deprived overtime compensation
22 in an amount to be determined at trial, and are entitled to recovery of such amounts, plus interest
23 thereon, under Labor Code § 1194.
24

25 81. PASTOR, TORRES, on behalf of themselves and similarly situated current and former
26 employees of DEFENDANTS, request relief as described below.
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THIRD CAUSE OF ACTION

By PLAINTIFFS and the Putative Class Against DEFENDANTS

(Failure to Pay Compensation for Missed & Improper Meal Periods)

82. PLAINTIFFS reallege and incorporate the above allegations by reference.

83. Pursuant to Labor Code §§ 226.7(a), 512, and Wage Order No. 5, DEFENDANTS are required to authorize and permit PLAINTIFFS, and similarly situated current and former employees of DEFENDANTS, the opportunity to take meal periods based upon total hours worked, at a rate of thirty (30) minutes net rest time per five (5) hours worked or major fraction thereof, with no deduction from wages.

84. DEFENDANTS failed and refused to authorize and permit PLAINTIFFS, and similarly situated current and former employees of DEFENDANTS, thirty (30) minute meal periods for every five (5) hours worked, or major fraction thereof, in violation of Labor Code §§ 226.7(a), 512, and Wage Order No. 5.

85. DEFENDANTS have violated Labor Code §§ 226.7, 512, and Wage Order No. 5, by failing to pay PLAINTIFFS, and similarly situated current and former employees of DEFENDANTS, one (1) hour of pay at their regular rate of pay for each workday meal periods were required but not provided.

86. PLAINTIFFS, on behalf of themselves and similarly situated current and former employees of DEFENDANTS, request reliefs as described below.

FOURTH CAUSE OF ACTION

By PLAINTIFFS and the Putative Class Against DEFENDANTS

(Failure to Pay Compensation for Missed & Improper Rest Periods)

87. PLAINTIFFS reallege and incorporate the above allegations by reference.

1 88. Pursuant to Labor Code § 226.7(a) and Wage Order No. 5, DEFENDANTS are required
2 to authorize and permit PLAINTIFFS, and similarly situated current and former employees of
3 DEFENDANTS, the opportunity to take rest periods based upon total hours worked, at a rate of ten
4 (10) minutes net rest time per four (4) hours worked or major fraction thereof, with no deduction from
5 wages.

6 89. DEFENDANTS failed and refused to authorize and permit PLAINTIFFS, and similarly
7 situated current and former employees of DEFENDANTS, ten (10) minute rest periods for every four
8 (4) hours worked, or major fraction thereof, in violation of Labor Code § 226.7(a) and Wage Order No.
9 5.
10

11 90. DEFENDANTS have violated Labor Code § 226.7 and Wage Order No. 5, by failing to
12 pay PLAINTIFFS, and similarly situated current and former employees of DEFENDANTS, one (1)
13 hour of pay at their regular rate of pay for each workday rest periods were required but not provided.
14

15 91. PLAINTIFFS, on behalf of themselves and similarly situated current and former
16 employees of DEFENDANTS, request reliefs as described below.

17 **FIFTH CAUSE OF ACTION**

18 By PLAINTIFFS and the Putative Class Against DEFENDANTS

19 *(Failure to Provide Accurate/Itemized Wage Statements)*

20 92. PLAINTIFFS reallege and incorporate the above allegations by reference.

21 93. As a pattern and practice, DEFENDANTS failed to furnish PLAINTIFFS, and similarly
22 situated current and former employees of DEFENDANTS, an accurate itemized statement in writing
23 showing all gross wages earned, all net wages earned, all hours worked, including the premium
24 compensation for any denied meal and/or rest breaks at the applicable hourly rates of PLAINTIFFS,
25 and similarly situated current and former employees of DEFENDANTS.
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1 94. As such, PLAINTIFFS, and similarly situated current and former employees of
2 DEFENDANTS, are entitled to payment from DEFENDANTS of the greater of actual damages or
3 \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each subsequent
4 violation, up to a maximum of \$4000.00, pursuant to Labor Code § 226, as well as reasonable
5 attorney's fees and costs of suit.

6 95. PLAINTIFFS, on behalf of themselves and similarly situated current and former
7 employees of DEFENDANTS, request reliefs as described below.
8

9 **SIXTH CAUSE OF ACTION**

10 By PLAINTIFFS and the Putative Class Against DEFENDANTS

11 *(Labor Code §§ 201-203- Waiting Time Penalties)*

12 96. PLAINTIFFS reallege and incorporate the above allegations by reference.

13 97. California Labor Code § 201 requires an employer who discharges an employee to pay
14 all compensation due to that employee immediately upon discharge.
15

16 98. California Labor Code § 202 requires an employer to pay all compensation due to
17 employees who quit within 72 hours of that employee quitting, unless the employee provides at least 72
18 hours' notice of quitting, in which case all compensation is due at the end of the employee's final day
19 of work.

20 99. Labor Code § 203 provides that if an employer willfully fails to pay compensation as
21 required by § 201 or § 202, then the employer is liable for waiting time penalties in the form of
22 continued compensation of up to 30 workdays.
23

24 100. DEFENDANTS willfully failed and refused to timely pay compensation and wages,
25 including unpaid wages and overtime compensation, including meal and rest break premiums, to
26 PLAINTIFFS, and other separated employees of DEFENDANTS, at the end of their employment.
27
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101. As a result, DEFENDANTS are liable to PLAINTIFFS, and other separated employees of DEFENDANTS, for waiting time penalties, together with interest thereon, under Labor Code § 203.

102. PLAINTIFFS, on behalf of themselves and other separated employees of DEFENDANTS, request reliefs as described below.

SEVENTH CAUSE OF ACTION

By PASTOR and Putative Class against PAGA DEFENDANTS

(Private Attorney General Act)

103. PASTOR realleges and incorporates the above allegations by reference.

104. Pursuant to Labor Code §2698 et seq., the foregoing violations of statutes and regulations permit PASTOR to recover civil penalties through this action on behalf of himself and other current and former employees of PAGA DEFENDANTS. Labor Code §2699 provides in relevant part that:

(a) Notwithstanding 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.

(f) For 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:...

(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 subsequent violation.

105. PASTOR has complied with the procedural requirements specified in Labor Code §2699.3.

106. PASTOR has exhausted all administrative procedures required of him under Labor Code §§2698, 2699 and 2699.3 and is justified as a matter of right in bringing forward this cause of action.

107. On April 7, 2020, PASTOR, through his counsel, pursuant to the Labor Code Private Attorneys General Act of 2004, sent via online submission a letter-notice of violations to the LWDA and via certified mail to DC DEVELOPMENT COMPANY, DC CONCORD, DC SAN RAMON, and DC SUNRISE. A copy of this letter-notice is attached to this Complaint as *Exhibit "A"*.

108. It has been over 65 days since PASTOR submitted his letter-notice of violations to the LWDA, and the LWDA has not provided notice to PASTOR of its intent to investigate the alleged violations detailed herein. Therefore, PASTOR may commence a civil action pursuant to Labor Code §2699.3(B).

109. As a result of PAGA DEFENDANTS' violation of numerous provisions of the Labor Code, PASTOR seeks all civil penalties, reasonable attorney's fees and costs available pursuant to Labor Code §2699 et seq.

110. PASTOR is likely to have evidentiary support, after further research and reasonable opportunity for investigation and discovery, to further penalties and violations. PASTOR will amend this complaint, if appropriate, to seek all applicable penalties for violations which the LWDA has failed to investigate and/or failed to issue a citation.

111. Pursuant to Labor Code §§ 2699(i) and 2699(g)(1), PASTOR should be awarded twenty-five percent (25%) of all penalties due under California law, plus interest and reasonable

attorneys' fees and costs. The LWDA should be awarded seventy-five percent (75%) of the penalties due and awarded.

EIGHTH CAUSE OF ACTION

By PLAINTIFFS and Putative Class against DEFENDANTS

(Business and Professions Code § 17200 et seq. violations.)

112. California Business and Professions Code § 17200 et. seq. prohibits acts of unfair competition including any "unlawful and unfair business practices."

113. The conduct of DEFENDANTS, as alleged herein, has been and continues to be unfair, unlawful, and deleterious to PLAINTIFFS and similarly situated current and former employees, and to the general public.

114. PLAINTIFFS hereby seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5. PLAINTIFFS are "persons" within the meaning of Business and Professions Code § 17204 and therefore have standing to bring this suit for injunctive relief and restitution.

115. The prompt and proper payment of wages is a fundamental public policy of the State of California. It is also the public policy of the State to enforce minimum labor standards ensuring that employees are not required or permitted to work under substandard and unlawful conditions and to protect those employers who comply with the law from losing competitive advantage to other employers that fail to comply with labor standards and requirements.

116. Through the conduct alleged herein, DEFENDANTS acted contrary to these public policies and have thus engaged in unlawful and/or unfair business practices in violation of Business and Professions Code §§ 17200 et. seq. depriving PLAINTIFFS, and similarly situated current and former employees of DEFENDANTS, the rights, benefits, and privileges guaranteed to employees under California law.

1 117. Beginning at an exact date unknown to PLAINTIFFS, but at least four years prior to the
2 filing of this action, DEFENDANTS have committed unlawful, unfair, and/or fraudulent business acts
3 and practices as defined by Cal. Business & Professions Code § 17200, by engaging in the following:

4 (a) Failing and refusing to properly compensate PLAINTIFFS, and similarly situated current
5 and former employees of DEFENDANTS;

6 (b) Failing and refusing to authorize and permit proper rest breaks to PLAINTIFFS, and
7 similarly situated current and former employees of DEFENDANTS;

8 (c) Failing to pay all accrued rest break compensation to PLAINTIFFS, and similarly situated
9 current and former employees of DEFENDANTS;

10 (d) Failing and refusing to authorize and permit proper meal breaks to PLAINTIFFS, and
11 similarly situated current and former employees of DEFENDANTS;

12 (e) Failing to pay all accrued meal break compensation to PLAINTIFFS, and similarly situated
13 current and former employees of DEFENDANTS;

14 (f) Failing to provide accurate itemized wage statements to PLAINTIFFS, and similarly situated
15 current and former employees of DEFENDANTS; and

16 (g) Failing to pay all wages owed to PLAINTIFFS, and similarly situated current and former
17 employees of DEFENDANTS, at the end of their employment.

18 118. By engaging in these business practices, which are unfair and unlawful within the
19 meaning of Business and Professions Code §§ 17200 et. seq., DEFENDANTS harm PLAINTIFFS,
20 similarly situated current and former employees of DEFENDANTS, and the general public, and have
21 gained an unfair competitive edge.
22

23 119. Under Business and Professions Code § 17203, PLAINTIFFS are entitled to obtain
24 restitution on behalf of themselves and others similarly affected by the unfair and/or unlawful business
25 practices as set forth herein.
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120. Pursuant to Business and Professions Code § 17202, PLAINTIFFS are entitled to specific reliefs enforcing the penalty provisions of various Labor Code sections for themselves and for members of the general public in amounts to be proven at trial. Failure to enforce the penalties due would result in the unlawful enrichment of DEFENDANTS and would promote unfair competition.

121. Pursuant to Business & Professions Code § 17203, injunctive relief is necessary to prevent DEFENDANTS from continuing to engage in the unfair business practices as alleged herein.

122. PLAINTIFFS allege, on information and belief, that DEFENDANTS, and persons acting in concert with them, have committed and will continue to commit the above-described unlawful and/or unfair acts unless restrained or enjoined by this Court. Unless the relief prayed for below is granted, a multiplicity of actions will result. PLAINTIFFS and other interested persons have no plain, speedy, or adequate remedy at law, in that pecuniary compensation alone would not afford adequate and complete relief. The above-described acts will cause great and irreparable damage to PLAINTIFFS and other interested persons unless DEFENDANTS are restrained from committing further illegal acts.

123. PLAINTIFFS' success in this action will result in the enforcement of important rights affecting the public and will confer a significant benefit upon the general public. Private enforcement of the rights enumerated in this Complaint are necessary, as public agencies have only sought limited enforcement of those rights, if any. The named PLAINTIFFS individually, and by and through counsel, are incurring a financial burden in pursuing this action on behalf of the general public. PLAINTIFFS seek to enjoin the above-referenced unlawful actions under California's Labor Code Industrial Welfare Commission Wage Orders. Therefore, PLAINTIFFS seek an award of attorneys' fees and costs of suit on this action pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws.

VII. PRAYER

WHEREFORE, PLAINTIFFS on their own behalf and on the behalf of the members of the class, prays for judgment as follows:

1. For compensatory and consequential damages;
2. Statutory damages;
3. Prejudgment interest pursuant to Labor Code § 218.6 accrued on all due and unpaid wages from the date that wages were due and payable, according to proof;
4. An award in the amount of unpaid wages, owed by DEFENDANTS for the four years preceding the filing of this complaint;
5. Compensation of one hour at the regular rate of pay for each rest period and meal period denied in violation of Labor Code § 226.7 and Wage Order No. 5, according to proof;
6. Waiting time penalties pursuant to Labor Code §§ 201-203;
7. An award of twenty-five percent (25%) of all civil penalties due under California law, interest, attorneys' fees and costs to PASTOR as aggrieved employee on behalf of himself and other current and former employees of PAGA DEFENDANTS only, pursuant to Labor Code §2699(i) and an award of seventy-five percent (75%) of the penalties in favor of the LWDA;
8. Attorneys' fees and costs made payable to the Liberation Law Group, P.C., pursuant to Cal. Civ. Proc. Code § 1021.5, Cal. Labor Code §§ 218.5, 226(e), 1194, 2699(g)(1), and other applicable laws;
9. Pursuant to Business & Professions Code § 17203, an award of restitution for the unjustly amounts earned or retained DEFENDANTS by virtue of their engaging in unlawful conduct, according to proof; and
10. Such other and further relief as the Court deems just and proper.

1 Dated: October 4, 2021

LIBERATION LAW GROUP, P.C.

2
3 By: 

4 Arlo Garcia Uriarte
5 Ernesto Sanchez
6 Attorneys for PLAINTIFFS

7 **VIII. DEMAND FOR JURY TRIAL**

8 PLAINTIFFS hereby demand a trial by jury.

9 Dated: October 4, 2021

LIBERATION LAW GROUP, P.C.

10 By: 

11 Arlo Garcia Uriarte
12 Ernesto Sanchez
13 Attorneys for PLAINTIFFS
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Exhibit A

Attorneys:
Arlo García Uriarte
Un Kei Wu
Ernesto Sánchez
Daniel P. Iannitelli
Nick Aguilar, Adm. in Fla.



Legal Assistants:
Andrea Ortiz
Lorenzo Barrera Cruz
Ivette Olguin
Vicent Uriarte
Crystina Arreola-Nunez
Mariana Toledo Segarra

2760 Mission Street · San Francisco, CA 94110 · 415 695-1000

April 7, 2020

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Re: Ruffo Pastor Diaz v. Dos Coyotes Development Company, LLC, Dos Coyotes Sunrise, Inc., East Bay Coyotes, Inc., Dos Coyotes Concord, Inc., Jason Wolenik, Michael Topf, and Robert H. Davidson.

Dear PAGA Administrator:

Pursuant to the Private Attorneys General Act of 2004, attached is a list of violations relevant to this action. Further investigation and discovery may result in shedding light to further violations. Please consider this letter and the attached as the notice required by California Labor Code Section 2699.3.

Pursuant to Labor Code 2699(a), Plaintiff Ruffo Pastor Diaz hereby apply to recover through civil action on behalf of themselves and other current and former aggrieved employees.

Very truly yours,

LIBERATION LAW GROUP, P.C.

Arlo Uriarte

Arlo Uriarte

w/enclosures

cc:

Dos Coyotes Development Company, LLC
1784 Picasso Ave., Ste. B
Davis, CA 95618

Liberation Law Group, r.
Dos Coyotes PAGA Letter
April 7, 2020

Dos Coyotes Sunrise, Inc.
1784 Picasso Ave., Ste. B
Davis, CA 95618

Dos Coyotes Concord, Inc.
1784 Picasso Ave., Ste. B
Davis, CA 95618

East Bay Coyotes, Inc.
485 S Grand Avenue
Pasadena, CA 91105

Jason Wolenik
485 S Grand Avenue
Pasadena, CA 91105

Michael Topf
485 S Grand Avenue
Pasadena, CA 91105

Robert H. Davidson
1784 Picasso Ave., Ste. B
Davis, CA 95618

Dos Coyotes Development Company, LLC, Dos Coyotes Sunrise, Inc., East Bay Coyotes, Inc., Dos Coyotes Concord, Inc.
Labor Code 2699 Notice of Violations

Ruffo Pastor Diaz ("Plaintiff") sues Defendants Dos Coyotes Development Company, LLC ("DC Development"); Dos Coyotes Sunrise, Inc.; East Bay Coyotes, Inc. ("DC San Ramon"); Dos Coyotes Concord, Inc. ("DC Concord"); Jason Wolenik ("Wolenik"); Michael Topf ("Topf"); and Robert H. Davidson ("Davidson") (collectively "Defendants"). Wolenik, Topf, and Davidson are individually liable for Plaintiff's claims pursuant to Labor Code §§ 558, 558.1.

Since 1991, Plaintiff has worked at multiple Dos Coyote Border Café locations. Between 2015 and 2016, Plaintiff worked at the following Dos Coyotes Border Café locations:

1. 1800 15th St, Ste D, Sacramento;
2. Sacramento International Airport;
3. 1735 Arden Way, #230, Sacramento; and
4. 1411 W. Covell Blvd., Davis

Plaintiff's primary duties involved cooking, prep cooking, and other manual, non-exempt duties.

On or about 2016, Plaintiff was transferred by Defendants to work at Dos Coyotes Border Café located at 1975 Diamond Blvd., Suite 150B, Concord, California ("DC Concord"). Plaintiff's job title was Kitchen Manager. Plaintiff worked at this location for approximately one (1) year. Plaintiff worked at this location approximately nine (9) to ten (10) hours per day. Plaintiff was paid by the hour for hours worked. DC Concord closed its business operations in approximately November 2019.

On or about April 2017, Plaintiff was transferred by Defendants to work at Dos Coyotes Border Cafe located at 3191 Crow Canyon Place in San Ramon, California ("DC San Ramon"). Plaintiff's job title was Kitchen Manager. Plaintiff was paid as a salaried employee while working at DC San Ramon.

During the first two (2) months of working at DC San Ramon, Plaintiff worked approximately ten (10) to fifteen (15) hours per day, seven (7) days per week. Thereafter, Plaintiff averaged approximately nine (9) to ten (10) hours worked per day, six (6) days per week. On days when Plaintiff had to cover for employees who did not show up for work, Plaintiff averaged approximately twelve (12) to thirteen (13) hours worked per day.

On or about mid-2019, Plaintiff worked approximately five (5) to six (6) days per week. While employed at DC San Ramon, Defendants failed to compensate Plaintiff for all overtime and double time hours worked at his corresponding overtime and double time rates of pay. While employed at DC San Ramon, Defendants misclassified Plaintiff as an exempt salaried employee, resulting in Defendants' failure to properly compensate Plaintiff for all overtime and double time hours worked at his overtime and double time rates of pay.

From approximately April 2017 to sometime in 2018, Defendants did not authorize nor provide Plaintiff the opportunity to track his hours worked by way of Defendants' timekeeping system. As a result, Defendants' failed to keep any information as to Plaintiff's hours worked during this time.

During the course of his employment, Defendants failed to authorize and provide Plaintiff with all uninterrupted thirty (30) minute meal breaks that he was entitled to receive. Plaintiff's meal breaks were regularly interrupted in order to process food orders. Additionally, Defendants had an unlawful policy and practice of having its employees work periods of more than five (5) hours per day, but less than six (6) hours per day, without providing employees with meal periods and without mutual waiver of such meal periods by its employees. Defendants did not have a policy of paying Plaintiff one (1) hour at his hourly rate when proper meal breaks were not provided.

During the course of his employment, Defendants did not have a policy or practice of authorizing and providing Plaintiff with rest breaks. Defendants did not have a policy of paying Plaintiff one hour at his hourly rate when proper rest breaks were not provided.

During the course of his employment, Defendants failed to provide Plaintiff with accurate itemized wage statements. The wage statements that Plaintiff received were inaccurate and incomplete given Defendants' failure to accurately itemize Plaintiff's gross wages earned, net wages earned, total hours worked, corresponding rates of pay, and meal and rest premiums due.

During the course of his employment, Plaintiff was required to wear a work uniform which consisted of a hat, t-shirt, and chef pants. Defendants failed to maintain the work uniforms. Plaintiff was required to maintain his work uniform. Defendants failed to reimburse Plaintiff for costs associated with laundering his work uniform.

Plaintiff is aware of other employees of Defendants who were required to purchase their work uniform and were not reimbursed for this expense. Plaintiff is aware of other employees of Defendants who were required to pay for the replacement work uniforms and were not reimbursed for this expense.

During the course of his employment, Defendants had a policy and practice of unlawfully deducting the cost of Defendants' work uniform from employees' first paycheck instead of employees' last paycheck.

On or about December 16, 2019, Defendants terminated Plaintiff's employment. Defendants failed to pay all wages and premiums owed to Plaintiff at the end of his employment.

Plaintiff is informed and believes that other current and former aggrieved employees of Defendants were subjected to the same wage and hour violations as Plaintiff noted herein. Pursuant to Labor Code § 2699, Plaintiff, on behalf of

themselves and all current and former aggrieved employees of Defendants, seek to recover civil penalties against Defendants for Labor Code violations pursuant to, but not limited to:

Defendants violated § 204 by failing to pay Plaintiff all wages due on the designated days of pay. Defendants failed to pay Plaintiff for all hours worked in violation of Labor Code §§ 1194 and 1197. Defendants violated section 4 of the Industrial Welfare Commission Wage Order 5 by failing to pay Plaintiff all hours worked at least at the minimum wage rate.

Violations to Labor Code § 204 – penalties pursuant to §§ 210 and 2699(f); violations to Labor Code § 1194 - penalties pursuant to Labor Code § 2699(f); violation to Labor Code § 1197 – penalties pursuant to Labor Code §§ 1197.1, 558, and 2699(f); violations to Wage Order 5 section 4 – penalties pursuant to § 20 of Wage Order 5.

By requiring Plaintiff to work overtime and not properly compensating him for overtime hours worked, Defendants violated Labor Code §§ 223, 510 and 1194(a), which makes it “unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” Defendants violated Labor Code §§ 510 and 1194, and section 3 of the Industrial Welfare Commission Wage Order 5 by failing to pay Plaintiff for all overtime hours worked at one and one half times his regular rate of pay and double time rates for hours worked more than twelve hours in one shift.

Violations to Labor Code § 223 - penalties pursuant to Labor Code §§ 225.5 and 2699(f); violations to Labor Code § 510 – penalties pursuant to Labor Code §§ 558 and 2699(f); violations to Labor Code § 1194 - penalties pursuant to Labor Code § 2699(f); violations to Wage Order 5 section 3 – penalties pursuant to § 20 of Wage Order 5.

Defendants violated Labor Code §§ 226.7(a) and 512, and sections 11 and 12 of the Industrial Welfare Commission Wage Order 5, by failing to authorize and provide Plaintiff with proper meal and rest breaks and then failing to provide Plaintiff the required one hour compensation when meal and rest breaks are not properly provided.

Violations to Labor Code § 226.7(a) - penalties pursuant to § 2699(f); violations to Labor Code § 512 - penalties pursuant to §§ 558 and 2699(f); violations to § 11 and § 12 of IWC Order 5 - penalties pursuant to § 20 of IWC Order 5.

Defendants violated Labor Code § 2802(a) by failing to reimburse Plaintiff the cost and expenditures they accrued related to the maintenance of their uniforms.

Violations to Labor Code § 2802(a) - penalties pursuant to § 2699(f)

Defendants violated Labor Code § 226(a) and Wage Order 5 section 7 by failing to provide Plaintiff with accurate itemized wage statements providing at least the following required information: (1) gross wages earned, (2) total actual hours worked by the employee,

(3) net wages earned, and (4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employees.

Violations to Labor Code § 226(a) – penalties pursuant to §§ 226(e), 226.3, and 2699(f); violations to IWC Order 5 section 7 – penalties pursuant to § 20 of IWC Order 5.

Defendants violated Labor Code §§ 201 through 203 by failing to pay Plaintiff all wages and compensation owed within their separation date.

Violations to Labor Code §§ 201 through 203 - penalties pursuant to Labor Code section 2699(f).

1 **PROOF OF SERVICE**

2
3 I, Ernesto Sanchez, declare as follows:

4 I am over the age of eighteen years and not a party to the within entitled action. My business
5 address is 2760 Mission Street, San Francisco, CA 94110. I am familiar with the employer's business
6 practice for collection and processing of mail using the United States Postal Service. On October 4,
2021, I served the attached:

7 **THIRD AMENDED CLASS ACTION COMPLAINT**

8 on the interested parties in said action, by placing a true copy thereof addressed as follows:

9 **Nicole Legrotaglie Wohl, Esq.**
10 **Carothers DiSante Freudenberger, LLP**
11 **900 University Avenue, Suite 200**
12 **Sacramento, CA 95825**
13 **nlegrotaglie@cdflaborlaw.com**

14 **Nicole Cloudsley, Esq.**
15 **Freeman Mathis & Gary, LLP**
16 **1010 B Street, Suite 300**
17 **San Rafael, CA 94901-2952**
18 **ncloudslev@fmglaw.com**

19 and served the named document in the manner indicated below:

20 ☒ **BY E-MAIL:** I caused true and correct copies of the above documents, sent via electronic
21 service (email) to **Nicole Legrotaglie Wohl** at **nlegrotaglie@cdflaborlaw.com** and **Nicole Cloudsley**
22 at **ncloudslev@fmglaw.com**.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing is
24 true and correct. Executed on October 4, 2021, at Oakland, California.

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27
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Ernesto Sanchez