

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Stephanie Bowick

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

RICARDO GAUNA, an individual, and on
behalf of all aggrieved employees,

Plaintiffs,

vs.

MERCADO BUENOS AIRES, INC., a
California corporation; PAUL
RODRIGUEZ, an individual; and, DOES 1
through 50, inclusive.

Defendants.

Case No. **21STCV38369**

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF &
ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE § 2698, ET
SEQ.:**

1. **FAILURE TO PAY REPORTING
TIME WAGES AND LIQUIDATED
DAMAGES [CAL. LAB. CODE § 1198
and 8 CAL. CODE REGS. §11050];**
2. **FAILURE TO PROVIDE MEAL
PERIODS [CAL. LAB. CODE §§ 226.7
and 512, and 8 CAL. CODE REGS. §§
11050];**
3. **FAILURE TO PROVIDE REST
PERIODS [CAL. LAB. CODE §§ 226.7
and 512, and 8 CAL. CODE REGS. §§
11050];**
4. **FAILURE TO PROVIDE ITEMIZED
STATEMENTS AND MAINTAIN
ACCURATE PAYROLL RECORDS
[CAL. LAB. CODE §§ 226(a), 1174(d),
and 1198];**
5. **CONVERSION - IMPROPER
RECEIPT AND DISTRIBUTION OF
GRATUITIES [CAL. LAB. CODE §
351];**
6. **FAILURE TO PROVIDE
ADEQUATE SEATING [CAL. LAB.
CODE § 1198];**
7. **FAILURE TO PAY WAGES UPON
TERMINATION OF EMPLOYMENT
[CAL. LAB. CODE § 203];**
8. **VIOLATION OF CALIFORNIA
LABOR CODE § 558;**
9. **UNFAIR COMPETITION [CAL. BUS.
& PROF. CODE §§ 17200 *et seq.*]; and,**
10. **CIVIL PENALTIES FOR**

**VIOLATIONS OF THE
CALIFORNIA LABOR CODE,
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT [CAL.
LAB. CODE §§ 2698, *et seq.*]**

DEMAND FOR A JURY TRIAL

Complaint filed:

Trial Date:

All allegations in this Complaint are based upon information and belief except for those allegations which pertain to the Plaintiff named herein and his counsel. Each allegation has evidentiary support, or is likely to have evidentiary support, after a reasonable opportunity for further investigation and discovery.

I.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Complaint under CAL. CIV. PROC. CODE § 410.10. The Plaintiff brings this Complaint on his own behalf and on behalf of all aggrieved employees.

2. Venue is proper in the Court pursuant to CAL. CIV. PROC. CODE §§ 395 and 395.5 because the claims made, and the CAL. LAB. CODE violations as against the persons identified herein, occurred in the County of Los Angeles. Further, each of the Defendants owned and operated their businesses in the County of Los Angeles.

II.

THE PARTIES

PLAINTIFF

3. RICARDO GAUNA ("PLAINTIFF") is, and at all material times mentioned was:

- (a) An individual who resides in the County of Los Angeles, California;
- (b) Jointly employed as an hourly paid employee by MERCADO BUENOS AIRES, INC; PAUL RODRIGUEZ; and/or DOES 1

1 through 50 ("DEFENDANTS"), from on or about April 2018, to on or
2 about March 14, 2020;

- 3 (c) Was not properly paid reporting time wages by DEFENDANTS;
- 4 (d) Did not receive compliant meal periods or meal period premium
5 wages from DEFENDANTS;
- 6 (e) Did not receive compliant rest periods or rest period premium wages
7 from DEFENDANTS;
- 8 (f) Did not receive accurate itemized wage statements from
9 DEFENDANTS;
- 10 (g) Was not properly provided all gratuities received by DEFENDANTS;
- 11 (h) Did not receive adequate seating from DEFENDANTS;
- 12 (i) When terminated from his employment, was not paid by
13 DEFENDANTS for reporting time wages owed, meal period wages
14 owed, and rest period wages owed within the time limits prescribed
15 by CAL. LABOR CODE § 201.

16 **DEFENDANTS**

17 4. PLAINTIFF is informed and believes, and based upon that information and
18 belief alleges, that Defendant MERCADO BUENOS AIRES, INC, is, and at all times
19 mentioned was:

- 20 (a) A California corporation authorized to conduct business, and actually
21 conducting business, in Los Angeles County, California;
- 22 (b) The owner and operator of a restaurant known as Mercado Buenos
23 Aires;
- 24 (c) Along with PAUL RODRIGUEZ, and DOES 1 through 50, inclusive,
25 was the former joint employer of PLAINTIFF, and all aggrieved
26 employees, as MERCADO BUENOS AIRES, INC, PAUL
27 RODRIGUEZ, and DOES 1 through 50 controlled PLAINTIFF'S and
28

1 all aggrieved employees' wages, hours, working conditions, and how
2 PLAINTIFF, and all aggrieved employees, were paid;

- 3 (d) Failed to properly pay PLAINTIFF and all aggrieved employees for
4 reporting time wages, for missed meal periods, and for missed rest
5 periods, failed to provide PLAINTIFF and all aggrieved employees
6 with accurate itemized wage statements, failed to properly distribute
7 all gratuities received on behalf of PLAINTIFF and all aggrieved
8 employees, failed to provide PLAINTIFF and all aggrieved employees
9 with adequate seating, and failed to pay PLAINTIFFS, and all
10 aggrieved employees, for wages due upon termination. Each of these
11 transgressions violated the CAL. LAB. CODE.

12 5. PLAINTIFF is informed and believes, and based upon that information and
13 belief alleges, that Defendant PAUL RODRIGUEZ is, and at all times mentioned was:

- 14 (a) An individual who resides in Los Angeles County, California;
15 (b) The owner and operator of MERCADO BUENOS AIRES, INC;
16 (c) The owner and operator of a restaurant known as Mercado Buenos
17 Aires;
18 (d) Along with MERCADO BUENOS AIRES, INC, and DOES 1 through
19 50, inclusive, was the former joint employer of PLAINTIFFS, and all
20 aggrieved employees, as PAUL RODRIGUEZ, MERCADO BUENOS
21 AIRES, INC, and DOES 1 through 50 controlled PLAINTIFF'S and
22 all aggrieved employees' wages, hours, working conditions, and how
23 PLAINTIFF and all aggrieved employees, were paid;
24 (e) Failed to properly pay PLAINTIFF and all aggrieved employees for
25 reporting time wages, for missed meal periods, and for missed rest
26 periods, failed to provide PLAINTIFF and all aggrieved employees
27 with accurate itemized wage statements, failed to properly distribute
28 all gratuities received on behalf of PLAINTIFF and all aggrieved

employees, failed to provide PLAINTIFF and all aggrieved employees with adequate seating, and failed to pay PLAINTIFF and all aggrieved employees, for wages due upon termination. Each of these transgressions violated the CAL. LAB. CODE.

6. MERCADO BUENOS AIRES, INC; PAUL RODRIGUEZ; and, DOES 1 through 50 are collectively referred to as “DEFENDANTS” throughout this Complaint.

7. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of Defendant DOES 1 through 50, inclusive, are unknown to the PLAINTIFF, who therefore sues these Defendants by such fictitious names pursuant to CAL. CIV. PROC. § 474. PLAINTIFF will seek leave to amend his Complaint to allege the true names and capacities of DOES 1 through 50, inclusive, when they are ascertained.

8. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that Defendant DOES 1 through 50 are persons, corporations or other entities which reside in, or are otherwise doing business in the State of California. Each of the Defendant DOES 1 through 50 was the managerial agent, employee, predecessor, successor, joint-venturer, co-conspirator, alter ego and/or representative of one or more of the other Defendants named herein, and acted with permission, authorization and/or ratification and consent of other Defendants.

9. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

10. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are, and at all times mentioned herein were, the agents, servants, and/or employees of each of the other Defendants, and that each Defendant was acting within the course of scope of his, hers, or its authority as the agent, servant and/or employee of each

1 of the other Defendants. Consequently, all the Defendants are jointly and severally liable to
2 PLAINTIFF, and all aggrieved employees, for their damages sustained as a proximate
3 result of Defendants' conduct.

4 11. PLAINTIFF is informed and believes, and based upon that information and
5 belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50,
6 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
7 themselves and entered into a combination and systemized campaign of activity to inter alia
8 damage PLAINTIFF, and all aggrieved employees, and to otherwise consciously and/or
9 recklessly act in derogation of PLAINTIFF'S and all aggrieved employees' rights, and the
10 trust reposed by PLAINTIFF and all aggrieved employees in each of the Defendants, the
11 acts being negligently and/or intentionally inflicted. Their conspiracy, and Defendants'
12 concerted actions, were such that, to PLAINTIFF'S information and belief, and to all
13 appearances, Defendants represented a unified body so that the actions of one Defendant
14 were accomplished in concert with, and with the knowledge, ratification, authorization and
15 approval of each of the other Defendants.

16 **ALTER-EGO ALLEGATIONS**

17 12. PLAINTIFF is informed and believes, and based upon that information and
18 belief alleges, that:

19 (a) MERCADO BUENOS AIRES, INC, and DOES 1 through 50, are, and at all
20 relevant times were, mere shells without capital, assets, stock or stockholders;

21 (b) Defendants MERCADO BUENOS AIRES, INC, and DOES 1 through 50 are,
22 and at all relevant times were, the alter ego of Defendants PAUL RODRIGUEZ, and DOES
23 1 through 50, inclusive, and each of them, who were the controlling shareholders, officers,
24 and directors of MERCADO BUENOS AIRES, INC, and DOES 1 through 50;

25 (c) There is, and at all relevant times was, a unity of interest and/or ownership
26 between all of these Defendants so that any individuality or separateness between them has
27 ceased to exist in that MERCADO BUENOS AIRES, INC, and DOES 1 through 50,
28 inclusive were and are under their control and domination; and,

1 (d) MERCADO BUENOS AIRES, INC, and DOES 1 through 50, inclusive are,
2 and at all relevant times were, completely controlled, dominated, managed and operated by
3 PAUL RODRIGUEZ, and Defendants DOES 1 through 50, inclusive, and each of them, so
4 that MERCADO BUENOS AIRES, INC, and DOES 1 through 50 were mere shells,
5 instrumentalities, and/or conduits through which each of these Defendants conducted some
6 or all of their/its business. Adherence to the fiction of the separate existence of MERCADO
7 BUENOS AIRES, INC, and DOES 1 through 50, inclusive as entities distinct from PAUL
8 RODRIGUEZ, Defendants DOES 1 through 50, inclusive, or any of them, would permit an
9 abuse of the corporate privilege and sanction fraud or promote injustice in that, among
10 other things, it would enable each of these Defendants to avoid liability and to defraud his,
11 her, or its creditors, the effect of which would be to render each Defendant financially
12 unable to respond to a monetary judgment awarded against each or any of them in the
13 action.

14 III.

15 PAGA REPRESENTATIVE ALLEGATIONS

16 13. At all times herein set forth, PAGA provides that any provision of law under
17 the CAL. LAB. CODE and applicable IWC Wage Order that provides for a civil penalty to be
18 assessed and collected by the LWDA for violations of the CAL. LAB. CODE and applicable
19 IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a civil
20 action brought on behalf of themselves and other current or former employees pursuant to
21 procedures outlined in CAL. LAB. CODE § 2699.3.

22 14. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as
23 “any person who was employed by the alleged violator and against whom one or more of
24 the alleged violations was committed.”

25 15. PLAINTIFF and other current and former employees of DEFENDANTS are
26 “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all
27 DEFENDANTS’ current or former employees and one or more of the alleged violations
28 were committed against them.

1 16. On February 17, 2021, PLAINTIFF provided written notice by online filing
2 to the LWDA and by Certified Mail to DEFENDANTS of the specific provisions of the
3 California Labor Code alleged to have been violated, including facts and theories to support
4 the alleged violations, in accordance with CAL. LAB. CODE § 2699.3. PLAINTIFF’S notice
5 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
6 PAGA Administrator confirmed receipt of Plaintiff’s written notice and assigned Plaintiff
7 PAGA Case Number LWDA-CM-822039-21.

8 17. PLAINTIFF has satisfied the administrative prerequisites under CAL. LAB.
9 CODE §§ 2699.3(a) and 2699.3(c) to recover civil penalties against DEFENDANTS for
10 violations of CAL. LAB. CODE §§ 201, 202, 203, 226, 226.7, 351, 510, 511, 512, 516,
11 1182.12, 1174, 1194, 1194.2, 1197, 1197.1, 1198.

12 18. CAL. LAB. CODE § 558(a) provides, “Any employer or other person acting on
13 behalf of an employer who violates, or causes to be violated, a section of this chapter or
14 any provision regulating hours and days of work in any order of the Industrial Welfare
15 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
16 dollars (\$50) for each underpaid employee for each pay period for which the employee was
17 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
18 underpaid employee for each pay period for which the employee was underpaid”
19 Labor Code section 558(d) provides, “The civil penalties provided for in this section are in
20 addition to any other civil or criminal penalty provided by law.”

21 19. DEFENDANTS, at all times relevant to this complaint, were employers or
22 persons acting on behalf of an employer(s) who violated PLAINTIFF’S and other aggrieved
23 employees’ rights by violating various sections of the CAL. LAB. CODE as set forth above.

24 20. As set forth below, DEFENDANTS have violated numerous provisions of
25 both the CAL. LAB. CODE sections regulating hours and days of work as well as the
26 applicable IWC Wage Order.

27 21. Pursuant to PAGA, and in particular, CAL. LAB. CODE §§ 2699(a), 2699.3(a),
28 2699.3(c), and 2699.5, and section 558, PLAINTIFF, acting in the public interest as a

1 private attorney general, seeks assessment and collection of civil penalties for himself, all
2 other aggrieved employees, and the State of California against DEFENDANTS for
3 violations of CAL. LAB. CODE §§ 201, 202, 203, 226, 226.7, 351, 510, 511, 512, 516,
4 1182.12, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802.

5 IV.

6 **THE CONDUCT**

7 22. DEFENDANTS operate a restaurant named Mercado Buenos Aires, which
8 serves food in Los Angeles, California.

9 23. DEFENDANTS' business requires the use of "non-exempt" employees as
10 defined by the California Labor Code and IWC Wage Order No. 5-2001 (as amended).

11 24. DEFENDANTS employed PLAINTIFF as a waiter from, on or about, April,
12 2018, to on or about, March 14, 2020.

13 25. During PLAINTIFF'S and all aggrieved employees' employment,
14 DEFENDANTS exercised complete and unfettered control over PLAINTIFF'S and all
15 aggrieved employees' work schedules; their hours worked; their rate of pay and method of
16 payment; dictated how PLAINTIFF and all aggrieved employees would actually perform
17 their jobs; and dictated when PLAINTIFF and all aggrieved employees could or could not
18 take lunch or rest breaks. During PLAINTIFF'S and all aggrieved employees' employment
19 with DEFENDANTS, PLAINTIFF and all aggrieved employees could not exercise
20 discretion and independent judgment regarding the tasks they performed. PLAINTIFF and
21 all aggrieved employees had to obtain approval on any action taken in the course of their
22 employment. The work PLAINTIFF and all aggrieved employees performed was integral to
23 DEFENDANTS' business. PLAINTIFF, and all aggrieved employees worked on a regular
24 schedule for DEFENDANTS and were not paid for each individual job that they performed
25 nor did they bill for each individual job that they performed, nor did they set a price for
26 each individual job that they performed. Additionally, DEFENDANTS failed to pay
27 PLAINTIFF and all aggrieved employees a salary twice the state minimum wage for full-
28 time employment. CAL. CODE REGS. § 11050, including the applicable California Wage

1 Order applies to PLAINTIFF and all aggrieved employees. PLAINTIFF and all aggrieved
2 employees were not exempt employees or independent contractors.

3 26. During PLAINTIFF'S and all aggrieved employees' employment,
4 DEFENDANTS failed to properly pay PLAINTIFF and all aggrieved employees reporting
5 time wage compensation when PLAINTIFFS and all aggrieved employees reported to work
6 for their scheduled shifts but were put to work for less than half of their regular shift times.

7 27. 8 CAL. CODE REGS. § 11050(5)(A) provides, "Each workday an employee is
8 required to report for work and does report, but is not put to work or is furnished less than
9 half said employee's usual or scheduled day's work, the employee shall be paid for half the
10 usual or scheduled day's work, but in no event for less than two (2) hours nor more than
11 four (4) hours, at the employee's regular rate of pay, which shall not be less than the
12 minimum wage."

13 28. DEFENDANTS refused to allow PLAINTIFF and all aggrieved employees to
14 take code-complaint meal periods.

15 29. DEFENDANTS regularly failed to provide PLAINTIFF and all aggrieved
16 employees with code-compliant thirty (30) minute meal periods during shifts in excess of
17 five (5) hours, and a second meal period of at least thirty (30) minutes during shifts in
18 excess of ten (10) hours. When meal periods were provided, they were shorter in duration
19 than 30 minutes or were interrupted. DEFENDANTS effectively maintained control over
20 PLAINTIFF and all aggrieved employees during the meal periods that were provided. On
21 each day where a code-compliant thirty (30) minute meal period was not provided to
22 PLAINTIFF and all aggrieved employees, DEFENDANTS failed to pay PLAINTIFF and
23 all aggrieved employees one additional hour of pay at their regular rate of pay.

24 30. DEFENDANTS refused to allow PLAINTIFF and all aggrieved employees to
25 take code-complaint rest periods.

26 31. DEFENDANTS did not provide PLAINTIFF and all aggrieved employees with
27 a code compliant 10-minute net rest period for every four (4) hours or major fraction
28 thereof worked. Where rest periods were provided, they were shorter in duration than 10

1 minutes, were interrupted, or were not provided every four (4) hours or major fraction
2 thereof worked. DEFENDANTS effectively maintained control over PLAINTIFF and all
3 aggrieved employees during rest periods that were provided. On each day when code-
4 compliant ten (10) minute rest periods were not provided to PLAINTIFF and all aggrieved
5 employees, DEFENDANTS failed to pay PLAINTIFF and all aggrieved employees, one
6 additional hour of pay at their regular rate of pay.

7 32. Under California law, an employee who works more than 4 hours or major
8 fraction thereof is entitled to a compensated rest period of 10 minutes. An employee who
9 works more than 5 hours in a day is entitled to a meal period of at least 30 minutes, and a
10 second meal period of at least 30 minutes if he or she works more than 10 hours in a
11 workday. (CAL. LAB. CODE § 512(a).) An employer that fails to provide a rest or meal
12 period that satisfies the requirements of the applicable IWC Wage Order 5-2001 (as
13 amended) must pay a premium to the employee of one additional hour of pay at the
14 employee's regular rate for each day that a meal or rest period was not provided. (CAL.
15 LAB. CODE § 226.7(b).)

16 33. DEFENDANTS wage statements that were provided to PLAINTIFF and all
17 aggrieved employees did not in conform with CALIFORNIA LABOR CODE § 226 as the wage
18 statements failed to accurately reflect PLAINTIFFS' and all aggrieved employees' hours
19 worked, including reporting time wages, missed meal period premium wages, and missed
20 rest period premium wages.

21 34. DEFENDANTS instituted a tip-pooling policy that allowed for managers to
22 take gratuities left by DEFENDANTS' customers for PLAINTIFF and other aggrieved
23 employees.

24 35. CAL. LAB. CODE § 351 provides that no employer or agent shall collect, take,
25 or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a
26 patron, or deduct any amount from wages due an employee on account of a gratuity, or
27 require an employee to credit the amount, or any part thereof, of a gratuity against and as a
28

1 part of the wages due the employee from the employer. Every gratuity is declared to be the
2 sole property of the employee or employees to whom it was paid, given, or left for.

3 36. DEFENDANTS failed to provide adequate seating to PLAINTIFF and all
4 aggrieved employees, while PLAINTIFF and all aggrieved employees were on and off
5 duty. PLAINTIFF and all aggrieved employees were required to work standing at all times,
6 even when they could have worked while seated, and they were forced to continue to stand
7 during times when they were not engaged in the active duties of their employment.

8 37. As a result, PLAINTIFF and all aggrieved employees are entitled to recover
9 all remedies available for violations of CALIFORNIA LABOR CODE § 1198 and California
10 Code of Regulations, Title 8, section 11050(14).

11 38. CAL. LAB. CODE § 201(a) provides that a discharged employee's unpaid wages
12 are due and payable immediately. Under CAL. LAB. CODE § 202(a), when an employee not
13 having a written contract for a definite period is terminated, his or her wages become
14 immediately due and payable. CAL. LAB. CODE § 203(a) provides, "If an employer willfully
15 fails to pay, without abatement or reduction, in accordance with Sections [201 and 202],
16 any wages of an employee who is discharged or who quits, the wages of the employee shall
17 continue as a penalty from the due date thereof at the same rate until paid or until an action
18 therefore is commenced; but the wages shall not continue for more than 30 days."

19 39. As a result, under CAL. LAB. CODE § 203, PLAINTIFF and other aggrieved
20 employees are entitled to one day's wages for each day they were not timely paid all wages
21 due, up to a maximum of 30 days' wages. Because DEFENDANTS failed to pay reporting
22 time wages, meal period premium wages, and rest period premium wages to PLAINTIFF
23 and other aggrieved employees, PLAINTIFF and other aggrieved employees are entitled to
24 30 days' wages.

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1 **FIRST CAUSE OF ACTION**
2 **FOR FAILURE TO PAY REPORTING TIME PAY AND LIQUIDATED DAMAGES**

3 **[Cal. Lab. Code § 1198 and 8 Cal. Code Regs. §11050]**

4 **(By PLAINTIFF and Against All DEFENDANTS)**

5 40. PLAINTIFF repeats and re-alleges paragraphs 1 through 39, inclusive, of this
6 Complaint and they are incorporated herein by this reference.

7 41. Under the applicable IWC Wage Order 5-2001 (as amended) DEFENDANTS
8 were the joint employers of PLAINTIFF.

9 42. CAL. LAB. CODE § 1198 dictates that no employer may employ an employee
10 under conditions of labor that are prohibited by the applicable IWC Wage Order.

11 43. 8 CAL. CODE REGS. § 11050(5)(A) provides, "Each workday an employee is
12 required to report for work and does report, but is not put to work or is furnished less than
13 half said employee's usual or scheduled day's work, the employee shall be paid for half the
14 usual or scheduled day's work, but in no event for less than two (2) hours nor more than
15 four (4) hours, at the employee's regular rate of pay, which shall not be less than the
16 minimum wage."

17 44. The purpose of the reporting time regulation is "to guarantee at least partial
18 compensation for employees who report to work expecting to work a specified number of
19 hours, and who are deprived of that amount because of inadequate scheduling or lack of
20 proper notice by the employer." (*Aleman v. AirTouch Cellular* (2012) 209 Cal.App.4th 556,
21 572.)

22 45. CAL. LAB. CODE § 1194.2 further establishes an employee's right to recover
23 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon
24 in an action for payment of a wage less than the minimum wage fixed by the Industrial
25 Welfare Commission or by statute.

26 46. At all times relevant hereto, PLAINTIFF was paid by DEFENDANTS on an
27 hourly basis. Additionally, PLAINTIFF did not reside at the place of employment.
28

1 47. During PLAINTIFF’S employment, DEFENDENTS failed to pay PLAINTIFF
2 reporting time pay when PLAINTIFF reported to work for his scheduled shifts but was put
3 to work for less than half of his regular shift times.

4 48. DEFENDANTS would cause PLAINTIFF to report to shifts only to be turned
5 away and not provided shifts on those days. In these instances, DEFENDENTS would not
6 pay PLAINTIFF’s wages for half of his scheduled shifts.

7 49. DEFENDANTS acted intentionally, oppressively, and maliciously toward
8 PLAINTIFF, with a conscious disregard of him, or the consequences to him, with the intent
9 of depriving him of property and legal rights and otherwise causing him injury. By virtue
10 of DEFENDANTS’ unlawful failure to pay reporting time wages, PLAINTIFF has suffered,
11 and will continue to suffer damages in an amount which is presently unknown to him but
12 which exceeds the jurisdictional limits of the court and which will be ascertained according
13 to proof at trial.

14 50. PLAINTIFF seeks to recover reporting-time wages according to proof, interest,
15 and all applicable statutory penalties against DEFENDANTS, in a sum as provided by the
16 CAL. LAB. CODE and/or other statutes. PLAINTIFF also seeks to recover of liquidated
17 damages as provided by CAL. LAB. CODE § 1194.2, and reasonable attorneys’ fees and
18 costs.

19 **SECOND CAUSE OF ACTION**

20 **FOR FAILURE TO PROVIDE MEAL PERIODS**

21 **[CAL. LAB. CODE §§ 226.7 and 512, and 8 CAL. CODE REGS. § 11050]**

22 **(By PLAINTIFF and Against All DEFENDANTS)**

23 51. PLAINTIFF repeats and re-alleges paragraphs 1 through 50, inclusive, of this
24 Complaint and they are incorporated herein by this reference.

25 52. Under the applicable IWC Wage Order 5-2001 (as amended), DEFENDANTS
26 were the joint employers of PLAINTIFF.

27 53. CAL. LAB. CODE §§ 226.7 and 512, and 8 CAL. CODE REGS. §§ 11050(11)(A)
28 provide that an employee who works more than five (5) hours in a day is entitled to a meal

1 period of at least thirty (30) minutes, and a second meal period of at least thirty (30)
2 minutes if he or she works more than ten (10) hours in a work day.

3 54. CAL. LAB. CODE § 226.7 and 8 CAL. CODE REGS. §§ 11050(11)(D) provide that
4 if an employer fails to provide an employee a meal period in accordance with the section,
5 the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
6 compensation for each workday that the meal period is not provided.

7 55. At all times relevant hereto, PLAINTIFF worked more than five (5) hours in a
8 workday for DEFENDANTS.

9 56. DEFENDANTS regularly failed to provide PLAINTIFF with compliant thirty
10 (30) minute meal periods during shifts in excess of five (5) hours and compliant second
11 meal periods of at least thirty (30) minutes during shifts in excess of ten (10) hours. When
12 meal periods were provided, they were shorter in duration than 30 minutes or were
13 interrupted. DEFENDANTS effectively maintained control over PLAINTIFF during the
14 meal periods that were provided. On each day where a compliant thirty (30) minute meal
15 period was not provided to PLAINTIFF, DEFENDANTS failed to pay PLAINTIFF one
16 additional hour of pay at PLAINTIFF'S regular rate of pay.

17 57. DEFENDANTS have intentionally and improperly denied meal periods to
18 PLAINTIFF, in violation of CAL. LAB. CODE §§ 226.7 and 512 and 8 CAL. CODE REGS. §
19 11050(11)(A) and other regulations and statutes.

20 58. By virtue of the DEFENDANTS' unlawful failure to provide meal periods to
21 PLAINTIFF, PLAINTIFF, has suffered, and will continue to suffer, damages in amounts
22 which are presently unknown to PLAINTIFF, but which damages exceed the jurisdictional
23 limits of the court and which will be ascertained according to proof at trial.

24 59. PLAINTIFF is informed and believes, and based upon that information and
25 belief alleges, that DEFENDANTS purposely elected not to provide meal periods to their
26 hourly paid employees. DEFENDANTS acted intentionally, oppressively and maliciously
27 toward PLAINTIFF, with a conscious disregard of his rights, or the consequences to
28

1 PLAINTIFF, with the intent of depriving PLAINTIFF of property and legal rights and
2 otherwise causing PLAINTIFF injury.

3 60. PLAINTIFF seeks to recover meal-period compensation according to proof,
4 interest, all applicable statutory penalties against DEFENDANTS, in a sum as provided by
5 the CAL. LAB. CODE and/or other statutes, and reasonable attorneys' fees and costs.

6 **THIRD CAUSE OF ACTION**

7 **FOR FAILURE TO PROVIDE REST PERIODS**

8 **[CAL. LAB. CODE §§ 226.7 and 512, and 8 CAL. CODE REGS. §§ 11050]**

9 **(By PLAINTIFF and Against All DEFENDANTS)**

10 61. PLAINTIFF repeats and re-alleges paragraphs 1 through 60, inclusive, of this
11 Complaint and they are incorporated herein by this reference.

12 62. Under the applicable IWC Wage Order 5-2001 (as amended), DEFENDANTS
13 were the joint employers of PLAINTIFF.

14 63. CAL. LAB. CODE §§ 226.7 and 8 CAL. CODE REGS. §§ 11050 (12)(A) provide
15 that employers shall authorize and permit all employees to take rest periods at the rate of
16 ten (10) minutes net rest time per four (4) hours or major fraction thereof, of work.

17 64. CAL. LAB. CODE §§ 226.7 and 8 CAL. CODE REGS. §§ 11050(12)(B) provide
18 that if an employer fails to provide an employee with rest periods in accordance with those
19 statutes, the employer shall pay the employee one (1) hour of pay at the employee's regular
20 rate of compensation for each workday that the rest period was not provided. The Wage
21 Order provides a separate remedy for violations of meal period requirements and violations
22 of rest period requirements" and section 226.7 allows recovery of up to two premium
23 payments per work day – one for each type of violation. (*United Parcel Service, Inc., v.*
24 *Superior Court* (2011) 196 Cal.App.4th 57, 609.)

25 65. At all times relevant hereto, PLAINTIFF worked more than four hours in a
26 workday for DEFENDANTS.

27 66. At all times relevant hereto, DEFENDANTS failed to provide rest periods as
28 required by CAL. LAB. CODE §§ 226.7 and 8 CAL. CODE REGS. §§ 11050(12)(A).

1 67. DEFENDANTS did not provide PLAINTIFF with a 10-minute net rest period
2 for every four (4) hours or major fraction thereof worked. Where rest periods were
3 provided, they were shorter in duration than 10 minutes, were interrupted, or were not
4 provided every four (4) hours or major fraction thereof worked. DEFENDANTS effectively
5 maintained control over PLAINTIFF during rest periods that were provided. On each day
6 where compliant ten (10) minute rest periods were not provided to PLAINTIFF,
7 DEFENDANTS failed to pay PLAINTIFF one additional hour of pay at his regular rate of
8 pay.

9 68. DEFENDANTS have intentionally and improperly denied rest periods to
10 PLAINTIFF, in violation of CAL. LAB. CODE §§ 226.7 and 512 and 8 CAL. CODE OF REGS.
11 §§ 11050(12)(A).

12 69. By virtue of the DEFENDANTS' unlawful failure to provide rest periods to the
13 PLAINTIFF, PLAINTIFF has suffered, and will continue to suffer, damages in amounts
14 which are presently unknown to PLAINTIFF, but which exceed the jurisdictional limits of
15 the court and which will be ascertained according to proof at trial.

16 70. PLAINTIFF is informed and believes, and based upon that information and
17 belief alleges, that DEFENDANTS knew or should have known that PLAINTIFF was
18 entitled to rest periods and purposely elected not to provide rest periods. DEFENDANTS
19 acted intentionally, oppressively and maliciously toward PLAINTIFF, with a conscious
20 disregard of his rights, or the consequences to PLAINTIFF, with the intent of depriving
21 PLAINTIFF of property and legal rights and otherwise causing PLAINTIFF injury.

22 71. PLAINTIFF seeks to recover rest-period compensation according to proof,
23 interest, all applicable statutory penalties against DEFENDANTS, in a sum as provided by
24 the CAL. LAB. CODE and/or other statutes, and reasonable attorneys' fees and costs.

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FOURTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE ITEMIZED STATEMENTS AND MAINTAIN
ACCURATE PAYROLL RECORDS

[CAL. LAB. CODE §§ 226(a), 1174(d), and 1198]

(By PLAINTIFF and Against All DEFENDANTS)

72. PLAINTIFF repeats and re-alleges paragraphs 1 through 71, inclusive, of this Complaint and they are incorporated herein by this reference.

73. Under the applicable IWC Wage Order 5-2001 (as amended), DEFENDANTS were the joint employers of PLAINTIFF.

74. CAL. LAB. CODE § 226(a) requires employers to provide non-exempt employees with detailed and accurate wage statements (*i.e.* “pay stubs”). Specifically, the statute provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and total hours worked for each temporary services assignment.

75. For violations of CAL. LAB. CODE § 226, CAL. LAB. CODE § 226(e) provides that an employee: (a) is entitled to recover the greater of all actual damages or minimum

1 statutory damages of \$50 for the initial pay period in which a violation occurs and \$100 for
2 each subsequent violation, up to a maximum of \$4,000.

3 76. Additionally, CAL. LAB. CODE § 1174 provides in part, “Every person
4 employing labor in this state shall...(c) Keep a record showing the names and addresses of
5 all employees employed and the ages of all minors. (d) Keep, at a central location in the
6 state or at the plants or establishments at which employees are employed, payroll records
7 showing the hours worked daily by and the wages paid to, and the number of piece-rate
8 units earned by and any applicable piece rate paid to, employees employed at the respective
9 plants or establishments....”

10 77. CAL. LAB. CODE § 1174.5 provides that employers are subject to a \$500 civil
11 penalty if they fail to maintain accurate and complete records as required by section
12 1174(c) or (d).

13 78. DEFENDANTS intentionally failed to furnish to PLAINTIFF, upon the
14 payment of wages, itemized wage statements in conformity with CAL. LAB. CODE § 226.
15 The wage statements failed to accurately reflect PLAINTIFF’S, hours worked, including
16 reporting time wages, missed meal period premium wages, missed rest period premium
17 wages, and failed to state the correct rate of pay.

18 79. PLAINTIFF was damaged by these failures because, among other things, the
19 failures led PLAINTIFF to believe that he was not entitled to be paid for all hours worked
20 even though he was so entitled, and because these failures hindered PLAINTIFF from
21 determining the amounts of wages owed to them.

22 80. PLAINTIFF is also informed and believes, and based upon that information
23 and belief alleges, that DEFENDANTS willfully failed to maintain accurate payroll records
24 showing the daily hours PLAINTIFF worked and the wages paid thereto as a result of
25 failing to record reporting time wages owed to PLAINTIFF, as well as PLAINTIFF’S
26 missed meal periods and rest periods.

27 81. PLAINTIFF seeks to recover of damages, penalties, and interest pursuant to
28 CAL. LAB. CODE §§ 226, 1174, and 1198, and reasonable attorneys’ fees and costs.

1 **FIFTH CAUSE OF ACTION**
2 **CONVERSION - IMPROPER RECEIPT AND DISTRIBUTION OF GRATUITIES**

3 **[CAL. LAB. CODE § 351]**

4 **(By PLAINTIFF and Against All DEFENDANTS)**

5 82. PLAINTIFF repeats and re-alleges paragraphs 1 through 81, inclusive, of this
6 Complaint and they are incorporated herein by this reference.

7 83. Under the applicable IWC Wage Order 5-2001 (as amended),
8 DEFENDANTS were the joint employers of PLAINTIFF.

9 84. CAL. LAB. CODE § 351 states, “No employer or agent shall collect, take, or
10 receive any gratuity or a part thereof that is paid, given to, or left for an employee by a
11 patron, or deduct any amount from wages due an employee on account of a gratuity, or
12 require an employee to credit the amount, or any part thereof, of a gratuity against and as a
13 part of the wages due the employee from the employer. Every gratuity is hereby declared to
14 be the sole property of the employee or employees to whom it was paid, given, or left for.”

15 85. DEFENDANTS instituted a tip-pooling policy that allowed for managers to
16 take gratuities left by DEFENDANTS’ customers for PLAINTIFF. DEFENDANTS’ tip-
17 pooling policy violated CAL. LAB. CODE § 351. Upon information and belief,
18 DEFENDANTS and DEFENDANTS’ managers took tips without the consent of
19 DEFENDANTS’ employees, including PLAINTIFF.

20 86. PLAINTIFF is entitled to and seeks all remedies available for violations of
21 CAL. LAB. CODE § 351.

22 **SIXTH CAUSE OF ACTION**
23 **FAILURE TO PROVIDE ADEQUATE SEATING**

24 **[Labor Code § 1198; Cal. Code of Regs. § 11010(14)]**

25 **(By PLAINTIFF and Against All DEFENDANTS)**

26 87. PLAINTIFF repeats and re-alleges paragraphs 1 through 86, inclusive, of this
27 Complaint and they are incorporated herein by this reference.
28

1 88. Under the applicable IWC Wage Order 5-2001 (as amended),
2 DEFENDANTS were the joint employers of PLAINTIFF.

3 89. CAL. LAB. CODE § 1198 makes it illegal to employ an employee under
4 conditions of labor that are prohibited by the applicable wage order.

5 90. CAL. LAB. CODE § 1198 requires that "...the standard conditions of labor
6 fixed by the commission shall be the . . . standard conditions of labor for employees. The
7 employment of any employee...under conditions of labor prohibited by the order is
8 unlawful."

9 91. CAL. CODE REGS., Title 8, section 11010(14)(A) provides, All working
10 employees shall be provided with suitable seats when the nature of the work reasonably
11 permits the use of seats."

12 92. CAL. CODE REGS, Title 8, section 11010(14)(B) provides, "When employees
13 are not engaged in the active duties of their employment and the nature of the work requires
14 standing, an adequate number of suitable seats shall be placed in reasonable proximity to
15 the work area and employees shall be permitted to use such seats when it does not interfere
16 with the performance of their duties."

17 93. DEFENDANTS violated CAL. LAB. CODE § 1198 and CAL. CODE REGS, Title
18 8, section 11050(14) because DEFENDANTS failed to provide adequate seating to
19 PLAINTIFF while PLAINTIFF was on and off duty. PLAINTIFF was required to work
20 standing at all times, even when he could have worked while seated, and was forced to
21 continue to stand during times when he was not engaged in the active duties of his
22 employment.

23 94. PLAINTIFF is entitled to and seeks all remedies all remedies available for
24 violations of CAL. LAB. CODE § 1198 and CAL. CODE REGS, Title 8, section 11010(14).

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SEVENTH CAUSE OF ACTION

FOR FAILURE TO PAY WAGES UPON TERMINATION OF EMPLOYMENT

[CAL. LAB. CODE § 203]

(By PLAINTIFF and Against All DEFENDANTS)

95. PLAINTIFF repeats and re-alleges paragraphs 1 through 94, inclusive, of this Complaint and they are incorporated herein by this reference.

96. Under the applicable IWC Wage Order 5-2001 (as amended), DEFENDANTS were the joint employers of PLAINTIFF.

97. CAL. LAB. CODE § 201(a) provides that a discharged employee's unpaid wages are due and payable immediately. Under CAL. LAB. CODE § 202(a), when an employee not having a written contract for a definite period is terminated, his or her wages become immediately due and payable.

98. CAL. LAB. CODE § 203 (a) provides, “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections [201 and 202], any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.”

99. PLAINTIFF did not have a written contract for definite terms of employment. PLAINTIFF was discharged from his employment with DEFENDANTS within the applicable statute of limitations. DEFENDANTS willfully failed to pay PLAINTIFF the wages due to them—without abatement or reduction.

100. Under CAL. LAB. CODE § 203, PLAINTIFF is entitled to one day's wages for each day he was not timely paid all wages due, up to a maximum of 30 days' wages. Because DEFENDANTS failed to pay reporting time wages owed, meal period premium wages owed, and rest period premium wages owed, PLAINTIFF is entitled to and does seek 30 days' wages, and applicable penalties. PLAINTIFF also seeks reasonable attorneys' fees and costs.

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1 **EIGHTH CAUSE OF ACTION**
2 **FOR VIOLATION OF CALIFORNIA LABOR CODE SECTION 558**

3 **[CAL. LAB. CODE § 558]**

4 **(By PLAINTIFF and Against All DEFENDANTS)**

5 101. PLAINTIFF repeats and re-alleges paragraphs 1 through 100, inclusive, of
6 this Complaint and they are incorporated herein by this reference.

7 102. Under the applicable IWC Wage Order 5-2001 (as amended),
8 DEFENDANTS were the joint employers of PLAINTIFF.

9 103. CAL. LAB. CODE § 558(a) provides, “Any employer or other person acting on
10 behalf of an employer who violates, or causes to be violated, a section of this chapter or
11 any provision regulating hours and days of work in any order of the Industrial Welfare
12 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
13 dollars (\$50) for each underpaid employee for each pay period for which the employee was
14 underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each
15 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
16 period for which the employee was underpaid in addition to an amount sufficient to recover
17 underpaid wages.” CAL. LAB. CODE § 558(d) provides, “The civil penalties provided for in
18 this section are in addition to any other civil or criminal penalty provided by law.”

19 104. At all relevant times, DEFENDANTS violated the rights of PLAINTIFF by
20 violating various sections of the CAL. LAB. CODE. PLAINTIFF seeks the remedies set forth
21 in CAL. LAB. CODE § 558.

22 **NINTH CAUSE OF ACTION**
23 **FOR UNFAIR COMPETITION**

24 **[CAL. BUS. & PROF. CODE § 17200 *et seq.*]**

25 **(By PLAINTIFF and Against All DEFENDANTS)**

26 105. PLAINTIFF repeats and re-alleges paragraphs 1 through 104, inclusive, of
27 this Complaint and they are incorporated herein by this reference.
28

1 106. Under the applicable IWC Wage Order 5-2001 (as amended),
2 DEFENDANTS were the joint employers of PLAINTIFF. DEFENDANTS are also a
3 “person” as that term is defined under CAL. BUS. & PROF. CODE § 17021.

4 107. CAL. BUS. & PROF. CODE section 17200 defines unfair competition as any
5 unlawful, unfair, or fraudulent business act or practice. At all times relevant hereto, by and
6 through the conduct described herein, DEFENDANTS have engaged in unfair and unlawful
7 practices by, among other violations, failing to pay reporting time wages to PLAINTIFF,
8 failing to provide compliant meal periods to PLAINTIFF, failing to provide compliant rest
9 periods to PLAINTIFF, failing to provide accurate wage statements to PLAINTIFF, failing
10 to properly account for and distribute gratuities to PLAINTIFF, failing to provide adequate
11 seating to PLAINTIFF, and failing to provide wages due upon termination of employment
12 to PLAINTIFF, under the applicable CAL. LAB. CODE, and Industrial Welfare Commission
13 requirements in violation of CAL. BUS. & PROF. CODE § 17200, et seq., and have thereby
14 deprived PLAINTIFF of fundamental rights and privileges.

15 108. By and through the unfair and unlawful business practices described herein,
16 DEFENDANTS have obtained valuable property, money, and services from PLAINTIFF
17 and have deprived him of valuable rights and benefits guaranteed by law, all to the
18 detriment of PLAINTIFF.

19 109. All the acts described herein are violations of, among other things, the CAL.
20 LAB. CODE, CAL. CODE REGS., and Industrial Welfare Commission Wage Order 5; are
21 unlawful and in violation of public policy; and in addition are immoral, unethical,
22 oppressive, and unscrupulous, and thereby constitute unfair and unlawful business practices
23 in violation of CAL. BUS. & PROF. CODE § 17200, et seq.

24 110. PLAINTIFF is entitled to and seeks such relief as may be necessary to
25 restore to him the money and property that DEFENDANTS have acquired, or of which
26 PLAINTIFF has been deprived, by means of the above-described unfair and unlawful
27 business practices.
28

111. PLAINTIFF is further entitled to and seeks a declaration that the above-described business practices are unfair and unlawful and that an injunctive relief should be issued restraining DEFENDANTS from engaging in any of the above-described unfair and unlawful business practices in the future.

112. PLAINTIFF has no plain, speedy, and/or adequate remedy at law to redress the injuries that they have suffered as a consequence of the unfair and unlawful business practices of DEFENDANTS. As a result of the unfair and unlawful business practices described above, PLAINTIFF has suffered and will continue to suffer irreparable harm unless DEFENDANTS are restrained from continuing to engage in these unfair and unlawful business practices. In addition, DEFENDANTS should be required to disgorge the unpaid moneys to PLAINTIFF.

TENTH CAUSE OF ACTION

FOR PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT

[California Labor Code § 2698, et seq.]

**(By PLAINTIFF, On His Own Behalf, and As A Private Attorneys General for All
Aggrieved Employees, and Against All DEFENDANTS)**

113. PLAINTIFF repeats and re-alleges paragraphs 1 through 112, inclusive, of this Complaint and they are incorporated herein by this reference.

114. CAL. LAB. CODE §§ 2698-2699, the Private Attorneys General Act of 2004 expressly establishes that any provision of the CAL. LAB. CODE which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the CAL. LAB. CODE, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

115. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil

1 action is authorized to exercise the same discretion, subject to the same limitations and
2 conditions, to assess a civil penalty.

3 116. PLAINTIFF and all persons employed by DEFENDANTS as hourly paid
4 employees are “aggrieved employees” as defined by CAL. LAB. CODE § 2699 in that they
5 are all current or former employees of DEFENDANTS, and one or more of the alleged
6 violations was committed against them.

7 117. PLAINTIFF asserts all of his claims in this Complaint on his own behalf and
8 on behalf of all aggrieved employees in his capacity as a Private Attorneys General, and
9 seeks all statutory penalties available under CAL. LAB. CODE §§ 2698-2699.

10 118. On February 17, 2021, PLAINTIFF gave written notice by certified mail to
11 and Defendants PAUL RODRIGUEZ, and MERCADO BUENOS AIRES, INC of the
12 specific code provisions alleged to have been violated, as required by CAL. LAB. CODE §
13 2699.3. On the same date, PLAINTIFF submitted a “PAGA Claim Notice” to the Labor and
14 Workforce Development Agency (“LWDA”) through its online portal. PLAINTIFF’s
15 PAGA Notice Letter and LWDA Claim Submissions indicated that he, “as an aggrieved
16 employee, on his own behalf and on behalf of all aggrieved employees of Mercado Buenos
17 Aires, Inc, Paul Rodriguez, and any other affiliated entity (collectively referred to herein as
18 “**Mercado Buenos Aires**”), intends to avail himself of the protections granted by the
19 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT OF 2004 (“the Act”) (CAL.
20 LABOR CODE §2698 *et. seq.*.” The statutory waiting period for PLAINTIFF to add these
21 allegations to the Complaint has expired. As a result, pursuant to CAL. LAB. CODE § 2699.3,
22 PLAINTIFF, on behalf of himself and all aggrieved employees, may now commence a
23 representative civil action pursuant to CAL. LAB. CODE § 2699 as the proxy of the State of
24 California.

25 119. DEFENDANTS’ conduct, as alleged herein, violates numerous sections of
26 the CAL. LAB. CODE , including, but not limited to, the following:
27
28

- 1 (a) Violations of CAL. LAB. CODE §§ 510, 1194, 1194.2, and 1198 for
2 DEFENDANTS' failure to pay overtime compensation and liquidated
3 damages to other aggrieved employees;
- 4 (b) Violations of CAL. LAB. CODE §§ 1182.12, 1194; 1194.2; 1197; 1197.1; and
5 1198 and 8 CAL. CODE REGS. §§ 11050 for DEFENDANTS' failure to pay
6 minimum wages and liquidated damages to other aggrieved employees;
- 7 (c) Violations of CAL. LAB. CODE § 1198 and 8 CAL. CODE REGS. §§ 11050 for
8 DEFENDANTS' failure to pay reporting time pay to PLAINTIFF and other
9 aggrieved employees;
- 10 (d) Violations of CAL. LAB. CODE §§ 226.7 and 512, and 8 CAL. CODE REGS. §§
11 11050 for DEFENDANTS' failure to provide meal periods to PLAINTIFF
12 and other aggrieved employees;
- 13 (e) Violations of CAL. LAB. CODE §§ 226.7 and 512, and 8 CAL. CODE REGS. §§
14 11050 for DEFENDANTS' failure to provide rest periods to PLAINTIFF
15 and other aggrieved employees;
- 16 (f) Violations of CAL. LAB. CODE §§ 226(a), 1174(d), and 1198 for
17 DEFENDANTS' failure to provide accurate itemized wage statements to
18 PLAINTIFF and other aggrieved employees and to maintain accurate payroll
19 records for PLAINTIFF and other aggrieved employees;
- 20 (g) Violations of CAL. LAB. CODE § 351 for DEFENDANTS' failure to properly
21 receive and distribute gratuities to PLAINTIFF and other aggrieved
22 employees;
- 23 (h) Violations of CAL. LAB. CODE § 1198 and CAL. CODE REGS. § 11050(14) for
24 DEFENDANTS' failure to provide adequate seating to PLAINTIFF and
25 other aggrieved employees; and,
- 26 (i) Violations of CAL. LAB. CODE § 201, 202, 203 for DEFENDANTS' failure
27 to timely pay wages to PLAINTIFF and other aggrieved employees.
28

120. Therefore, PLAINTIFF, on his own behalf and on behalf of all aggrieved employees can and hereby does seek recovery of all civil penalties as prescribed by the CAL. LAB. CODE §§ 2698-2699, the Private Attorneys General Act of 2004, as the representative of the State of California, for the illegal conduct perpetrated on PLAINTIFF and all aggrieved employees by DEFENDANTS.

PRAYER

WHEREFORE, PLAINTIFFS, on their own behalf and on behalf of all aggrieved employees, pray for judgment against each Defendant, jointly and severally, as follows:

1. ON THE FIRST CAUSE OF ACTION:

- (a) For reporting time wage compensation and liquidated damages;
- (b) For an award of interest, including prejudgment interest at the legal rate; and,
- (c) For statutory penalties, interest, costs of suit, and attorneys' fees.

2. ON THE SECOND, THIRD, AND SEVENTH CAUSES OF ACTION:

- (a) For compensatory damages, including lost wages;
- (b) For an award of interest, including prejudgment interest at the legal rate; and,
- (c) For statutory penalties, interest, costs of suit, and attorneys' fees.

3. ON THE FOURTH, FIFTH, SIXTH, AND EIGHTH CAUSES OF ACTION:

- (a) For compensatory damages;
- (b) For an award of interest, including prejudgment interest at the legal rate; and,
- (c) For statutory penalties, interest, costs of suit, and attorneys' fees.

4. ON THE NINTH CAUSE OF ACTION:

- (a) For restitution and disgorgement;
- (b) For injunctive relief ordering the continuing unfair business acts and practices to cease, or as the Court otherwise deems just and proper; and,

- 1 (c) For other injunctive relief ordering DEFENDANTS to notify
2 PLAINTIFF that they have not been paid the proper amounts required
3 in accordance with California law.

4 **5. ON THE TENTH CAUSE OF ACTION:**

- 5 (a) That the Court declare, adjudge and decree that DEFENDANTS
6 violated the following CAL. LAB. CODE provisions as to PLAINTIFF
7 and/or other aggrieved employees:

- 8 1. CAL. LAB. CODE §§ 510, 1194, 1194.2, and 1198 for
9 DEFENDANTS' failure to pay overtime compensation and
10 liquidated damages to other aggrieved employees;
11 2. CAL. LAB. CODE §§ 1182.12, 1194; 1194.2; 1197; 1197.1; and
12 1198 and 8 CAL. CODE REGS. §§ 11050 for DEFENDANTS'
13 failure to pay minimum wages and liquidated damages to other
14 aggrieved employees;
15 3. CAL. LAB. CODE § 1198 and 8 CAL. CODE REGS. §§ 11050 for
16 DEFENDANTS' failure to pay reporting time pay to
17 PLAINTIFF and other aggrieved employees;
18 4. CAL. LAB. CODE §§ 226.7 and 512, and 8 CAL. CODE REGS. §§
19 11050 for DEFENDANTS' failure to provide meal periods to
20 PLAINTIFF and other aggrieved employees;
21 5. CAL. LAB. CODE §§ 226.7 and 512, and 8 CAL. CODE REGS. §§
22 11050 for DEFENDANTS' failure to provide rest periods to
23 PLAINTIFF and other aggrieved employees;
24 6. CAL. LAB. CODE §§ 226(a), 1174(d), and 1198 for
25 DEFENDANTS' failure to provide accurate itemized wage
26 statements to PLAINTIFF and other aggrieved employees and
27 to maintain accurate payroll records for PLAINTIFF and other
28 aggrieved employees;

- 1 7. CAL. LAB. CODE § 351 for DEFENDANTS' failure properly
2 receive and distribute gratuities to PLAINTIFF and other
3 aggrieved employees;
4 8. CAL. LAB. CODE § 1198 and CAL. CODE REGS. § 11050(14) for
5 DEFENDANTS' failure to provide adequate seating to
6 PLAINTIFF and other aggrieved employees;
7 9. CAL. LAB. CODE § 201, 202, and 203 for DEFENDANTS'
8 failure to timely pay wages to PLAINTIFF and other aggrieved
9 employees; and,

- 10 (b) For civil penalties pursuant to CAL. LAB. CODE §§ 210, 226.3, 256,
11 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of CAL.
12 LAB. CODE §§ 201, 202, 203, 226, 226.7, 351, 510, 511, 512, 516,
13 1182.12, 1174, 1194, 1194.2, 1197, 1197.1, 1198;
14 (c) For attorneys' fees and costs pursuant to California Labor Code
15 section 2699(g)(1), and any and all other relevant statutes, for
16 Defendant's violations of CAL. LAB. CODE §§ 201, 202, 203, 226,
17 226.7, 351, 510, 511, 512, 516, 1182.12, 1174, 1194, 1194.2, 1197,
18 1197.1, 1198;
19 (d) For pre-judgment and post-judgment interest as provided by law; and
20 (e) For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **ON ALL CAUSES OF ACTION:**

- 23 (a) For reasonable attorneys' fees;
24 (b) For costs of suit;
25 (c) For prejudgment interest; and,
26 (d) For other and further relief their court deems just and proper.
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Dated: October 18, 2021

LAW OFFICES OF DAVID R. GREIFINGER

By: 
DAVID R. GREIFINGER
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: October 18, 2021

LAW OFFICES OF DAVID R. GREIFINGER

By: 
DAVID R. GREIFINGER
Attorneys for Plaintiffs