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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
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SUPERIOR COURT OF CALIFORNIA
SAN DIEGO COUNTY

STEVEN ALVARADO, AILED CORTEZ,
JUAN LUNA, PATRICIA MELENDREZ,
BENJAMIN SILVA AVENA, MARCO
SILVA, and ALBA ZAVALA, all individuals,

Plaintiffs,

v.

CHAIDEZ GONZALEZ INC.; COCINA 35,
LLC; PAULINA CHAIDEZ GONZALEZ,
CESAR A. CHAIDEZ GAMBOA, MARIA
DOLORES GONZALEZ, CESAR CHAIDEZ
GONZALEZ JR., and PAULINA CHAIDEZ
CALDERON, all individuals; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: 37-2022-00032310-CU-OE-CTL

COMPLAINT FOR DAMAGES:

1. FAILURE TO PAY WAGES
2. FAILURE TO TIMELY FURNISH
ACCURATE ITEMIZED WAGE
STATEMENTS
3. UNFAIR BUSINESS PRACTICES
4. WAITING TIME PENALTIES PER
LABOR CODE §203
5. MEAL AND REST PERIOD
VIOLATIONS
6. FAILURE TO TIMELY PROVIDE A
COPY OF PAYROLL RECORDS AND
EMPLOYEE FILE AND FAILURE TO
MAINTAIN ACCURATE TIME
RECORDS
7. CONVERSION OF GRATUITIES
8. PRIVATE ATTORNEYS GENERAL
ACT OF 2004 ("PAGA") PER LABOR
CODE §2699, et seq.

[IMAGED FILE]

1 Plaintiffs STEVEN ALVARADO, AILED CORTEZ, JUAN LUNA, PATRICIA
2 MELENDREZ, BENJAMIN SILVA AVENA, MARCO SILVA AVENA, and ALBA
3 ZAVALA, all individuals (hereinafter collectively, “Plaintiffs”) allege as follows:

4
5 **GENERAL ALLEGATIONS**

6 The public policy of California declares:

7 It is the public policy of this state to vigorously enforce minimum labor standards in
8 order to ensure employees are not required or permitted to work under substandard
9 unlawful conditions or for employers that have not secured the payment of compensation
10 and to protect employers who comply with the law from those who attempt to gain a
11 competitive advantage at the expense of their workers by failing to comply with
12 minimum labor standards.

13 (Labor Code §90.5 subd. (a).)

14 Despite this clear mandate, DEFENDANTS blatantly violated the California Labor Code
15 and the Industrial Welfare Commission (“IWC”) Wage Orders. Defendants willfully failed to
16 pay mandated minimum wage, regular wage, and overtime wage compensation, failed to pay
17 earned vacation and sick pay, failed to provide meal and rest periods, willfully and maliciously
18 converted gratuities, and failed to provide and maintain proper employee records to their
19 employees.

20 1. This lawsuit is brought in response to the Defendants’ refusal to pay Plaintiffs and
21 the other aggrieved employees, who are current and former employees of Defendants, all wages,
22 premium wages, compensation, and interest that they earned during their employment with
23 Defendants, among other Labor Code violations.

24 2. The acts complained of herein have occurred within the time period from four (4)
25 years plus additional time preceding the filing of the original Complaint herein (hereinafter, the
26 “Relevant Time Period”) due to tolling of several types, including, but not limited to, a tolling
27 agreement entered between all Plaintiffs and Defendants which tolls all employment claims by
28 Plaintiffs against Defendants from December 29, 2021 to the present, Cal. Rule of Court

Emergency Rule 9, Labor Code section 2699.3(d), and filing of several Plaintiffs' employment claims with the Labor Commissioner's office starting in 2020.

JURISDICTION AND VENUE

3. The Superior Court of the State of California for the County of San Diego has jurisdiction over this case due to the fact that some of the alleged violations (a) of California Labor Code (i.e. §§ 200 et seq.), (b) California Business and Professions Code §§ 17200 et seq. and (c) related common law violations occurred in the County of San Diego.

4. Venue is proper in Central Division of San Diego County Superior Court pursuant to Code of Civil Procedure §395(a) and §395.5, because *inter alia*, (a) the Defendants' and Defendant corporation's principal place of business is situated in this County, and (b) complaints regarding such issues may be filed in the Central Division.

PARTIES

5. Plaintiff STEVEN ALVARADO is an individual over the age of eighteen (18) and was an employee of Defendants during at least the last 4 years.

6. Plaintiff AILED CORTEZ is an individual over the age of eighteen (18) and was an employee of Defendants during at least the last 4 years.

7. Plaintiff JUAN LUNA is an individual over the age of eighteen (18) and was an employee of Defendants during at least the last 4 years.

8. Plaintiff PATRICIA MELENDREZ is an individual over the age of eighteen (18) and was an employee of Defendants during at least the last 4 years.

9. Plaintiff BENJAMIN SILVA is an individual over the age of eighteen (18) and was an employee of Defendants during at least the last 4 years.

10. Plaintiff MARCO SILVA is an individual over the age of eighteen (18) and was an employee of Defendants during at least the last 4 years.

1 11. Plaintiff ALBA ZAVALA is an individual over the age of eighteen (18) and was
2 an employee of Defendants during at least the last 4 years.

3 12. Plaintiffs are informed and believe that Defendant CHAIDEZ GONZALEZ INC.
4 is a California Corporation, and at all times mentioned herein operated its businesses within the
5 jurisdiction of this Court and performed business as COCINA 35 and other businesses.
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7 13. Plaintiffs are informed and believe that Defendant COCINA 35, LLC is a
8 California Limited Liability Company, and at all times mentioned herein operated its businesses
9 within the jurisdiction of this Court and performed business as COCINA 35 and other
10 businesses.

11 14. Plaintiffs are informed and believe that Defendant PAULINA CHAIDEZ
12 GONZALEZ is an individual who during the relevant time period has owned, managed and
13 operated and continues to own, manage and operate CHAIDEZ GONZALEZ INC. and COCINA
14 35, LLC, and who at all times mentioned in this Complaint herein resided within the jurisdiction
15 of this Court. PAULINA CHAIDEZ GONZALEZ was and remains a person acting on behalf of
16 CHAIDEZ GONZALEZ, INC. and COCINA 35, LLC, on information and belief as the
17 secretary, managing agent, and director of CHAIDEZ GONZALEZ, INC. and/or COCINA 35,
18 LLC, who violated and/or who caused to violate various Labor Code sections and other
19 provisions regulating hours and days of work established by the Industrial Welfare Commission
20 of the State of California rendering him individually liable pursuant to Labor Code Sections 558,
21 558.1, 1102.5, and 2699 et. seq. In addition, PAULINA CHAIDEZ GONZALEZ is an officer,
22 director, and person acting either individually or as a managing agent, who paid or caused to be
23 paid the Plaintiffs and the other aggrieved employees a wage less than the minimum, regular, and
24 overtime rate of pay under the law, failed to relieve them of duties during their meal and rest
25 periods, failed to reimburse business expenditures, and failed to provide accurate records, or by
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1 an order of the commission and is therefore subject to a civil penalty, restitution of wages
2 payable to the employee, and any applicable wages, damages and penalties plus fees and costs
3 imposed pursuant to Labor Sections 203, 558, 558.1, and 2699 et. seq.

4 15. Plaintiffs are informed and believe that Defendant CESAR A. CHAIDEZ
5 GAMBOA is an individual who during the relevant time period has owned, managed and
6 operated and continues to own, manage and operate CHAIDEZ GONZALEZ INC. and COCINA
7 35, LLC, and who at all times mentioned in this Complaint herein resided within the jurisdiction
8 of this Court. CESAR A. CHAIDEZ GAMBOA was and remains a person acting on behalf of
9 CHAIDEZ GONZALEZ, INC. and COCINA 35, LLC, on information and belief as the chief
10 executive officer, managing agent, and director of CHAIDEZ GONZALEZ, INC. and/or
11 COCINA 35, LLC, who violated and/or who caused to violate various Labor Code sections and
12 other provisions regulating hours and days of work established by the Industrial Welfare
13 Commission of the State of California rendering him individually liable pursuant to Labor Code
14 Sections 558, 558.1, 1102.5, and 2699 et. seq. In addition, CESAR A. CHAIDEZ GAMBOA is
15 an officer, director, and person acting either individually or as a managing agent, who paid or
16 caused to be paid the Plaintiffs and the other aggrieved employees a wage less than the
17 minimum, regular, and overtime rate of pay under the law, failed to relieve them of duties during
18 their meal and rest periods, failed to reimburse business expenditures, and failed to provide
19 accurate records, or by an order of the commission and is therefore subject to a civil penalty,
20 restitution of wages payable to the employee, and any applicable wages, damages and penalties
21 plus fees and costs imposed pursuant to Labor Sections 203, 558, 558.1, and 2699 et. seq.

22 16. Plaintiffs are informed and believe that Defendant MARIA DOLORES
23 GONZALEZ is an individual who during the relevant time period has owned, managed and
24 operated and continues to own, manage and operate CHAIDEZ GONZALEZ INC. and COCINA
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1 35, LLC, and who at all times mentioned in this Complaint herein resided within the jurisdiction
2 of this Court. MARIA DOLORES GONZALEZ was and remains a person acting on behalf of
3 CHAIDEZ GONZALEZ, INC. and COCINA 35, LLC, on information and belief as the chief
4 financial officer, managing agent, and director of CHAIDEZ GONZALEZ, INC. and/or
5 COCINA 35, LLC, who violated and/or who caused to violate various Labor Code sections and
6 other provisions regulating hours and days of work established by the Industrial Welfare
7 Commission of the State of California rendering him individually liable pursuant to Labor Code
8 Sections 558, 558.1, 1102.5, and 2699 et. seq. In addition, MARIA DOLORES GONZALEZ is
9 an officer, director, and person acting either individually or as a managing agent, who paid or
10 caused to be paid the Plaintiffs and the other aggrieved employees a wage less than the
11 minimum, regular, and overtime rate of pay under the law, failed to relieve them of duties during
12 their meal and rest periods, failed to reimburse business expenditures, and failed to provide
13 accurate records, or by an order of the commission and is therefore subject to a civil penalty,
14 restitution of wages payable to the employee, and any applicable wages, damages and penalties
15 plus fees and costs imposed pursuant to Labor Sections 203, 558, 558.1, and 2699 et. seq.

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18 17. Plaintiffs are informed and believe that Defendant CESAR CHAIDEZ
19 GONZALEZ JR. is an individual who during the relevant time period has owned, managed and
20 operated and continues to own, manage and operate CHAIDEZ GONZALEZ INC. and COCINA
21 35, LLC, and who at all times mentioned in this Complaint herein resided within the jurisdiction
22 of this Court. CESAR CHAIDEZ GONZALEZ JR. was and remains a person acting on behalf
23 of CHAIDEZ GONZALEZ, INC. and COCINA 35, LLC, on information and belief as managing
24 agent and director of CHAIDEZ GONZALEZ, INC. and/or COCINA 35, LLC, who violated
25 and/or who caused to violate various Labor Code sections and other provisions regulating hours
26 and days of work established by the Industrial Welfare Commission of the State of California
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1 rendering him individually liable pursuant to Labor Code Sections 558, 558.1, 1102.5, and 2699
2 et. seq. In addition, CESAR CHAIDEZ GONZALEZ JR. is an officer, director, and person
3 acting either individually or as a managing agent, who paid or caused to be paid the Plaintiffs
4 and the other aggrieved employees a wage less than the minimum, regular, and overtime rate of
5 pay under the law, failed to relieve them of duties during their meal and rest periods, failed to
6 reimburse business expenditures, and failed to provide accurate records, or by an order of the
7 commission and is therefore subject to a civil penalty, restitution of wages payable to the
8 employee, and any applicable wages, damages and penalties plus fees and costs imposed
9 pursuant to Labor Sections 203, 558, 558.1, and 2699 et. seq.
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11 18. Plaintiffs are informed and believe that Defendant PAULINA CHAIDEZ
12 CALDERON is an individual who during the relevant time period has owned, managed and
13 operated and continues to own, manage and operate CHAIDEZ GONZALEZ INC. and COCINA
14 35, LLC, and who at all times mentioned in this Complaint herein resided within the jurisdiction
15 of this Court. PAULINA CHAIDEZ CALDERON was and remains a person acting on behalf of
16 CHAIDEZ GONZALEZ, INC. and COCINA 35, LLC, on information and belief as managing
17 agent and director of CHAIDEZ GONZALEZ, INC. and/or COCINA 35, LLC, who violated
18 and/or who caused to violate various Labor Code sections and other provisions regulating hours
19 and days of work established by the Industrial Welfare Commission of the State of California
20 rendering him individually liable pursuant to Labor Code Sections 558, 558.1, 1102.5, and 2699
21 et. seq. In addition, PAULINA CHAIDEZ CALDERON is an officer, director, and/or person
22 acting either individually or as a managing agent, who paid or caused to be paid the Plaintiffs
23 and the other aggrieved employees a wage less than the minimum, regular, and overtime rate of
24 pay under the law, failed to relieve them of duties during their meal and rest periods, failed to
25 reimburse business expenditures, and failed to provide accurate records, or by an order of the
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1 commission and is therefore subject to a civil penalty, restitution of wages payable to the
2 employee, and any applicable wages, damages and penalties plus fees and costs imposed
3 pursuant to Labor Sections 203, 558, 558.1, and 2699 et. seq.

4
5 19. DOES 1 to 50, inclusive are now, and/or at all times mentioned in this Complaint
6 were licensed to do business and/or actually doing business in the State of California. Plaintiffs
7 do not know the true names or capacities, whether individual, partner or corporate, of DOES 1 to
8 50, inclusive and for that reason, DOES 1 to 50 are sued under such fictitious names pursuant to
9 California Code of Civil Procedure (“CCP”) §474. Plaintiffs will amend this Complaint to allege
10 such names and capacities as soon as they are ascertained.

11
12 20. Plaintiffs are informed and believe and thereon allege that DOES 1 to 50,
13 inclusive, are former co-employers and/or joint employers of Plaintiffs.

14
15 21. Plaintiffs are informed and believe and thereon allege that DOES 1 to 50,
16 inclusive, are successors in interest to Defendants or are otherwise obligated to pay Plaintiffs the
17 wages due and owing to them, e.g. by way of statute, common law, quantum meruit, express
18 written contract, implied in fact contract, or by way of common counts such as money had and
19 received. Plaintiffs reserve the right to augment the foregoing allegations to more clearly set
20 forth this Defendants’ liability as discovery progresses and reveals the same.

21
22 22. Plaintiffs are informed and believe, and based upon such information and belief
23 allege that the Defendants, and each of them, are now and/or at all times mentioned in this
24 Complaint were in some manner legally responsible for the events, happenings and
circumstances alleged in this Complaint.

25
26 23. Plaintiffs are further informed and believe, and based upon such information and
27 belief allege, that at all times herein mentioned, all Defendants, and each of them, were and are
28 the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants,

1 and were, at all such times, acting within the course and scope of said employment and/or
2 agency; furthermore, that each and every Defendants herein, while acting as a high corporate
3 officer, director and/or managing agent, principal and/or employer, expressly directed, consented
4 to, approved, affirmed and ratified each and every action taken by the other co-Defendants, as
5 herein alleged and was responsible in whole or in part for the matters referred to herein.
6

7 24. Plaintiffs are further informed and believe, and based upon such information and
8 belief allege, that at all times herein mentioned, Defendants, and each of them, proximately
9 caused Plaintiffs to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
10 damages alleged in this Complaint.
11

12 25. Plaintiffs are further informed and believe, and based upon such information and
13 belief allege, that at all times herein mentioned, Defendants, and each of them were co-
14 employers and/or joint employers of Plaintiffs.

15 26. Defendants, and each of them, are now and/or at all times mentioned in this
16 Complaint were members of and/or engaged in a joint venture, partnership and common
17 enterprise, and were acting within the course and scope of, and in pursuit of said joint venture,
18 partnership and common enterprise and, as such were co-employers and/or joint employers of
19 Plaintiffs.
20

21 27. Defendants, and each of them, at all times mentioned in this Complaint concurred
22 with, contributed to, approved of, aided and abetted, condoned and/or otherwise ratified the
23 various acts and omissions of each and every one of the other Defendants in proximately causing
24 the complaints, injuries and/or damages alleged in this Complaint.

25 28. Plaintiffs are informed and believe and thereon allege that at all times herein
26 mentioned, some of the Defendants DOES 1 through 50, Inclusive, were the *alter egos* of the
27 named Defendants. Plaintiffs are informed and believe and thereon allege that there exists such a
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1 unity of interest and ownership between the named Defendants and DOES 1 through 50, that the
2 individuality and separateness of the named Defendants and DOES 1 through 50 has ceased to
3 exist. The business affairs of named Defendants and DOES 1 through 50, are, and at all times
4 relevant hereto were, so mixed and intermingled that the same cannot reasonably be segregated,
5 and the same are in inextricable confusion. Defendants, and at all times relevant hereto, used
6 each other as a mere shell and conduit for the conduct of certain of Defendants' affairs. The
7 recognition of the separate existence of Defendants would not promote justice, in that it would
8 permit Defendants to insulate themselves from liability to Plaintiffs. Accordingly, the named
9 Defendants constitute the *alter ego* of Defendants DOES 1 through 50, and the fiction of their
10 separate existence must be disregarded.
11

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY WAGES**

14 **(Against all Defendants)**

15
16 29. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
17 section as though fully set forth herein.

18
19 30. Plaintiffs were each an "employee" of Defendants (as defined by section 350 of
20 the Labor Code) but Defendants failed to pay Plaintiffs and the other aggrieved employees for all
21 hours worked. Plaintiffs and the other aggrieved employees were employed as cooks, food
22 preparers, dishwashers, servers, bussers, managers, and caterers.

23 31. Pursuant to Labor Code section 1197, payment of less than the minimum wage
24 fixed by the commission is unlawful.

25 32. During the entire period of time that Plaintiffs and the other aggrieved employees
26 were employed by Defendants, and for the four (4) years preceding the filing of this lawsuit,
27 Defendants were required to compensate them at least at the minimum wage, but failed to carry
28

1 out their duties and responsibilities as an employer imposed under the laws and regulations of the
2 State of California and violated the law by failing to pay Plaintiffs and the other aggrieved
3 employees a minimum wage for all hours worked pursuant to all applicable wage orders and in
4 accordance with Labor Code sections 200, 226, 500, 510, 558.1, 1194, 1194.2, and 1197.

5
6 33. Defendants regularly failed to pay Plaintiffs and the other aggrieved employees
7 all of the wages that they earned. Specifically, Defendants have intentionally failed to pay
8 Plaintiffs and the other aggrieved employees for all hours worked (“wage theft”), where
9 Defendants intentionally and maliciously underpay them despite them working regularly over 9.5
10 hours per day, where Defendants many times pay the employees nothing at all for overtime hours
11 worked and also pay them nothing at all for the meal periods they work through, but are
12 maliciously not paid by Defendants.

13
14 34. In violation of state law, Defendants have knowingly and willfully refused to
15 perform their obligations to compensate Plaintiffs and the other aggrieved employees for all
16 minimum wages earned and all hours worked. As a direct result, Plaintiffs and the other
17 aggrieved employees have suffered, and continue to suffer, substantial losses related to the use
18 and enjoyment of such unpaid wages, lost interest on such wages, costs and attorneys’ fees in
19 seeking to compel Defendants to fully perform its obligation under state law, all to their damage
20 in amounts according to proof at the time of trial, but in amounts in excess of the minimum
21 jurisdiction requirement of this Court. Defendants committed the acts alleged herein knowingly
22 and willfully, with wrongful and deliberate intent.

23
24 35. Defendants’ conduct described herein violates Labor Code sections 200, 226, 500,
25 510, 558, 558.1, 1194, 1194.2, and 1197. As a proximate result of the aforementioned
26 violations, Plaintiffs and the other aggrieved employees have been damaged in an amount
27 according to proof at the time of trial, but in an amount in excess of the minimum jurisdiction
28

1 requirement of this Court. Therefore, pursuant to Labor Code sections 200, 203, 226, 558,
2 558.1, 1194, 1194.2, 1197, and 1197.1, Plaintiff is therefore entitled to recover the unpaid
3 balance of minimum wages and damages for minimum wage violations, including but not limited
4 to LC 1194.2 liquidated damages, plus interest, penalties, attorneys' fees, expenses, and costs of
5 suit.
6

7 36. Pursuant to Labor Code §200, "wages" includes all amounts for labor performed
8 by employees of every description, whether the amount is fixed or ascertained by the standard of
9 time, task, piece, commission basis, or other method of calculation.

10 37. Plaintiffs are thus entitled to their earned unpaid wages in an amount to be proven
11 at trial, plus interest, penalties, attorneys' fees and costs.
12

13 38. Under California law, including but not limited to, Labor Code sections 200, 226,
14 500, 510, 558, 558.1, and 1198, Defendants were required to compensate the aggrieved
15 employees for all overtime, which is calculated at one and one-half (1.5) times the regular rate of
16 pay for hours worked in excess of forty (40) per week or after eight (8) in one day, and double
17 time (2) times the regular rate of pay for hours worked on the seventh consecutive work day, or
18 after twelve (12) hours in any workday.

19 39. Throughout their employment with Defendants, Plaintiffs and the aggrieved
20 employees regularly worked over 40 hours per week and over 8 hours per day, at least five days
21 per week. The aggrieved employees are or were non-exempt employees entitled to overtime pay
22 under California law, including but not limited to Labor Code sections 200, 226, 500, 510, 558,
23 558.1, 1194 and 1198. Throughout Plaintiffs and the aggrieved employees' employment,
24 Defendants regularly failed to pay them at the overtime wage rate for all of their overtime hours
25 worked. Specifically, Defendants would intentionally and maliciously fail to pay Plaintiffs, and
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1 other aggrieved employees, at the overtime rate where they regularly worked over 9.5 hours per
2 day, instead paying them at the regular rate of pay in cash or nothing at all.

3 40. Under the applicable wage orders, statutes and regulations, the aggrieved
4 employees are entitled to one and one-half (1.5) times and double their regular rate of pay for
5 overtime work performed during the entire course of their employment with Defendants.
6

7 41. As a direct result, Plaintiffs and the other aggrieved employees have suffered
8 substantial losses related to the use and enjoyment of such wages, lost interest on such wages,
9 and expenses and attorneys' fees in seeking to compel Defendants to fully perform their
10 obligation under state law, all to their respective damage in amounts according to proof at the
11 time of trial, but in amounts in excess of the jurisdiction of this Court. Defendants committed
12 the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of
13 injuring Plaintiffs, from improper motives amounting to malice, and in conscious disregard of
14 Plaintiffs' rights. Plaintiffs are thus entitled to recover nominal, actual, compensatory damages
15 in amounts according to proof at the time of trial, but in amounts in excess of the jurisdiction of
16 this Court.
17

18 42. Defendants' conduct described herein violates Labor Code sections 200, 226, 500,
19 510, 558, 558.1, and 1194. As a proximate result of the aforementioned violations, Plaintiffs
20 have been damaged in an amount according to proof at the time of trial, but in an amount in
21 excess of the jurisdiction of this Court. Therefore, pursuant to Labor Code sections 200, 203,
22 226, 558, 558.1, and 1194, Plaintiffs are entitled to recover the unpaid balance of overtime
23 compensation Defendants owe to the aggrieved employees, plus interest, penalties, attorneys'
24 fees, expenses, and costs of suit.
25

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1 43. All accrued and earned vacation pay must be paid as wages at the time of
2 termination of an employee and earned vacation may not be forfeited by an employer pursuant to
3 Labor Code Sections 201, 202, 203, 227, and 227.3, and applicable Wage Orders.

4 44. Plaintiffs and the other aggrieved employees earned vacation pay per Defendants'
5 vacation pay policy that was not paid by Defendants at the time of separation. Defendants
6 willfully failed to pay Plaintiffs and the other aggrieved employees their earned vacation at the
7 time of separation of their employment from Defendants. By Defendants' failure to timely pay
8 accrued vacation pay wages to Plaintiffs and the other aggrieved employees, Defendants
9 willfully violated the provisions of Labor Code Sections 201, 202, 203, 227, and 227.3, and
10 applicable Wage Orders.
11

12 45. An employer must pay its employees sick leave pursuant to Labor Code Section
13 246, et seq. Defendants failed to pay for sick pay leave in violation of Labor Code Section 246,
14 et seq. Therefore, Plaintiffs and the other aggrieved employees are entitled to unpaid sick pay
15 leave in an amount to be proven at trial, plus interest, penalties, attorneys' fees and costs.
16

17 46. Defendants committed the acts alleged herein knowingly and willfully, with the
18 wrongful and deliberate intention of injuring Plaintiffs and the other aggrieved employees, from
19 improper motives amounting to malice, and in conscious disregard of Plaintiffs' and the other
20 aggrieved employees' rights. Specifically, Defendants know that they owe wages to Plaintiffs
21 and the other aggrieved employees and yet have failed to pay them their owed wages and instead
22 have taken efforts to deprive them of their owed wages to annoy, harass, oppress, hinder, delay
23 and defraud them in violation of Labor Code section 216.
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SECOND CAUSE OF ACTION
FAILURE TO TIMELY FURNISH
ACCURATE ITEMIZED WAGE STATEMENTS
(Pursuant to Labor Code §226(a) and (e))
(Against all Defendants)

47. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this section as though fully set forth herein.

48. Plaintiffs are informed and believe and thereon alleges that Defendants, in violation of Labor Code §226(a), engaged in a practice with respect to Plaintiffs and the other aggrieved employees of regularly failing to furnish them with accurate, itemized statements in writing showing (1) all gross wages earned, (2) all deductions, (3) net wages earned, and/or (4) accurate rate of pay during each respective pay period for which wages have been and continue to be due and owing, as well as all other information required by section 226 of the Labor Code. Specifically, Defendants failed to provide wage statements to Plaintiffs and the other aggrieved employees showing the above required information, and in fact, Defendants' counsel has admitted this.

49. Plaintiffs seek damages pursuant to Labor Code §226(e) for each violation by Defendants of Labor Code §226 of at least \$4,000.00, and pursuant to §§ 226.3, 558.1, plus attorneys' fees and costs. In addition, Plaintiffs seek preliminary and permanent injunctive relief pursuant to Labor Code §226(h).

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1 in irreparable injury to members of the general public, including, but not limited to Plaintiffs and
2 the other aggrieved employees, who are current and former employees of the Defendants, and for
3 which there is no adequate remedy at law. Thus, Plaintiffs request that the Court issue a
4 preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing
5 conduct.
6

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES UPON SEPARATION OF EMPLOYMENT**

9 **WAITING TIME PENALTIES PURSUANT TO LABOR CODE §203**

10 **(Against all Defendants)**

11 56. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
12 section as though fully set forth herein.
13

14 57. Defendants failed to pay Plaintiffs and the other aggrieved employees all earned
15 wages upon the separation of their employment with Defendants in violation of Labor Code
16 sections 201 and 202, including but not limited to, overtime, minimum, regular, and meal and
17 rest period premium wages, and despite their several demands to be paid. This is particularly true
18 since Defendants have admitted that they owe wages through their attorneys, yet they still have
19 not paid the wages owed nor have they paid any waiting time penalties.
20

21 58. Defendants' failure to pay Plaintiffs and the other aggrieved employees all wages
22 due was willful and done with malice. Plaintiffs and the other aggrieved employees are therefore
23 entitled to penalties pursuant to Labor Code §203, and pursuant to §§ 558, 558.1, plus attorneys'
24 fees and costs.

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1 **FIFTH CAUSE OF ACTION**

2 **MEAL AND REST PERIOD VIOLATIONS**

3 **LABOR CODE §§ 226.7 and 512**

4 **(Against all Defendants)**

5
6 59. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
7 section as though fully set forth herein.

8 60. Under California Labor Code sections 226.7, 512 and California Wage Orders,
9 Off Duty Meal Periods of 30 minutes are required for all non-exempt employees who work at
10 least 5 hours in a shift, except that when a work period of not more than 6 hours will complete
11 the day's work then the meal period may be waived by mutual consent of the employer and
12 employee. Time records of meal periods must be kept except that meal periods during which
13 operations cease need not be recorded. Employers must provide non-exempt employees 2 Off
14 Duty Rest Periods of 10 minutes each in a normal 8 hour shift. Rest Periods need not be
15 recorded. The Meal Periods are unpaid unless the employee is not fully relieved of all duties.
16 Rest Periods must be paid. An employer who fails to provide off duty meal and rest periods
17 (breaks) must pay the employee an additional 1 hour regular pay for each category of break not
18 provided in a work day.
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21 61. At all times mentioned herein, Defendants violated Labor Code sections 226.7
22 and 512 by refusing to allow Plaintiffs and the other aggrieved employees to be fully relieved of
23 their duties during their meal and rest periods. Defendants did not allow Plaintiffs and the other
24 aggrieved employees to be fully relieved of their duties during their meal and rest periods, and
25 were required to work through them throughout the year, and even if they were allowed, they
26 would not be able to finish their required duties which would cause them to receive discipline or
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1 be terminated. Plaintiffs and the other aggrieved employees were not paid their owed meal and
2 rest period premium wages despite the above violations.

3
4 62. Accordingly, Plaintiff seeks damages available pursuant to the Labor Code,
5 including but not limited to Labor Code sections 226.7, 512, 558, and 558.1, plus interest.

6 **SIXTH CAUSE OF ACTION**

7 **EMPLOYEE FILE & PAYROLL RECORDS VIOLATION**

8 **LABOR CODE §§ 1198.5, 432, 226(b), (c), and (f)**

9 **(Against all Defendants)**

10
11 63. Plaintiff incorporates by reference and re-alleges each and every one of the
12 allegations contained in this Complaint as though fully set forth herein.

13 64. On or about May 12, 2021, Plaintiffs, through their counsel, requested in writing
14 and via certified US mail, that Defendants provide Plaintiffs with a copy of certain documents in
15 their employee file and payroll and time records. Defendants failed to furnish Plaintiffs with a
16 copy of their full employee file and payroll and time records in violation of Labor Code §§432,
17 and 226(b),(c), (f), and 1198.5; IWC Orders 1 through 15, Section 7, and IWC Order 16, Section
18 6, despite multiple requests to do so. Plaintiffs are entitled to recover any and all penalties and
19 compensation provided by the Labor Code, including the above mentioned sections and section
20 558.1, for Defendants' failure to furnish the requested personnel and payroll and time records
21 including penalties pursuant to LC §§226(f) and 1198.5, plus attorneys' fees and costs.

22
23
24 65. Pursuant to Labor Code §1174(d), Defendants have a legal obligation to “[k]eep,
25 at a central location in the state or at the plants or establishments at which employees are
26 employed, payroll records showing the hours worked daily by and the wages paid to, and the
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1 number of piece-rate units earned by and any applicable piece rate paid to, employees employed
2 at the respective plants or establishments.”

3
4 66. Defendants failed to maintain records of Plaintiffs’ and the other aggrieved
5 employees’ accurate hours worked which Defendant swas required to keep pursuant to Labor
6 Code §1174(d). Therefore, Defendants violated Labor Code §1174(d) by failing to collect and
7 keep records indicating the daily hours worked by Plaintiffs and the other aggrieved employees.

8
9 67. Pursuant to Labor Code §1174.5, “any person employing labor who willfully fails
10 to maintain... accurate and complete records required by subdivision (d) of Section 1174... shall
11 be subject to a civil penalty of five hundred dollars (\$500).” Accordingly, Defendants are
12 required to pay Plaintiffs and the other aggrieved employees an additional \$500.00 each along
13 with consequential damages.

14 **SEVENTH CAUSE OF ACTION**

15 **CONVERSION OF GRATUITIES**

16 **VIOLATION OF LABOR CODE §§ 350-356**

17 **(Against All Defendants)**

18
19 68. Plaintiffs incorporate by reference and re-allege each and every one of the
20 allegations contained in this Complaint as though fully set forth herein.

21
22 69. Labor Code Section 351 provides in part that “[n]o employer or agent shall
23 collect, take, or receive any gratuity or a part thereto that is paid, given to, or left for an
24 employee by a patron, or deduct any amount from wages due an employee on account of a
25 gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against
26 and as a part of the wages due the employee from the employer...”

1 70. Labor Code Section 353 provides that “[e]very employer shall keep accurate
2 records of all gratuities received by him, whether received directly from the employee or
3 indirectly by means of deductions from the wages of the employee or otherwise.”
4

5 71. In violation of California Labor Code Section 351, Defendants consistently
6 collect, take, or receive the gratuities or a portion thereof paid by customers to the Plaintiffs and
7 the other aggrieved employees. Defendants converted the gratuities left for Plaintiffs by patrons
8 on a regular basis. Furthermore, it is believed Defendants have failed to keep accurate records of
9 all gratuities received by them.
10

11 72. The conversion has been carried out by Defendants with complete disregard of the
12 law and the rights of Plaintiffs and the other aggrieved employees. In converting the gratuities
13 paid by customers, Defendants are guilty of “oppression, fraud or malice” within the meaning of
14 California Civil Code Section 3294, and should be liable for punitive damages in an amount to
15 be determined at trial.
16

17 73. Therefore, Defendants must pay Plaintiffs their earned gratuities that they took
18 from Plaintiffs, plus interest, fees and costs and any applicable penalties, plus punitive damages
19 in an amount to be determined at trial.
20

21 **EIGHTH CAUSE OF ACTION**

22 **PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”)**

23 **PER LABOR CODE §2699, et seq.**

24 **(Against All Defendants)**

25 74. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
26 section as though fully set forth herein.
27

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1 75. On or about May 12, 2021, pursuant Labor Code sections 2699(a) and 2699.3,
2 Plaintiffs, through their counsel, provided notice in writing by online submission to the
3 California Labor Workforce Development Agency (“LWDA”) and via certified US Mail to
4 Defendants and each of them, that Plaintiffs intended to assert a PAGA claim pursuant to section
5 2699(a) on their own behalf, and in a representative capacity on behalf of other aggrieved
6 employees of Defendants, for Defendants’ violations of specified provisions of the California
7 Labor Code. See Exhibit 1 attached to this Complaint. The LWDA did not respond within 65
8 days.
9

10 76. As a result, Plaintiffs have perfected their right to sue Defendants in a civil action,
11 and to collect statutory penalties, pursuant to Labor Code section 2699.3(a)(2)(A)(1) on behalf of
12 all aggrieved employees (PAGA Employees).
13

14 77. As a result of the acts alleged above, Plaintiffs bring this action on their own
15 behalf, and in a representative capacity on behalf of other current or former aggrieved employees
16 (PAGA Employees), for penalties pursuant to California Labor Code section 2699 for
17 Defendants’ violations of the enumerated Labor Code sections, including, but not limited to
18 sections 200, 201, 202, 203, 210, 216, 220, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 227,
19 227.3, 246, 350-356, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1194, 1194.2, 1197.1,
20 1198, 1198.5, 1199, 1770-1781, and 2802.
21

22 78. Pursuant to California Labor Code section 2699, Plaintiffs and PAGA Employees
23 are entitled to be awarded twenty-five (25%) percent of all penalties due under California law, in
24 addition to interest, attorney’s fees and costs.
25

26 79. The Court should award seventy-five (75%) percent of all penalties due under
27 California law to the State of California.
28

1 80. Plaintiffs, on behalf of the State of California and the aggrieved employees,
2 therefore seek to recover from Defendants, and each of them, allowable damages and civil
3 penalties for the violations claimed above regarding Plaintiffs' claims, plus interest, costs, and
4 attorneys' fees, plus civil penalties regarding the other aggrieved employees' claims in an
5 amount according to proof at trial, in accordance with Labor Code sections 2699, *et seq.*

7 81. Labor Code Section 558 states that "[a]ny employer or *other person* acting on
8 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
9 provision regulating hours and days of work in any order of the Industrial Welfare Commission
10 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
11 each underpaid employee for each pay period for which the employee was underpaid in addition
12 to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
13 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
14 was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages
15 recovered pursuant to this section shall be paid to the affected employee. The Section goes on to
16 state that "[t]he civil penalties provided for in this section are in addition to any other civil or
17 criminal penalty provided by law."

19 82. Labor Code Section 558.1(a) provides in pertinent part: "Any employer or other
20 person acting on behalf of an employer, who violates, or causes to be violated, any provision
21 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
22 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
23 2802, may be held liable as the employer for such violation."

25 83. Defendants violated/violate, or caused/causes to be violated, multiple sections of
26 the Labor Code as well as provisions regulating hours and days of work in any order of the
27 Industrial Welfare Commission including those requiring payment of minimum and regular
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1 wages and payment of overtime wages, meal and rest periods, records violations, as set forth in
2 detail throughout this Complaint.

3
4 84. Accordingly, Plaintiffs are also entitled to recovery of wages, premium wages,
5 damages, and penalties pursuant to Labor Code Sections 558, and 558.1.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiffs pray for judgment against Defendants, as follows:

8
9 1. For compensatory damages, including but not limited to, those pursuant to Labor Code
10 §§ 200, 201, 203, 218, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 246, 350-356, 500, 510,
11 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1194.3, 1197.1, 1198, 1198.5, 1770-1781, 2802,
12 2699, et seq., California Wage Orders, and other statutes and laws;

13 2. For pre-judgment interest pursuant to all applicable statutes including but not limited to,
14 Labor Code §§218.6, et seq., and pursuant to Civil Code §§ 3287(b) and 3289;

15 3. For penalties pursuant to Labor Code §§ 203, 225.5, 226, 226(f), 1198.5, 226.3, 226.7,
16 246, 350-356, 512, 558, 558.1, 1174.5, 1194.2, 1197.1, 2802, 2699, et seq., and other statutes
17 and laws;

18
19 4. For all damages available pursuant to all applicable sections of the Labor Code;

20 5. For injunctive relief pursuant to Labor Code §226(h);

21 6. For an award of reasonable attorneys' fees and costs;

22 7. For restitution of all monies due to Plaintiffs and disgorged profits from the unlawful
23 business practices of Defendants;

24 8. For all remedies available pursuant to Business and Professions Code section 17200 et
25 seq.;

26
27 9. For punitive damages according to proof;

28 10. For all other appropriate injunctive, declaratory and equitable relief;

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11. For interest to the extent permitted by law; and

12. For such other and further relief as the Court may deem proper.

Dated: August 12, 2022



Rodolfo Ruiz-Velasco, Esq.
Attorneys for Plaintiffs

EXHIBIT 1

RUIZ-VELASCO LAW FIRM

May 12, 2021

Via Electronic Submission

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

All By Certified Mail

Cesar A Chaidez Gamboa
Paulina Chaidez Gonzalez
Maria Dolores Gonzalez
Chaidez Gonzalez Inc.
9335 Airway Rd Ste 112
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Cesar Chaidez Gonzales Jr.
Paulina Chaidez Calderon
Cocina 35, LLC
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Via Email (luisaberistain@gmail.com)

Ms. Luisa Beristain
Law Offices of Luisa Beristain
1505 N. San Fernando Blvd., Suite A
Burbank, California 91504
Attorneys for Defendants

Re: **Melendrez, et al. v. Chaidez Gonzalez Inc., et al.**

To Whom It May Concern:

We represent Patricia Melendrez, Steven Alvarado, Ailed Cortez, Alba Zavala, Marco Silva Avena, and Benjamjin Silva Avena individually and on behalf of all other individuals (collectively "Plaintiffs") who are either former or current employees of Chaidez Gonzalez Inc. and Cocina 35, LLC, and Cesar A Chaidez Gamboa, Paulina Chaidez Gonzalez, Maria Dolores Gonzalez, Cesar Chaidez Gonzales Jr., and Paulina Chaidez Calderon, who own, manage and operate Cocina 35 restaurant and catering (collectively, "Defendants"). The individual Defendants are believed to be owners, officers and directors of Chaidez Gonzalez Inc. and Cocina 35, LLC and made the Plaintiffs' schedules, controlled the Plaintiffs' everyday duties and set the employment policies of Cocina 35 restaurant and catering, and set the pay for and paid the Plaintiffs their wages. Pursuant to Labor Code section 2699.3, this letter constitutes written notice

of Defendants' Labor Code violations and of our clients' intent to recover statutory penalties under the Labor Code Private Attorney General Act of 2004. A copy of this letter is also being sent to Defendants via certified mail pursuant to Labor Code section 2699.3, and a courtesy copy is being sent by email to their attorney Ms. Luisa Beristain.

Plaintiffs were employed by Defendants as cooks, food preparers, dishwashers, servers, bussers, managers, and caterers. Plaintiffs are regularly required to work on average at least 9 and a half hours per day 5 days per week, which amounts to over 47.5 hours of work per week without receiving overtime compensation, but instead getting paid at the regular rate of pay for overtime hours worked, and many times not getting paid anything at all for their works worked ("wage theft"). Defendants underpay their other employees, and owe them minimum, regular, and overtime wages.

Defendants paid Plaintiffs for their overtime hours worked in cash at the regular rate of pay, or paid them nothing at all for some of their hours worked, and thus failed to provide Plaintiffs with paycheck statements with accurate hours worked, rate of pay, and regular and overtime hours. Defendants also failed to keep accurate time records of Plaintiffs and other employees, in violation of Section 7 of the Wage Orders and Labor Code section 1174.5.

Plaintiffs were not paid all of their wages owed at the time of their separation of work and were paid late on several occasions and with NSF checks in violation of LC §§ 203 and 204.

In addition, Defendants failed to fully relieve Plaintiffs from their meal and rest periods and to pay them any premiums for their on-duty meal and rest periods. Specifically, Plaintiffs and other current and former employees were not fully relieved of their duties during their meal period and any of their rest periods because Defendants required them to work through their meal and their rest periods, and Defendants did not allow Plaintiffs to leave the restaurant or catering area during their meal and rest periods, instead, they had to work through their meal and rest periods and remain on the premises.

The payment of a less wage than the California minimum wage and minimum wage violations, including failure to pay split shift premiums, are unlawful pursuant to Labor Code Sections 1197, 1197.1, 1194, 558, 558.1. Overtime compensation is statutorily required by California Labor Code Section 510, 558, 558.1. Meal and rest periods are required pursuant to Labor Code section 226.7 and 512, 558, 558.1. Failure to reimburse for expenses incurred in the course of one's employment is a violation of Labor Code Section 2802, et seq. Accurate wage statements must be timely given to employees pursuant to Labor Code section 226. Illegal deductions are in violation of LC Sections 220, 221, 222, 223, 224, et seq. Taking of gratuities from aggrieved employees

California Labor & Workforce Development Agency
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is a violation of Labor Code sections 350-356. Defendants' employment practices implicate violations of numerous other Labor Code sections, including but not limited to the following: Labor Code §§ 98.6, 201, 202, 203, 204, 220, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 227.3, 350-356, 510, 512, 558, 558.1, 1102.5, 1194, 1194.2, 1197.1, 2802, et seq., and 2698, et seq.

Accordingly, Plaintiffs respectfully request that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, Plaintiffs will pursue these claims for statutory penalties on behalf of themselves and all other current and former employees.

If you have any questions or concerns regarding the above, do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Rodolfo Ruiz-Velasco', with a stylized, flowing script.

Rodolfo Ruiz-Velasco, Esq.