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Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

MARITZA EVELYN MAGANA, YERENIA
GUADARRAMA, GLORIA TORRES,
ARNULFO RUIZ, and ROXANA AGUILAR,
individually, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act,

Plaintiffs,

v.

OREN'S HUMMUS CATERING LLC, a
California Limited Liability Company;
OREN'S HUMMUS CUPERTINO LLC, a
California Limited Liability Company;
OREN'S HUMMUS MOUNTAIN VIEW LLC,
a California Limited Liability Company;
OREN'S HUMMUS SF1 LLC, a California
Limited Liability Company; OREN'S
HUMMUS, LLC, a California Limited Liability
Company; and DOES 1 through 10, inclusive,

Defendants.

Case No. **20CV371894**

**COMPLAINT FOR PENALTIES FOR
VIOLATION OF LABOR CODE
§ 2698 et seq. (PRIVATE ATTORNEYS
GENERAL ACT OF 2004)**

1 Plaintiffs Maritza Evelyn Magana, Yerania Guadarrama, Gloria Torres, Arnulfo Ruiz, and
2 Roxana Aguilar (“Plaintiffs”) hereby submit their Complaint against Defendants OREN’S HUMMUS
3 CATERING LLC, OREN’S HUMMUS CUPERTINO LLC, OREN’S HUMMUS MOUNTAIN
4 VIEW LLC, OREN’S HUMMUS SF1 LLC, OREN’S HUMMUS LLC, and DOES 1 through 10,
5 inclusive (collectively, “Defendants”), on behalf of themselves and other current and former aggrieved
6 employees of Defendants for penalties as follows:

7 **INTRODUCTION**

8 1. This representative action is brought pursuant to Labor Code § 2698 *et seq.* (the Private
9 Attorneys General Act of 2004 (“PAGA”)) for Defendants’ violations of Labor Code §§ 201, 202,
10 203, 204, 221, 223, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800
11 and 2802.

12 2. This Complaint challenges Defendants’ systemic illegal employment practices
13 resulting in violations of various provisions of the California Labor Code against the identified group
14 of employees as stated herein.

15 3. Plaintiffs are informed and believe and thereon allege that during the statutory liability
16 period and continuing to the present, Defendants joint and severally enforced shift schedules,
17 employment policies and practices, and workload requirements wherein Plaintiffs and all other
18 aggrieved employees: (1) were not paid proper wages they earned for all hours they worked including
19 minimum wage and/or proper overtime compensation; (2) were not permitted to take their full
20 statutorily authorized meal and rest periods, or had their meal and rest periods shortened and/or
21 provided to them late due to the scheduling and work load and time requirements placed upon them
22 by Defendants – and Defendants failed to pay such employees one (1) hour of pay at the employee’s
23 regular rate of compensation for each workday that the meal period and/or rest period was not properly
24 provided; (3) were not provided with accurate wage statements; (4) were not paid all wages due and
25 owing upon termination of employment; and (5) were not reimbursed for all necessary business
26 expenses.

27 4. On information and belief, Defendants had actual or constructive knowledge of the
28 improprieties alleged in this Complaint and intentionally refused to rectify their unlawful policies and

1 practices.

2 **JURISDICTION AND VENUE**

3 5. This action is brought pursuant to PAGA. The civil penalties sought by Plaintiffs on
4 behalf of themselves and all other aggrieved employees exceed the minimal jurisdiction limits of the
5 Superior Court and will be established according to proof at trial.

6 6. This Court has original jurisdiction over this action pursuant to California Constitution,
7 Article VI, Section 10, which grants the Superior Court of California “original jurisdiction in all other
8 causes” except those causes given by statute to other courts. The statutes under which this action is
9 brought do not specify any other basis for jurisdiction.

10 7. On information and belief, this Court has personal jurisdiction over Defendants in this
11 action because each party is either a citizen of California, has sufficient minimum contacts in
12 California, or otherwise intentionally avails itself of the California market so as to render the exercise
13 of jurisdiction over it by California courts consistent with traditional notions of fair play and
14 substantial justice. Further, no federal question is at issue because the Plaintiffs’ claims arise under
15 and are based solely on California law.

16 8. Venue is proper in the County of Santa Clara pursuant to California Code of Civil
17 Procedure section 395.5. Plaintiffs were employed and performed work for Defendants in the County
18 of Santa Clara, California, during the time relevant to this action. Defendants also maintain offices,
19 have agents, and/or transact business in the County of Santa Clara. Moreover, this action is brought
20 on behalf of the State of California as a private attorney general and has jurisdiction in this venue.

21 **PARTIES**

22 9. Plaintiffs Maritza Evelyn Magana, Yerania Guadarrama, Gloria Torres, Arnulfo Ruiz
23 and Roxana Aguilar are individuals residing in the State of California. Plaintiffs were employed as
24 hourly, nonexempt employees of Defendants and were entitled to legally required meal and rest
25 periods and payment of minimum and overtime wages due for all time worked. Plaintiff Maritza
26 Evelyn Magana worked for Defendants from November 2017 to March 17, 2020, Plaintiff Yerania
27 Guadarrama worked for Defendants from January 2019 to March 16, 2020, Plaintiff Gloria Torres
28 worked for Defendants from July 2019 to March 16, 2020, Plaintiff Arnulfo Ruiz worked for

1 Defendants from July 2015 to the present, and Plaintiff Roxana Aguilar worked for Defendants from
2 July 2017 to the present.

3 10. Plaintiffs are informed and believe and thereon allege that Defendants OREN'S
4 HUMMUS CATERING LLC, OREN'S HUMMUS CUPERTINO LLC, OREN'S HUMMUS
5 MOUNTAIN VIEW LLC, OREN'S HUMMUS SF1 LLC, and OREN'S HUMMUS, LLC, are
6 California limited liability companies that regularly conduct business in the State of California,
7 including the County of Santa Clara.

8 11. Plaintiffs are unaware of the true names or capacities of the Defendants sued herein
9 under the fictitious names, DOES 1 through 10, inclusive, and therefore sue said Defendants under
10 such fictitious names. On information and belief, each of the DOE Defendants is liable for the
11 unlawful acts alleged in this action and proximately caused the injuries and damages to Plaintiffs and
12 aggrieved employees prosecuting this action. Once Plaintiffs ascertain the true names and capacities
13 of these DOE Defendants, Plaintiffs will seek leave of court to file an amended complaint.

14 12. At all times relevant to this action, each of the Defendants were the agents, partners,
15 joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-
16 conspirators and/or assigns, of each of the other Defendants.

17 13. At all times relevant to this action, each of the Defendants were acting within the course
18 and scope of their authority as such agents, partners, joint venturers, joint employers, representatives,
19 servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged in
20 this action were committed with the ratification, knowledge, permission, encouragement,
21 authorization and/or consent of each alleged DOE Defendant.

22 14. Plaintiffs further allege Defendants directly or indirectly controlled or affected the
23 working conditions, wages, working hours, and conditions of employment of Plaintiffs and aggrieved
24 employees so as to make each of the Defendants liable under the statutory provisions set forth in this
25 action as joint employers.

26 15. As such, and based upon all the facts and circumstances incident to Defendants'
27 business in California, Defendants are subject to PAGA and Labor Code §§ 201, 202, 203, 204, 226(a),
28 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

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21. Defendants violated California Labor Code §§ 510, 558 and 1194 by not compensating Plaintiffs and aggrieved employees for work performed in excess of eight hours (8) in a day or forty hours in a work week (40). Section 510 of the Labor Code codifies the right to overtime compensation at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week.

22. Defendants also violated California Labor Code §§ 200, 1194, 1197 and 1198 by failing to pay minimum wages for time spent working “off the clock” without pay. Labor Code §1197 provides that employees are to be paid minimum wage for each hour worked and the payment of a lesser wage than the established minimum is unlawful.

Failure to Provide Meal Periods

23. In accordance with California Labor Code § 512, Defendants were required to authorize and permit their non-exempt employees with a thirty (30) minute meal period for every five (5) hours worked. During the relevant time period, Defendants failed to provide Plaintiffs and aggrieved employees uninterrupted meal periods of 30 minutes within the first five hours of a shift and/or a second 30 minute meal period within the first ten hours of the shift when they worked over ten hours. Defendants failed to pay proper compensation for this failure.

24. More specifically, Defendants had, and continue to have, a Company-wide policy and/or practice that prevented Plaintiffs and aggrieved employees from taking all timely, complete, and uninterrupted meal periods. Defendants required Plaintiffs and aggrieved employees to work through part or all of their meal periods, had their meal periods cut short, permitted their meal periods to be interrupted, and/or wait extended periods of time before taking meal periods. Further, Defendants did not provide Plaintiffs and aggrieved employees with second 30 minute meal periods on days that they worked in excess of ten (10) hours in one day. On information and belief, Plaintiffs and aggrieved employees did not sign valid meal period waivers for days in which they were entitled to meal periods and were not relieved of all duties.

Failure to Provide Rest Periods

25. In accordance with California Labor Code § 226.7, Defendants were required to authorize and permit their non-exempt employees to take a ten (10) minute rest break for every four

(4) hours worked or major fraction thereof. During the relevant time period, Defendants failed to authorize and permit Plaintiffs and aggrieved employees to take ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof. Plaintiffs regularly worked shifts without properly authorized rest periods. Defendants failed to pay proper compensation for this failure.

26. As with meal periods, Defendants had a Company-wide policy and practice of failing to relieve Plaintiffs and aggrieved employees of all duties in order to provide them with rest periods as required by California law. Plaintiffs and aggrieved employees had to wait for management to authorize them to go on their rest breaks and were often prevented from doing so. Plaintiffs and aggrieved employees were frequently not permitted to take full and complete ten (10) minute rest periods, and instead would miss their rest periods or have her rest periods interrupted or cut short to meet the Company's demands. Plaintiffs and aggrieved employees therefore worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled.

Failure to Timely Pay Wages During Employment

27. Pursuant to California Labor Code § 204, for all labor performed between the 1st and 15th days of any calendar month, Defendants are required to pay their nonexempt employees between the 16th and 26th day of the month during which the labor was performed. Labor Code § 204 also provides that for all labor performed between the 16th and 26th days of any calendar month, Defendants are required to pay their nonexempt employees between the 1st and 10th day of the following calendar month. In addition, Labor Code § 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday of the next regular payroll period. Alternatively, Labor Code § 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

28. During the relevant time period, Defendants failed to timely pay Plaintiffs and other aggrieved employees all the wages due to them, including but not limited to, minimum and overtime wages, by the next regular payroll period as required by Labor Code § 204.

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1 **Failure to Timely Pay Final Wages Upon Separation**

2 29. Defendants have a Company-wide practice or policy of not paying departing employees
3 their final wages on their last day of employment or within seventy-two (72) hours of resigning without
4 prior notice, instead of abiding by the time requirements required by California Labor Code §§ 201
5 and 202. For example, upon being terminated from their employment at Oren's Hummus, Ms.
6 Magana, Ms. Guadarrama and Ms. Torres did not receive their final check on their termination date.
7 Ms. Magana, Ms. Guadarrama and Ms. Torres had to wait several weeks for Oren's Hummus to send
8 them their final paycheck. Thus, Defendants failed to timely pay Plaintiffs' and aggrieved employees'
9 owed wages within the required time limit in violation of California Labor Code section 201.

10 30. Additionally, Defendants willfully failed to pay Plaintiffs and aggrieved employees
11 who are no longer employed by Defendants all their earned wages either at the time of discharge or
12 within seventy-two (72) hours of their leaving Defendants' employ in violation of California Labor
13 Code §§ 201, 202, and 203, including, but not limited to overtime and minimum wages.

14 **Failure to Provide Complete and Accurate Wage Statements**

15 31. At all times relevant herein, Defendants were required to keep accurate records
16 regarding their California employees pursuant to California Labor Code §§ 226 and 1174.

17 32. As a result of Defendants' various Labor Code violations, Defendants failed to keep
18 accurate records regarding Plaintiffs and other aggrieved current and former employees. For example,
19 Defendants failed in their affirmative obligation to keep accurate records regarding Plaintiffs' and
20 other aggrieved employees' gross wages earned, total hours worked, all deductions, net wages earned,
21 and all applicable hourly rates and the number of hours worked at each hourly rate.

22 **Failure to Reimburse Business Expenses**

23 33. At all times relevant herein, Defendants were required to reimburse their employees
24 for any and all necessary expenditures or losses incurred by employees in direct consequence of the
25 discharge or their duties pursuant to California Labor Code §§ 2800 and 2802.

26 34. Defendants had, and continue to have, a Company-wide policy and/or practice of not
27 reimbursing employees for expenses necessarily incurred, in violation of California law. At all times
28 relevant time to this action, Defendants failed to provide Plaintiffs and aggrieved employees with

adequate supplies/uniforms for the tasks Defendants required them to perform. Instead, Defendants required Plaintiffs and aggrieved employees to pay out-of-pocket for some of their uniform expenses including but not limited to Company shirts, sweaters, and jackets. Defendants however did not provide these uniforms/supplies to employees and instead required Plaintiffs and aggrieved employees to purchase these on their own without reimbursement for this expense in violation of California law.

35. Defendants could have provided Plaintiffs and aggrieved employees with the actual supplies for use on the job for fulfilling work-related tasks or could have reimbursed employees for these expenses. Instead, Defendants required workers to bear the burden of these expenses without reimbursement in violation of California law.

FIRST CAUSE OF ACTION

Violation of the Private Attorneys General Act

[Cal. Labor Code, § 2698 *et seq.*]

(Against All DEFENDANTS)

36. Plaintiffs, re-allege and incorporate by reference all prior paragraphs as though fully set forth herein.

37. Plaintiffs are “aggrieved employees” within the meaning of California Labor Code § 2699(c), and proper representatives to bring a civil action on behalf of themselves and other current and former employees of Defendants pursuant to the procedures specified in Labor Code § 2699.3, because Plaintiffs were employed by Defendants and one or more of the alleged Labor Code violations was committed against Plaintiffs.

38. Plaintiffs seek to recover civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class certification is not required.

39. Pursuant to Labor Code §§ 2698-2699.5, Plaintiffs seek to recover civil penalties from Defendants in a representative action for the violations set forth above, including but not limited to violations of Labor Code §§ 201, 202, 203, 204, 221, 223, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

40. Pursuant to Labor Code § 2699(a), Plaintiffs seek civil penalties for Defendants’

violations of Labor Code provisions for which a civil penalty is specifically provided, including but not limited to the following:

- a. Pursuant to Labor Code § 210, for violations of Labor Code § 204, Defendants are subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred dollars (\$200) per employee for violations in subsequent pay periods.
- b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a), Defendants are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period where a violation occurs and one thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay periods.
- c. Pursuant to Labor Code § 558(a), “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission,” including Labor Code §§ 510 and 512, shall be subject to a civil penalty, in addition to any other penalty provided by law, of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid and one hundred dollars (\$100) for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid.
- d. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d), Defendants are subject to a civil penalty of five hundred dollars (\$500).
- e. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission, shall be subject to a civil penalty as follows: for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid; and for each subsequent violation of the same offense, two hundred fifty dollars

1 (\$250) for each underpaid employee for each pay period for which the
2 employee is underpaid regardless of whether the initial violation was
3 intentionally committed.

4 41. Labor Code § 2699(f) provides that for all Labor Code violations for which a civil
5 penalty is not specifically provided, the following civil penalties are established: one hundred dollars
6 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars
7 (\$200) for each aggrieved employee per pay period for each subsequent violation. Plaintiffs seek such
8 civil penalties under Labor Code § 2699(f) for Defendants' violations of Labor Code provisions for
9 which a civil penalty is not specifically provided, including but not limited to Labor Code §§ 201, 202,
10 221, 223, 226.7, 1194, 1197, 1198, and 2802.

11 42. Plaintiffs also seek reasonable attorney's fees and costs pursuant to Labor Code §§ 210,
12 1194, and 2699(g)(1).

13 **REQUEST FOR A JURY TRIAL**

14 43. Plaintiffs, individually and on behalf of all other aggrieved employees, hereby demand
15 a jury trial on all causes of action and issues so triable.

16 **PRAYER FOR RELIEF**

17 44. WHEREFORE, Plaintiffs, individually and on behalf of all other aggrieved employees,
18 hereby pray for relief against Defendants, as follows:

- 19 a. For civil penalties pursuant to statute as set forth in Labor Code § 2698 et seq.,
20 for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 221, 226(a),
21 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and
22 2802.
- 23 b. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802,
24 California Civil Code §§ 3287, 3288, and/or any other applicable provision
25 providing for pre-judgment interest;
- 26 c. For costs and attorneys' fees pursuant to Labor Code §§ 210, 1194, and 2699,
27 and any other applicable statute; and
- 28 d. For such other relief as the Court deems just and proper.

1 Dated: October 21, 2020

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5 JOSE MACIAS, JR.
6 HECTOR RODRIGUEZ
7 TRAVIS M. ADAMS

8 **MACIAS RODRIGUEZ LLP**
9 Attorneys for Plaintiffs
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