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Dulce Lizbeth Morales

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

DULCE LIZBETH MORALES, an
individual,

PLAINTIFF,

vs.

TAQUERIA MI LINDO APATZINGÁN, a
California Corporation DBA MI LINDO
APATZINGAN; RODRIGO TORRES, an
individual; ISABEL TORRES, an
individual; and DOES 1 through 25,
inclusive,

DEFENDANTS.

CASE NO.: CVRI2102632

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

1. Failure to Pay Overtime Wages;
2. Failure to Provide Meal Periods or Compensation in Lieu Thereof;
3. Failure to Provide Rest Periods or Compensation in Lieu Thereof;
4. For Failure To Pay Prevailing Minimum Wages;
5. Failure to Reimburse Business Expenses In Violation of Labor Code § 2802;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Unfair Competition Pursuant to Business and Professions Code Section 17200 Et Seq.;
8. Civil Penalties Pursuant to Labor Code Section 2698 *et seq*

DEMAND FOR JURY TRIAL

HERE COMES NOW PLAINTIFF Dulce Lizbeth Morales (*hereafter referred to as* “PLAINTIFF” and/or “Morales”), in this Labor & Employment wage and hour action, and alleges against DEFENDANT TAQUERIA MI LINDO APATZINGÁN, a California Corporation DBA MI LINDO APATZINGAN (*hereinafter* referred to as “COMPANY”); RODRIGO TORRES, an individual (“RODRIGO”); ISABEL TORRES, an individual (“ISABEL”) and DOES 1 through 25, inclusive (*hereafter referred to as* “DOES”) (all herein referred to collectively as the “DEFENDANTS”) as follows:

GENERAL ALLEGATIONS

1. At all times mentioned herein, PLAINTIFF was and is a resident of the County of Riverside, State of California.

2. PLAINTIFF is informed and believes, and based thereon alleges, that at all times mentioned herein DEFENDANT COMPANY, was and is a California Corporation and registered with the California Secretary of State under entity number C3785083, and doing business and having a substantial, continuous, and systematic commercial activity in the City and County of Riverside, State of California, and employer of PLAINTIFF along with co-DEFENDANTS RODRIGO and ISABEL.

3. PLAINTIFF is informed and believes, and based thereon alleges, that at all times mentioned herein co-DEFENDANT RODRIGO TORRES ("RODRIGO"), was and is a resident of the State of California, County of Riverside, and a supervisor of PLAINTIFF for the COMPANY, in that he was in charge of hiring, firing, disciplining, promoting, scheduling, and otherwise directing the work of employees of the COMPANY and setting pay of employees, including PLAINTIFF. As such, this Defendant is believed to be an "other person acting on behalf of an employer" within the meaning of Labor Code §§ 558.1.

4. PLAINTIFF is informed and believes, and based thereon alleges, that at all times mentioned herein co-DEFENDANT ISABEL TORRES (“ISABEL”) was and is a resident of the State of California, County of Riverside, the owner of COMPANY, and a director, owner, and/or supervising agent of the COMPANY, in that she was in charge of hiring, firing, disciplining,

1 promoting, scheduling, and otherwise directing the work of the employees of COMPANY as well
2 as setting pay of employees, including PLAINTIFF. As such, this Defendant is believed to be an
3 "other person acting on behalf of an employer" within the meaning of Labor Code §§ 558.1.

4 5. PLAINTIFF is ignorant of the true names and capacities of the DEFENDANTS
5 sued herein as DOES 1 through 25, inclusive, and therefore sues said DEFENDANTS by such
6 fictitious names. PLAINTIFF will amend this Complaint to allege their true names and capacities
7 when ascertained. PLAINTIFF is informed and believes and thereon alleges that each of the
8 fictitiously named COMPANIES is responsible in some manner for the occurrences herein
9 alleged, and such DEFENDANTS proximately caused that PLAINTIFF'S damages as herein
10 alleged.

11 6. PLAINTIFF is informed and believes, and based thereon alleges, that at all times
12 relevant herein, each DEFENDANT designated, including DOES 1 through 25, was the agent,
13 managing agent, principal, owner, partner, joint ventures, representative, manager, servant,
14 employee, and/or co-conspirator of each of the other DEFENDANTS, and was at all times
15 mentioned herein acting within the course and scope of said agency and employment, and that all
16 acts or omissions alleged herein were duly committed with the ratification, knowledge,
17 permission, encouragement, authorization, and consent of each DEFENDANT designated herein.

18 7. PLAINTIFF is informed and believes and based thereon alleges that PLAINTIFF
19 was hired by COMPANY on approximately November 25, 2016 in the capacity of a server.
20 PLAINTIFF's primary employment functions with COMPANY include but are not limited to
21 customer service, taking food and drinks to tables, cleaning, sweeping, mopping, and cleaning
22 bathrooms. PLAINTIFF is designated as an hourly, non-exempt employee with COMPANY, and
23 is currently paid at a rate of \$13.00 per hour.

24 8. PLAINTIFF works an average of 42-50 hours per week, typically from 2:00 p.m.
25 to 11:00 p.m. Wednesday through Saturday, and approximately 12 hours on Sundays.

26 9. During her employment, between November 2016 and the present, PLAINTIFF
27 has worked for COMPANY without incident and with satisfactory performance.

1 10. In early 2020, COMPANY opened a new location, and PLAINTIFF worked at
2 both locations for a few months.

3 11. After working at both locations for a few months, PLAINTIFF was promoted to
4 manager of the new COMPANY location. Shortly thereafter, a new manager, Victoria Bernal,
5 was hired by the COMPANY, and PLAINTIFF was demoted back to server.

6 12. During her employment, PLAINTIFF was also subjected to pervasive wage and
7 hour and California Labor Code violations. Specifically, COMPANY compensated PLAINTIFF
8 in cash and "under the table," and never provided PLAINTIFF with a W-2, despite her repeated
9 requests. PLAINTIFF believes COMPANY subjects at least twenty (20) other employees to this
10 practice.

11 13. Throughout PLAINTIFF's employment, PLAINTIFF and her co-workers were
12 habitually denied their legally mandated uninterrupted meal and rest breaks.

13 14. PLAINTIFF regularly worked Wednesday through Sunday, for at least 8 hours,
14 and frequently 12 hours per shift. However, despite working such hours, PLAINTIFF was
15 habitually denied her legally required 30-minute, uninterrupted meal breaks, as were her co-
16 workers.

17 15. For example, PLAINTIFF was mandated to take her lunch breaks after her shift
18 was completed.

19 16. Similarly, PLAINTIFF and her co-workers were not and are not provided their
20 ten-minute rest breaks throughout the entire duration of their employment.

21 17. Specifically, when PLAINTIFF attempted to take a rest break, it was immediately
22 denied, and she was told to wait until the end of her shift and clock out.

23 18. Further, during the months of March through July 2020, PLAINTIFF made meal
24 deliveries for COMPANY, and also purchased supplies for COMPANY.

25 19. COMPANY failed to compensate PLAINTIFF for mileage costs entirely during
26 that time period, and further failed to reimburse PLAINTIFF for purchases made for the
27 COMPANY.

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1 20. PLAINTIFF was required to make COMPANY purchases before clocking in for
2 the day or after clocking out for the day and was not paid at all for that time.

3 21. Because PLAINTIFF was not paid at all for the time she spent purchasing supplies
4 for COMPANY, PLAINTIFF was not paid at the proper minimum wage rate, let alone at the
5 proper overtime rate.

6 22. Further, DEFENDANTS issued non-compliant wage statements for PLAINTIFF
7 and her co-workers. For example, PLAINTIFF's wage statements, when she actually received
8 one, failed to include all wages, including premium pay and mileage reimbursement in violation
9 of *California Labor Code Section 226(a)(2)*.

10 23. Often, PLAINTIFF and her co-workers were paid with cash, and thus received no
11 wage statement at all, also in violation of *California Labor Code Section 226(a)(2)*.

12 24. DEFENDANTS' conduct has also caused severe financial hardship to
13 PLAINTIFF.

14 25. On May 28, 2021, PLAINTIFF, through her representative, gave written notice by
15 electronic filing to the Labor and Workforce Development Agency ("LWDA"), and by certified
16 mail to all DEFENDANTS, of the specific provisions of the Labor Code herein alleged to have
17 been violated, including the facts and theories to support the alleged violations. To date, more
18 than 65 days after giving notice, the LWDA has not responded to Plaintiff's written notice.
19 PLAINTIFF has, therefore, complied with the prerequisites to bring a cause of action pursuant to
20 the Labor Code Private Attorneys General Act of 2004.

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FIRST CAUSE OF ACTION
(Failure to Pay Overtime Wages)
(Cal. Lab. Code §§ 510, 1194, Wage Order 4-2001)
Against COMPANY, ISABEL, RODRIGO, and DOES 1 Through 25 By PLAINTIFF

26. PLAINTIFF Morales re-alleges and incorporates by reference, as though fully set forth herein, all of the preceding paragraphs of this Complaint.

27. The California Labor Code allows plaintiffs to hold individuals acting on behalf of their employers to be personally liable if they are responsible for policies and procedures that violate the Labor Code.

28. Labor Code § 558.1 provides:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

(Labor Code § 558.1; *see also Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 822.)

29. PLAINTIFF is informed and believes, and thereupon alleges, that at all relevant times, ISABEL TORRES and RODRIGO TORRES were the employers, owners, and/or managing agents of the COMPANY as defined under *California Labor Code Section 558.1*.

30. At all relevant times during the applicable statutory period, PLAINTIFF was employed by DEFENDANTS, COMPANY, ISABEL, and RODRIGO, and required to work over forty hours a week, or eight hours a day.

31. Despite working such long hours, DEFENDANTS, and each of them, failed to pay PLAINTIFF the required overtime rate for hours worked in excess of eight (8) in a day or forty

(40) a week, and the required double time for hours worked in excess of twelve (12) in a day.

32. As a proximate result of DEFENDANTS' failure to properly compensate, PLAINTIFF has been denied the full compensation owed to her, all to her damage in an amount exceeding the jurisdictional limits of this court, but believed to be in excess of \$25,000 and which will be established according to proof at trial.

33. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF is entitled to the recovery of such unpaid wage amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to *California Labor Code Sections 218.5, 218.6, and 1194.*

SECOND CAUSE OF ACTION

(Failure to Provide Meal Periods or Compensation in Lieu Thereof)

(Cal. Lab. Code § 226.7 And Wage Order 4-2001 § 11)

Against COMPANY, ISABEL, RODRIGO, And DOES 1 — 25 By PLAINTIFF

34. PLAINTIFF Morales re-alleges and incorporates by reference, as though fully set forth herein, all of the preceding paragraphs of this Complaint.

35. The California Labor Code allows plaintiffs to hold individuals acting on behalf of their employers to be personally liable if they are responsible for policies and procedures that violate the Labor Code.

36. Labor Code § 558.1 provides:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

(Labor Code § 558.1; *see also Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 822.)

1 37. PLAINTIFF is informed and believes, and thereupon alleges, that at all relevant
2 times, ISABEL TORRES and RODRIGO TORRES were the employers, owners, and/or managing
3 agents of the COMPANY as defined under *California Labor Code Section 558.1*.

4 38. At all relevant times. PLAINTIFF was an employee of DEFENDANTS covered
5 by Labor Code sections 226.7 and 512 and WC Wage Order 4-2001.

6 39. *California Labor Code Section 226.7* provides as follows:

7 (a) No employer shall require any employee to work during any meal or rest period
8 mandated by an applicable order of the Industrial Welfare Commission.

9 (b) If an employer fails to provide an employee a meal period or rest period in
10 accordance with an applicable order of the Industrial Welfare Commission the
11 employer shall pay the employee one additional hour of pay at the employee's
12 regular rate of compensation for each workday that the meal period or rest period
13 is not provided.

14 40. *California Labor Code Section 512(a)* provides as follows:

15 An employer may not employ an employee for a work period of more than five
16 hours per day without providing the employee with a meal period of not less than
17 30 minutes, except that if the total work period per day of the employee is no
18 more than six hours, the meal period may be waived by mutual consent of both
19 the employer and employee. An employer may not employ an employee for a
20 work period of more than ten hours per day without providing the employee with
21 a second meal period of not less than 30 minutes, except that if the total hours
22 worked in no more than 12 hours, the second meal period may be waived by
23 mutual consent of the employer and the employee only if the first meal period
24 was not waived.

25 41. *California Labor Code Section 226.7* requires an employer to pay an additional
26 hour of compensation for each meal period that the employer prevents an employee from taking.
27 DEFENDANTS failed to provide or allow PLAINTIFF with timely meal breaks of not less than
28 thirty (30) minutes, and failed to pay them the additional pay at their regular rate of compensation
for each workday in lieu of providing off-duty meal period(s), as required by the Labor Code
during the relevant statutory period.

42. Additionally, Section 11 of California's Wage Order no. 4-2001 provides, in
relevant part, that "no employer shall employ any person for a work period of more than five (5)
hours without a meal period of not less than (30) minutes...." Moreover, Cal. Labor Code § 512(a)

maintains “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes [...] An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes...”

43. As a result of DEFENDANTS' failure to comply with their obligations under *California Labor Code Sections 226.7 and 512 and Wage Order 4-2001*, PLAINTIFF has suffered damages in an amount, subject to proof, to the extent, PLAINTIFF was not paid additional pay owed for DEFENDANTS' failure to provide meal periods as required by the law.

44. Further, to the extent any breaks were provided, they were subject to DEFENDANTS' joint control and being called upon to return to duty, and thus not relieved of all duties for a full uninterrupted 30-minute time period.

45. Pursuant to *California Labor Code Section 218*, PLAINTIFF is entitled to recover the full amount of her unpaid additional pay for DEFENDANTS' failure to provide statutory meal periods as required by law. Pursuant to *California Labor Code Section 218.6*, PLAINTIFF is entitled to recover prejudgment interest on the amount of the additional pay owed.

THIRD CAUSE OF ACTION
(Failure to Provide Rest Periods or Compensation in Lieu Thereof)
(Cal. Lab. Code § 226.7 And Wage Order 4-2001 § 12)
Against COMPANY, ISABEL, RODRIGO, and DOES 1 Through 25 By PLAINTIFF

46. PLAINTIFF Morales re-alleges and incorporates by reference, as though fully set forth herein, all of the preceding paragraphs of this Complaint.

47. The California Labor Code allows plaintiffs to hold individuals acting on behalf of their employers to be personally liable if they are responsible for policies and procedures that violate the Labor Code.

48. Labor Code § 558.1 provides:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable

as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

(Labor Code § 558.1; *see also Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 822.)

49. PLAINTIFF is informed and believes, and thereupon alleges, that at all relevant times, ISABEL TORRES and RODRIGO TORRES were the employers, owners, and/or managing agents of the COMPANY as defined under *California Labor Code Section 558.1*.

50. *California Labor Code Section 226.7* requires an employer to pay an additional hour of compensation for each rest period that the employer fails to provide. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours or fraction thereof worked. PLAINTIFF, as well as all other similarly situated employees, were not provided with their legally mandated rest breaks. PLAINTIFF consistently worked over four (4) hours per shift with no rest breaks during the relevant statutory period. PLAINTIFF is informed and believes, and thereupon alleges that she was prohibited and/or prevented from taking her legally required rest breaks.

51. Pursuant to *California Labor Code Section 226.7*, PLAINTIFF is entitled to damages in an amount equal to one (1) hour of wages per missed rest break, in a sum to be proven at trial, plus interest and penalties thereon, attorneys' fees and costs, pursuant to *California Labor Code Sections 218.5 and 218.6*.

FOURTH CAUSE OF ACTION
(For Failure To Pay Minimum Wages)
Against COMPANY, ISABEL, RODRIGO, and DOES 1 Through 25 By PLAINTIFF

52. PLAINTIFF Morales re-alleges and incorporates by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

53. The California Labor Code allows plaintiffs to hold individuals acting on behalf

of their employers to be personally liable if they are responsible for policies and procedures that violate the Labor Code.

54. Labor Code § 558.1 provides:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

(Labor Code § 558.1; *see also Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 822.)

55. PLAINTIFF is informed and believes, and thereupon alleges, that at all relevant times, ISABEL TORRES and RODRIGO TORRES were the employers, owners, and/or managing agents of the COMPANY as defined under *California Labor Code Section 558.1*.

56. At all relevant times, PLAINTIFF was an employee of DEFENDANTS covered by the *California Labor Code Sections 1194, 1194.2, 1197, and 1197.1*.

57. Under *California Labor Code Sections 1194, 1194.2, and 1197* it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked, as required by the California Labor Code and applicable IWC Wage Orders.

58. Under IWC Wage Order 4-2001(2)(K), the term "hours worked" means "the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so."

59. PLAINTIFF was suffered and or permitted to work for DEFENDANTS without compensation due to DEFENDANTS requiring PLAINTIFF to perform work by making

purchases for the COMPANY outside her normal working hours. Therefore, DEFENDANTS failed to pay PLAINTIFF the minimum wage for all time worked.

60. As a result of DEFENDANTS' failing to pay PLAINTIFF minimum wage for all time worked, PLAINTIFF is entitled to recover from DEFENDANTS compensation from through the date of judgment, plus reasonable attorneys' fees, and costs of suit under *California Labor Code* §§ 218.5, 1194, and penalties under *California Labor Code Sections* 203, 226, and 558. Plaintiff is also entitled to liquidated damages under the Labor Code, including section 1194.2.

FIFTH CAUSE OF ACTION
Failure to Reimburse Business Expenses
(Cal. Labor Code § 2802)
Against COMPANY, ISABEL, RODRIGO, and DOES 1 – 25 By PLAINTIFF

61. PLAINTIFF Morales re-alleges and incorporates by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

62. The California Labor Code allows plaintiffs to hold individuals acting on behalf of their employers to be personally liable if they are responsible for policies and procedures that violate the Labor Code.

63. Labor Code § 558.1 provides:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

(Labor Code § 558.1; *see also Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 822.)

64. PLAINTIFF is informed and believes, and thereupon alleges, that at all relevant

1 times, ISABEL TORRES and RODRIGO TORRES were the employers, owners, and/or
2 managing agents of the COMPANY as defined under *California Labor Code Section 558.1*.

3 65. California Labor Code section 2802(a) provides: “An employer shall indemnify his
4 or her employee for all necessary expenditures or losses incurred by the employee in direct
5 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
6 employer, even though unlawful, unless the employee, at the time of obeying the directions,
7 believed them to be unlawful.”

8 66. PLAINTIFF incurred necessary expenditures in direct consequence of the
9 discharge of her employment duties and her obedience to DEFENDANTS’ directions.
10 DEFENDANTS failed to fully compensate PLAINTIFF for these costs incurred by PLAINTIFF
11 in direct consequence of the discharge of her duties.

12 67. As a result of DEFENDANTS’ unlawful acts, PLAINTIFF is entitled to recover
13 her unreimbursed expenditures, interest, and attorney’s fees and costs, in amounts to be proven at
14 the time of trial. Labor Code § 2802(b)-(c).

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16 **SIXTH CAUSE OF ACTION**
17 **(Failure to Provide Accurate Itemized Wage Statements)**
18 **(Cal. Lab. Code §§ 226, 1174, Wage Order 4-2001, §7)**
19 **Against COMPANY, ISABEL, RODRIGO, and DOES 1 Through 25 By PLAINTIFF**

20 68. PLAINTIFF Morales re-alleges and incorporates by reference, as though fully set
21 forth herein, all of the preceding paragraphs of this Complaint.

22 69. The California Labor Code allows plaintiffs to hold individuals acting on behalf
23 of their employers to be personally liable if they are responsible for policies and procedures that
24 violate the Labor Code.

25 70. Labor Code § 558.1 provides:

26 (a) Any employer or other person acting on behalf of an employer,
27 who violates, or causes to be violated, any provision regulating
28 minimum wages or hours and days of work in any order of the
Industrial Welfare Commission, or violates, or causes to be violated,
Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable
as the employer for such violation.

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2 (b) For purposes of this section, the term "other person acting on
3 behalf of an employer" is limited to a natural person who is an
4 owner, director, officer, or managing agent of the employer, and the
term "managing agent" has the same meaning as in subdivision (b)
of Section 3294 of the Civil Code.

5 (c) Nothing in this section shall be construed to limit the definition
6 of employer under existing law.

7 (Labor Code § 558.1; *see also Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 822.)

8 71. PLAINTIFF is informed and believes, and thereupon alleges, that at all relevant
9 times, ISABEL TORRES and RODRIGO TORRES were the employers, owners, and/or
10 managing agents of the COMPANY as defined under *California Labor Code Section 558.1*.

11 72. *California Labor Code* Section 226 requires an employer to provide employees
12 with an accurate itemized statement in writing showing, among other things, accurate total hours
13 worked by the employee, all gross wages earned, and the correct applicable hourly rates.

14 73. PLAINTIFF was not always provided with an itemized wage statement, and when
15 she was, PLAINTIFF was not provided with accurate itemized statements accurately showing all
16 hours worked nor providing all applicable hourly rates in effect during the pay period and the
17 corresponding number of hours worked at each hourly rate by the employee.

18 74. PLAINTIFF was damaged and injured by Defendants' intentional violation of
19 *California Labor Code Section 226* by, among other things, not being able to calculate accurately
20 her hours worked, her rate of pay, and not being able to apply for loans due to lack of proper
21 documentation.

22 75. Pursuant to *California Labor Code Section 226(e)*, PLAINTIFF is entitled to
23 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
24 a violation occurs and one hundred dollars (\$100) per employee for each violation in subsequent
25 pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and are entitled
26 to an award of costs and reasonable attorney's fees.

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SEVENTH CAUSE OF ACTION
(Unfair Competition Pursuant to Business and Professions Code 17200 et seq.)
Against COMPANY, ISABEL, RODRIGO, and DOES 1 Through 25 By PLAINTIFF

76. PLAINTIFF Morales re-alleges and incorporates by reference, as though fully set forth herein, all of the preceding paragraphs of this Complaint.

77. The California Labor Code allows plaintiffs to hold individuals acting on behalf of their employers to be personally liable if they are responsible for policies and procedures that violate the Labor Code.

78. Labor Code § 558.1 provides:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

(Labor Code § 558.1; *see also Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 822.)

79. PLAINTIFF is informed and believes, and thereupon alleges, that at all relevant times, ISABEL TORRES and RODRIGO TORRES were the employers, owners, and/or managing agents of the COMPANY as defined under *California Labor Code Section 558.1*.

80. PLAINTIFF, on her behalf, brings this claim pursuant to *California Business and Professions Code §17200, et seq.* The conduct of DEFENDANTS as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to PLAINTIFF and the general public. PLAINTIFF seeks to enforce important rights affecting the public interest within the meaning of *California Code of Civil Procedure §1021.5*.

1 81. PLAINTIFF is a “person who has suffered injury in fact and [has] lost money or
2 property as a result of such unfair competition” within the meaning of *California Business and*
3 *Professions Code §17204*, in that she has been deprived of overtime wages and proper meal and
4 rest period wages, and therefore has standing to bring this cause of action for injunctive relief,
5 restitution, and other appropriate equitable relief.

6 82. *California Business and Profession Code §17200, et seq.* prohibits unlawful and
7 unfair business practices.

8 83. Overtime wage and hour laws express fundamental public policies. Providing
9 employees with overtime wages and meal and/or rest breaks are also a fundamental public policy
10 of this State and of the United States. *California Labor Code* Section 90.5(a) articulates the public
11 policies of this State to enforce vigorously minimum labor standards, to ensure that employees
12 are not required or permitted to work under substandard and unlawful conditions, and to protect
13 law-abiding employers and their employees from competitors who lower their costs by failing to
14 comply with minimum labor standards, including the failing to properly compensate employees
15 and/or provide them with the required meal and rest periods.

16 84. DEFENDANTS, beginning at an exact date unknown to PLAINTIFF, but at least
17 since a date four years prior to the filing of this suit, have committed acts of unfair competition
18 as defined by the Unfair Business Practice Act and have violated statutes of public policies.

19 85. Through the conduct alleged in this Complaint, DEFENDANTS have acted
20 contrary to these public policies, have violated specific provisions of the Labor Code, and have
21 engaged in other unlawful and unfair business practices in violation of *California Business &*
22 *Profession Code §17200, et seq.*, depriving PLAINTIFF, and all interested persons, of rights,
23 benefits, and privileges guaranteed to all employees under law.

24 86. DEFENDANTS’ conduct, as alleged hereinabove, constitutes unfair competition
25 in violation of §17200 of the *California Business and Professions Code*, in that at a minimum
26 DEFENDANTS have violated *California Labor Code* Sections 201-203, 226, 226.7, 510, 512,
27 1194, 1198, 2802, as well as IWC Wage Orders pertaining to overtime pay and meal and rest
28 periods.

1 87. DEFENDANTS, by engaging in the conduct herein alleged, including but not
2 limited to not paying all due mileage expenses, wages, including overtime wages, and by not
3 providing proper meal and rest breaks, either knew or in the exercise of reasonable care should
4 have known that the conduct was unlawful. As such it is a violation of §17200 of the *California*
5 *Business and Professions Code*.

6 88. Unless restrained by this Court, DEFENDANTS will continue to engage in the
7 unlawful conduct as alleged above. Pursuant to *California Business and Professions Code section*
8 *17200, et seq.*, this Court should make such orders or judgments, including the appointment of a
9 receiver, as may be necessary to prevent the use or employment, by DEFENDANTS, their agents
10 or employees, of any unlawful or deceptive practice prohibited by the *Business and Professions*
11 *Code*, and/or, including but not limited to restitution which may be necessary to restore
12 PLAINTIFF and other similarly situated employees the money DEFENDANTS have unlawfully
13 failed to pay.

14 89. PLAINTIFF'S success in this action will enforce important rights affecting the
15 public interest and, in that regard, PLAINTIFF sues on behalf of the general public as well as
16 themselves and other similarly situated. PLAINTIFF is entitled to restitution, civil penalties,
17 declaratory and injunctive relief, and all other equitable remedies owing to them.

18 90. PLAINTIFF herein takes upon herself the enforcement of these laws and lawful
19 claims. There is a financial burden involved in pursuing this action, the action is seeking to
20 vindicate a public right, and it would be against the interests of justice to penalize PLAINTIFF
21 by forcing her to pay attorneys' fees from the recovery in this action. Attorneys' fees are
22 appropriate pursuant to *California Code of Civil Procedure, Section 1021.5* and otherwise.

23
24 **EIGHTH CAUSE OF ACTION**
25 **Civil Penalties Pursuant to Labor Code Section 2698 Et Seq.**
26 **Against All Defendants and DOES 1 through 25**

27 91. PLAINTIFF Morales re-alleges and incorporates by reference, as though fully set
28 forth herein, all of the preceding paragraphs of this Complaint.

 92. The California Labor Code allows plaintiffs to hold individuals acting on behalf

of their employers to be personally liable if they are responsible for policies and procedures that violate the Labor Code.

93. Labor Code § 558.1 provides:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

(Labor Code § 558.1; *see also Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 822.)

94. PLAINTIFF is informed and believes, and thereupon alleges, that at all relevant times, ISABEL TORRES and RODRIGO TORRES were the employers, owners, and/or managing agents of the COMPANY as defined under *California Labor Code Section 558.1*.

95. DEFENDANTS violated the following provisions of the Labor Code:

- a. L.C. § 226 by failing to provide employees with pay vouchers that contained all of the detail required by L.C. § 226;
- b. L.C. § 226.7 by failing to provide employees with the required 10 minute rest periods for every four hours worked and, in violation of Section 226.7(c), not paying employees the extra hour's worth of pay due for missed meal or rest breaks;
- c. L.C. § 510 by failing to pay employees at an overtime rate for all hours worked in excess of eight (8) in a day and/or forty (40) in a week;
- d. L.C. § 512 by failing to provide employees with the legally required 30 minute relieved of all duties meal periods.

Having violated the aforementioned sections of the Labor Code, DEFENDANTS are

1 liable for the civil penalties called for by various sections of the Labor Code, including,
2 but not necessarily limited to, sections 226.8(b), 228.6(c), 558, and 2699.

3
4 **WHEREFORE**, PLAINTIFF prays for judgment against COMPANY, ISABEL,
5 RODRIGO, and each of them, as follows:

- 6 1. For compensatory damages including lost wages and benefits according to proof, but
7 believed to be in excess of \$500,000.00;
- 8 2. For unpaid wages, including but not limited to, overtime, meal and rest period wages,
9 wage statement violations, waiting time penalties, reimbursements, wage statement
10 violations, according to proof;
- 11 3. For compensatory damages in the amount of PLAINTIFF'S hourly wage for each meal
12 and rest period missed or taken late from the applicable statutory period to the present as
13 may be proven;
- 14 4. For civil penalties as provided by statute;
- 15 5. For liquidated damages for unpaid minimum wages under Labor Code Section 1194.2;
- 16 6. For restitution for unfair competition pursuant to *Business & Professions Code §17200*,
17 in an amount, as may be proven;
- 18 7. For declaratory judgment that Defendants have violated *California Business and*
19 *Professions Code §§ 17200 et seq*, as a result of the aforementioned violations of the
20 *California Labor Code* and of California public policy protecting workers and
21 discouraging work without adequate compensation, including overtime compensation
22 and meal periods;
- 23 8. For penalties pursuant to Labor Code Sections 226 and 1198.5, among others;
- 24 9. For preliminary, permanent, and mandatory injunctive relief prohibiting
25 DEFENDANTS, and its officers, agents and all those acting in concert with them, from
26 committing in the future those violations of law herein alleged;
- 27 10. For prejudgment interest on all amounts claimed;
- 28 11. An award providing for payment of costs of suit;

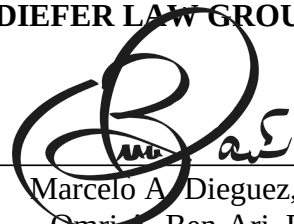
12. For an award of attorneys' fees under all applicable statutes, including but not limited to the *California Labor Code*; and/or other applicable law;
13. For such other and further relief as the Court deems just and proper, and
14. **Plaintiff further requests a trial by jury on all issues so triable.**

Dated: November 4, 2021,

Respectfully submitted,

DIEFER LAW GROUP, P.C.

By: _____



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Omri A. Ben-Ari, Esq.

Yalda Satar, Esq.

Attorney for Plaintiff Dulce Lizbeth Morales

File No.: 1346