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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Amy Woolf, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

SAN DIEGO COUNTY

JOSE PEREZ, an individual,

Plaintiff,

v.

MUTUAL PARTNERS, INC. dba
BEACHFRONT VACATION ONLY
RENTAL; DAVID PAUL FISCHBACH, an
individual; ADELE NELSON FISCHBACH, an
individual; PETER RODRIGUEZ, an
individual; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2021-00038932-CU-WT-NC

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 PROVIDE A COPY OF
PAYROLL RECORDS AND EMPLOYEE
FILE AND FAILURE TO MAINTAIN
ACCURATE TIME RECORDS
7. PRIVATE ATTORNEYS GENERAL
ACT OF 2004 ("PAGA") PER LABOR
CODE §2699, et seq.
8. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;
9. WRONGFUL TERMINATION AND
RETALIATION IN VIOLATION OF
LABOR §1102.5, et seq.

[IMAGED FILE]

1 Plaintiff JOSE PEREZ, an individual (hereinafter “Plaintiff”) alleges as follows:

2 **GENERAL ALLEGATIONS**

3 The public policy of California declares:

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

(Labor Code §90.5 subd. (a).)

10 Despite this clear mandate, DEFENDANTS blatantly violated the California Labor Code
11 and the Industrial Welfare Commission (“IWC”) Wage Orders. Defendants willfully failed to
12 pay mandated overtime and minimum wage compensation, failed to provide meal and rest
13 periods, and failed to provide and maintain proper employee records to their employees.

14 1. This lawsuit is brought in response to the Defendants’ refusal to pay Plaintiff,
15 who is a former employee of Defendants, all wages that he earned during his employment with
16 Defendants, among other Labor Code violations.

17 2. The acts complained of herein have occurred within the time period from four (4)
18 years preceding the filing of the original Complaint herein (hereinafter, the “Relevant Time
19 Period”).

20 **JURISDICTION AND VENUE**

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

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1 4. Venue is proper in North County Division of San Diego County Superior Court
2 pursuant to Code of Civil Procedure §395(a) and §395.5, because *inter alia*, (a) the Defendants'
3 and Defendant corporation's principal place of business is situated in this County, and (b)
4 complaints regarding such issues may be filed in the North County Division.
5

6 **PARTIES**

7 5. Plaintiff JOSE PEREZ is an individual over the age of eighteen (18) and was an
8 employee of Defendants during the last 4 years.

9 6. Plaintiff is informed and believes that Defendant MUTUAL PARTNERS, INC. is
10 a California Corporation, and at all times mentioned herein operated its businesses within the
11 jurisdiction of this Court, and has operated and is doing business as Beachfront Vacation Only
12 Rental.
13

14 7. Plaintiff is informed and believes that Defendant DAVID PAUL FISCHBACH is
15 an individual who during the relevant time period has owned, managed and operated and
16 continues to own, manage and operate MUTUAL PARTNERS, INC., and who at all times
17 mentioned in this Complaint herein resided within the jurisdiction of this Court. DAVID PAUL
18 FISCHBACH was and remains a person acting on behalf of MUTUAL PARTNERS, INC., on
19 information and belief as the chief executive officer, managing agent, and director of MUTUAL
20 PARTNERS, INC., who violated and/or who caused to violate various Labor Code sections and
21 other provisions regulating hours and days of work established by the Industrial Welfare
22 Commission of the State of California rendering him individually liable pursuant to Labor Code
23 Sections 558, 558.1, 1102.5, and 2699 et. seq. In addition, DAVID PAUL FISCHBACH is an
24 officer, director, and person acting either individually or as a managing agent, who paid or
25 caused to be paid the Plaintiff and the other aggrieved employees a wage less than the minimum
26 and overtime rate of pay under the law, failed to relieve them of duties during their meal and rest
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1 periods, and failed to provide accurate records, or by an order of the commission and is therefore
2 subject to a civil penalty, restitution of wages payable to the employee, and any applicable
3 wages, damages and penalties plus fees and costs imposed pursuant to Labor Sections 203, 558,
4 558.1, and 2699 et. seq. Further, DAVID PAUL FISCHBACH is a person who retaliated against
5 Plaintiff for disclosing a violation of state or federal statute, or a violation of or noncompliance
6 with a local, state or federal rule or regulation, in violation of Labor Code 1102.5.
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8 8. Plaintiff is informed and believes that Defendant ADELE NELSON
9 FISCHBACH is an individual who during the relevant time period has owned, managed and
10 operated and continues to own, manage and operate MUTUAL PARTNERS, INC., and who at
11 all times mentioned in this Complaint herein resided within the jurisdiction of this Court.
12 ADELE NELSON FISCHBACH was and remains a person acting on behalf of MUTUAL
13 PARTNERS, INC., on information and belief as the secretary, chief financial officer, and
14 managing agent of MUTUAL PARTNERS, INC., who violated and/or who caused to violate
15 various Labor Code sections and other provisions regulating hours and days of work established
16 by the Industrial Welfare Commission of the State of California rendering her individually liable
17 pursuant to Labor Code Sections 558, 558.1, 1102.5, and 2699 et. seq. In addition, ADELE
18 NELSON FISCHBACH is an officer, agent, and person acting either individually or as a
19 managing agent, who paid or caused to be paid the Plaintiff and the other aggrieved employees a
20 wage less than the minimum and overtime rate of pay under the law, failed to relieve them of
21 duties during their meal and rest periods, and failed to provide accurate records, or by an order of
22 the commission and is therefore subject to a civil penalty, restitution of wages payable to the
23 employee, and any applicable wages, damages and penalties plus fees and costs imposed
24 pursuant to Labor Sections 203, 558, 558.1, and 2699 et. seq. Further, ADELE NELSON
25 FISCHBACH is a person who retaliated against Plaintiff for disclosing a violation of state or
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1 federal statute, or a violation of or noncompliance with a local, state or federal rule or regulation,
2 in violation of Labor Code 1102.5.

3 9. Plaintiff is informed and believes that Defendant PETER RODRIGUEZ is an
4 individual who during the relevant time period has owned, managed and operated and continues
5 to own, manage and operate MUTUAL PARTNERS, INC., and who at all times mentioned in
6 this Complaint herein resided within the jurisdiction of this Court. PETER RODRIGUEZ was
7 and remains a person acting on behalf of MUTUAL PARTNERS, INC., on information and
8 belief as the managing agent of MUTUAL PARTNERS, INC., who violated and/or who caused
9 to violate various Labor Code sections and other provisions regulating hours and days of work
10 established by the Industrial Welfare Commission of the State of California rendering him
11 individually liable pursuant to Labor Code Sections 558, 558.1, 1102.5, and 2699 et. seq. In
12 addition, PETER RODRIGUEZ is a person acting either individually or as a managing agent,
13 who paid or caused to be paid the Plaintiff and the other aggrieved employees a wage less than
14 the minimum and overtime rate of pay under the law, failed to relieve them of duties during their
15 meal and rest periods, and failed to provide accurate records, or by an order of the commission
16 and is therefore subject to a civil penalty, restitution of wages payable to the employee, and any
17 applicable wages, damages and penalties plus fees and costs imposed pursuant to Labor Sections
18 203, 558, 558.1, and 2699 et. seq. Further, PETER RODRIGUEZ is a person who retaliated
19 against Plaintiff for disclosing a violation of state or federal statute, or a violation of or
20 noncompliance with a local, state or federal rule or regulation, in violation of Labor Code
21 1102.5.

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

4 11. Plaintiff is informed and believes and thereon alleges that DOES 1 to 50,
5 inclusive, are former co-employers and/or joint employers of Plaintiff.

6 12. Plaintiff is informed and believes and thereon alleges that DOES 1 to 50,
7 inclusive, are successors in interest to Defendants or are otherwise obligated to pay Plaintiff the
8 wages due and owing to them, e.g. by way of statute, common law, quantum meruit, express
9 written contract, implied in fact contract, or by way of common counts such as money had and
10 received. Plaintiff reserves the right to augment the foregoing allegations to more clearly set
11 forth this Defendant’s liability as discovery progresses and reveals the same.
12

13 13. Plaintiff is informed and believes, and based upon such information and belief
14 alleges that the Defendants, and each of them, are now and/or at all times mentioned in this
15 Complaint were in some manner legally responsible for the events, happenings and
16 circumstances alleged in this Complaint.
17

18 14. Plaintiff is further informed and believes, and based upon such information and
19 belief alleges, that at all times herein mentioned, all Defendants, and each of them, were and are
20 the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants,
21 and were, at all such times, acting within the course and scope of said employment and/or
22 agency; furthermore, that each and every Defendant herein, while acting as a high corporate
23 officer, director and/or managing agent, principal and/or employer, expressly directed, consented
24 to, approved, affirmed and ratified each and every action taken by the other co-Defendants, as
25 herein alleged and was responsible in whole or in part for the matters referred to herein.
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1 15. Plaintiff is further informed and believes, and based upon such information and
2 belief alleges, that at all times herein mentioned, Defendant, and each of them, proximately
3 caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
4 damages alleged in this Complaint.

5 16. Plaintiff is further informed and believes, and based upon such information and
6 belief alleges, that at all times herein mentioned, Defendants, and each of them were co-
7 employers and/or joint employers of Plaintiff.

8 17. Defendants, and each of them, are now and/or at all times mentioned in this
9 Complaint were members of and/or engaged in a joint venture, partnership and common
10 enterprise, and were acting within the course and scope of, and in pursuit of said joint venture,
11 partnership and common enterprise and, as such were co-employers and/or joint employers of
12 Plaintiff.

13 18. Defendants, and each of them, at all times mentioned in this Complaint concurred
14 with, contributed to, approved of, aided and abetted, condoned and/or otherwise ratified the
15 various acts and omissions of each and every one of the other Defendants in proximately causing
16 the complaints, injuries and/or damages alleged in this Complaint.

17 19. Plaintiff is informed and believes and thereon alleges that at all times herein
18 mentioned, some of the Defendants DOES 1 through 50, Inclusive, were the *alter egos* of the
19 named Defendants. Plaintiff is informed and believes and thereon alleges that there exists such a
20 unity of interest and ownership between the named Defendants and DOES 1 through 50, that the
21 individuality and separateness of the named Defendants and DOES 1 through 50 has ceased to
22 exist. The business affairs of named Defendants and DOES 1 through 50, are, and at all times
23 relevant hereto were, so mixed and intermingled that the same cannot reasonably be segregated,
24 and the same are in inextricable confusion. Defendants, and at all times relevant hereto, used
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1 each other as a mere shell and conduit for the conduct of certain of Defendants' affairs. The
2 recognition of the separate existence of Defendants would not promote justice, in that it would
3 permit Defendants to insulate themselves from liability to Plaintiff. Accordingly, the named
4 Defendants constitute the *alter ego* of Defendants DOES 1 through 50, and the fiction of their
5 separate existence must be disregarded.
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7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES**

9 **(Against all Defendants)**

10 20. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
11 section as though fully set forth herein.
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13 21. Plaintiff was an "employee" of Defendants (as defined by section 350 of the
14 Labor Code) but Defendants failed to pay Plaintiff and the other aggrieved employees for all
15 hours worked. Plaintiff and the other aggrieved employees were employed as maintenance
16 workers for rental properties, mainly beachfront properties.
17

18 22. Pursuant to Labor Code section 1197, payment of less than the minimum wage
19 fixed by the commission is unlawful.
20

21 23. During the entire period of time that Plaintiff and the other aggrieved employees
22 were employed by Defendants, and for the four (4) years preceding the filing of this lawsuit,
23 Defendants were required to compensate them at least at the minimum wage, but failed to carry
24 out their duties and responsibilities as an employer imposed under the laws and regulations of the
25 State of California and violated the law by failing to pay Plaintiff and the other aggrieved
26 employees a minimum wage for all hours worked pursuant to all applicable wage orders and in
27 accordance with Labor Code sections 200, 226, 500, 510, 558.1, 1194, 1194.2, and 1197.
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1 24. Defendants regularly failed to pay Plaintiff and the other aggrieved employees all
2 of the wages that they earned. Specifically, Defendants have intentionally failed to pay Plaintiff
3 and the other aggrieved employees for all hours worked (“wage theft”), where Defendants shave
4 time worked by Plaintiff and the aggrieved employees by requiring them to clock out for their
5 meal period but to work through the meal period, particularly during the summer months,
6 causing them to not receive at least the minimum wage for all of their hours worked. Further,
7 Defendants often call Plaintiff and the other aggrieved employees to take care of emergency
8 repairs during their meal periods while they are clocked out, however they are not compensated
9 for this time.
10

11 25. In violation of state law, Defendants have knowingly and willfully refused to
12 perform their obligations to compensate Plaintiff and the other aggrieved employees for all
13 minimum wages earned and all hours worked. As a direct result, Plaintiff and the other
14 aggrieved employees have suffered, and continue to suffer, substantial losses related to the use
15 and enjoyment of such unpaid wages, lost interest on such wages, costs and attorneys’ fees in
16 seeking to compel Defendants to fully perform its obligation under state law, all to their damage
17 in amounts according to proof at the time of trial, but in amounts in excess of the minimum
18 jurisdiction requirement of this Court. Defendants committed the acts alleged herein knowingly
19 and willfully, with wrongful and deliberate intent.
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22 26. Defendants’ conduct described herein violates Labor Code sections 200, 226, 500,
23 510, 558, 558.1, 1194, 1194.2, and 1197. As a proximate result of the aforementioned
24 violations, Plaintiff and the other aggrieved employees have been damaged in an amount
25 according to proof at the time of trial, but in an amount in excess of the minimum jurisdiction
26 requirement of this Court. Therefore, pursuant to Labor Code sections 200, 203, 226, 558,
27 558.1, 1194, 1194.2, 1197, and 1197.1, Plaintiff is therefore entitled to recover the unpaid
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1 balance of minimum wages and damages for minimum wage violations, including but not limited
2 to LC 1194.2 liquidated damages in the amount of at least \$744.00, plus interest of at least
3 \$74.40, penalties, attorneys' fees, expenses, and costs of suit.

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

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8 28. Plaintiff is thus entitled to their earned unpaid wages in an amount to be proven at
9 trial, plus interest, penalties, attorneys' fees and costs.

10 29. Under California law, including but not limited to, Labor Code sections 200, 226,
11 500, 510, 558, 558.1, and 1198, Defendants were required to compensate Plaintiff and the other
12 aggrieved employees for all overtime, which is calculated at one and one-half (1.5) times the
13 regular rate of pay for hours worked in excess of forty (40) per week or after eight (8) in one day,
14 and double time (2) times the regular rate of pay for hours worked on the seventh consecutive
15 work day, or after twelve (12) hours in any workday.

16
17 30. Throughout his employment with Defendants, Plaintiff regularly worked over 40
18 hours per week and over 8 hours per day, at least five days per week. Plaintiff and the other
19 aggrieved employees are or were non-exempt employees entitled to overtime pay under
20 California law, including but not limited to Labor Code sections 200, 226, 500, 510, 558, 558.1,
21 1194 and 1198. Throughout Plaintiff's employment, Defendants regularly failed to pay Plaintiff
22 and the other aggrieved employees at the overtime wage rate for all of their overtime hours
23 worked. Specifically, Defendants would intentionally fail to pay Plaintiff, and other aggrieved
24 employees, at the overtime rate where Defendants shave time worked by Plaintiff and the
25 aggrieved employees by requiring them to clock out for their meal period but to work through
26 the meal period, particularly during the summer months, causing them to not receive at least the
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1 minimum wage for all of their hours worked, much less their overtime wages. Further,
2 Defendants often call Plaintiff and the other aggrieved employees to take care of emergency
3 repairs during their meal periods while they are clocked out, however they are not compensated
4 for this time, causing further unpaid overtime wages.

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

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

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19 33. Defendants' conduct described herein violates Labor Code sections 200, 226, 500,
20 510, 558, 558.1, 1194, and 1197.1. As a proximate result of the aforementioned violations,
21 Plaintiff has been damaged in an amount according to proof at the time of trial, but in an amount
22 in excess of the jurisdiction of this Court. Therefore, pursuant to Labor Code sections 200, 203,
23 226, 558, 558.1, and 1194, Plaintiff is entitled to recover the unpaid balance of overtime
24 compensation Defendants owe to Plaintiff of at least \$2,112.00, plus interest of at least \$211.20,
25 penalties, attorneys' fees, expenses, and costs of suit.

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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)

34. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this section as though fully set forth herein.

35. Plaintiff is informed and believes and thereon alleges that Defendants, in violation of Labor Code §226(a), engaged in a practice with respect to Plaintiff 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 Plaintiff and the other aggrieved employees showing the above required information.

36. Plaintiff seeks 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, Plaintiff seeks preliminary and permanent injunctive relief pursuant to Labor Code §226(h).

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1 the other aggrieved employees, who are current and former employees of the Defendants, and for
2 which there is no adequate remedy at law. Thus, Plaintiff requests that the Court issue a
3 preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing
4 conduct.

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6 **FOURTH CAUSE OF ACTION**

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

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

9 **(Against all Defendants)**

10 43. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
11 section as though fully set forth herein.

12 44. Defendants failed to pay Plaintiff and the other aggrieved employees all earned
13 wages upon the separation of their employment with Defendants in violation of Labor Code
14 sections 201 and 202, including but not limited to, overtime, minimum, regular, and meal and
15 rest period premium wages, and despite his several demands to be paid.

16 45. Defendants' failure to pay Plaintiff and the other aggrieved employees all wages
17 due was willful and done with malice. Plaintiff and the other aggrieved employees are therefore
18 entitled to penalties pursuant to Labor Code §203 of at least \$5,280.00, and pursuant to §§ 558,
19 558.1, plus attorneys' fees and costs.
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22 **FIFTH CAUSE OF ACTION**

23 **MEAL AND REST PERIOD VIOLATIONS**

24 **LABOR CODE §§ 226.7 and 512**

25 **(Against all Defendants)**

26 46. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
27 section as though fully set forth herein.
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1 47. Under California Labor Code sections 226.7, 512 and California Wage Orders,
2 Off Duty Meal Periods of 30 minutes are required for all non-exempt employees who work at
3 least 5 hours in a shift, except that when a work period of not more than 6 hours will complete
4 the day's work then the meal period may be waived by mutual consent of the employer and
5 employee. Time records of meal periods must be kept except that meal periods during which
6 operations cease need not be recorded. Employers must provide non-exempt employees 2 Off
7 Duty Rest Periods of 10 minutes each in a normal 8 hour shift. Rest Periods need not be
8 recorded. The Meal Periods are unpaid unless the employee is not fully relieved of all duties.
9 Rest Periods must be paid. An employer who fails to provide off duty meal and rest periods
10 (breaks) must pay the employee an additional 1 hour regular pay for each category of break not
11 provided in a work day.
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14 48. At all times mentioned herein, Defendants violated Labor Code sections 226.7
15 and 512 by refusing to allow Plaintiff and the other aggrieved employees to be fully relieved of
16 their duties during their meal and rest periods. Defendants did not allow Plaintiff and the
17 aggrieved employees to be fully relieved of their duties during their rest periods, and were
18 required to work through them throughout the year. Defendants also did not allow Plaintiff and
19 the other aggrieved employees to be fully relieved of their duties during their meal periods
20 during the busy summer months of at least June, July, August, and September.
21

22 49. Accordingly, Plaintiff seeks damages available pursuant to the Labor Code,
23 including but not limited to Labor Code sections 226.7, 512, 558, and 558.1, of at least
24 \$44,220.00, plus interest of at least \$4,422.00.
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1 Code §1174(d). Therefore, Defendants violated Labor Code §1174(d) by failing to collect and
2 keep records indicating the daily hours worked by Plaintiff and the other aggrieved employees.

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4 54. Pursuant to Labor Code §1174.5, “any person employing labor who willfully fails
5 to maintain... accurate and complete records required by subdivision (d) of Section 1174... shall
6 be subject to a civil penalty of five hundred dollars (\$500).” Accordingly, Defendants are
7 required to pay Plaintiff an additional \$500.00 along with consequential damages.

8
9 **SEVENTH CAUSE OF ACTION**

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

11 **PER LABOR CODE §2699, et seq.**

12 **(Against All Defendants)**

13 55. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
14 section as though fully set forth herein.

15
16 56. On or about June 28, 2021, pursuant Labor Code sections 2699(a) and 2699.3,
17 Plaintiff, through his counsel, provided notice in writing by online submission to the California
18 Labor Workforce Development Agency (“LWDA”) and via certified US Mail to Defendants and
19 each of them, that Plaintiff intended to assert a PAGA claim pursuant to section 2699(a) on his
20 own behalf, and in a representative capacity on behalf of other aggrieved employees of
21 Defendants, for Defendants’ violations of specified provisions of the California Labor Code. See
22 Exhibit 1 attached to this Complaint. The LWDA did not respond within 65 days.

23
24 57. As a result, Plaintiff has perfected his right to sue Defendants in a civil action, and
25 to collect statutory penalties, pursuant to Labor Code section 2699.3(a)(2)(A)(1) on behalf of all
26 aggrieved employees (PAGA Employees).

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1 58. As a result of the acts alleged above, Plaintiff brings this action on his own behalf,
2 and in a representative capacity on behalf of other current or former aggrieved employees
3 (PAGA Employees), for penalties pursuant to California Labor Code section 2699 for
4 Defendants' violations of the enumerated Labor Code sections, including, but not limited to
5 sections 200, 201, 202, 203, 210, 216, 220, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 227,
6 227.3, 246, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1194, 1194.2, 1197.1, 1198,
7 1198.5, 1199, 1770-1781, and 2802.

9 59. Pursuant to California Labor Code section 2699, Plaintiff and PAGA Employees
10 are entitled to be awarded twenty-five (25%) percent of all penalties due under California law, in
11 addition to interest, attorney's fees and costs.

13 60. The Court should award seventy-five (75%) percent of all penalties due under
14 California law to the State of California.

16 61. Plaintiff, on behalf of the State of California and the aggrieved employees,
17 therefore seek to recover from Defendants, and each of them, allowable damages and civil
18 penalties of at least \$5,100.00 for the violations claimed above regarding Plaintiff's claims, plus
19 interest, costs, and attorneys' fees, plus civil penalties regarding the other aggrieved employees'
20 claims in an amount according to proof at trial, in accordance with Labor Code sections 2699, *et*
21 *seq.*

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

8 63. Labor Code Section 558.1(a) provides in pertinent part: “Any employer or other
9 person acting on behalf of an employer, who violates, or causes to be violated, any provision
10 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
11 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
12 2802, may be held liable as the employer for such violation.”
13

14 64. Defendants violated/violate, or caused/causes to be violated, multiple sections of
15 the Labor Code as well as provisions regulating hours and days of work in any order of the
16 Industrial Welfare Commission including those requiring payment of minimum and regular
17 wages and payment of overtime wages, meal and rest periods, records violations, as set forth in
18 detail throughout this Complaint.
19

20 65. Accordingly, Plaintiff is also entitled to recovery of wages, premium wages,
21 damages, and penalties pursuant to Labor Code Sections 558 of at least \$2,550.00, and 558.1.
22

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1 **EIGHTH CAUSE OF ACTION**

2 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

3 **(Against All Defendants)**

4
5 66. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
6 section as though fully set forth herein.

7 67. California Labor Code §1102.5 generally prohibits employers from terminating
8 employees that complaint regarding unfair labor practices and/or who report illegal activity.
9

10 68. Plaintiff believes and alleges that Defendants terminated Plaintiff's employment
11 because he complained to Defendant PETER RODRIGUEZ about illegal criminal activity and
12 threatened to file a complaint with the appropriate governmental agency. More specifically,
13 Plaintiff disclosed to his supervisor Defendant PETER RODRIGUEZ that his coworker assaulted
14 Plaintiff with a deadly military style weapon while at work and threatened to injure Plaintiff and
15 to damage his vehicle. Plaintiff then requested that he be placed in a different shift from the
16 coworker because he did not feel safe working in the same shift as the coworker. Plaintiff also
17 then requested to Defendant PETER RODRIGUEZ that he or someone at the company report the
18 incident to the police or that he would have to file a report with the police, out of concern for his
19 safety and that of his coworkers, particularly given the coworker's history of assaulting and
20 threatening other employees, and of damaging other employees' vehicles.
21

22
23 69. On or about three days after Plaintiff disclosed the assault and threats to
24 Defendant PETER RODRIGUEZ and stated that he would file a police report regarding the
25 incident, Defendants retaliated against Plaintiff and terminated his employment with the
26 company in retaliation for reporting the assault with a deadly weapon and threats made by the
27
28

1 coworker, and for stating that he would file a report with the police. Defendants terminated
2 Plaintiff despite Plaintiff having worked there for over 5 years with an exemplary record.

3
4 70. Based on the misconduct alleged in this Complaint, Plaintiff believes and alleges
5 that Plaintiff's termination was wrongful because it was in violation of the public policy of the
6 State of California in that Plaintiff's termination was based on Defendants' violations of the
7 above-mentioned laws.

8
9 71. In terminating Plaintiff for these reasons and under the circumstances alleged
10 herein, Defendants' discharge of Plaintiff violated the public policy of the State of California, as
11 expressed in provisions of the above-mentioned laws.

12 72. As a direct, foreseeable, and proximate result of Defendants' wrongful
13 termination of Plaintiff in violation of the public policy of the State of California, Plaintiff
14 sustained damages in the form of lost and continued loss of income and benefits of at least
15 \$228,800.00, and has suffered and continues to suffer humiliation, embarrassment, mental and
16 emotional distress, and discomfort all to Plaintiff's damage in an amount to be proven at trial, but
17 of at least \$500,000.00.

18
19 73. In doing the things herein alleged, Defendants are guilty of oppression, fraud and
20 malice, and, insofar as the things alleged were attributable to employees of Defendants, said
21 employees were employed by Defendants with advance knowledge of the unfitness of the
22 employees and they were employed with a conscious disregard for the rights of others; or
23 Defendants authorized or ratified the wrongful conduct; or there was advance knowledge,
24 conscious disregard, authorization, ratification or act of oppression, fraud or malice on the part of
25 an officer, director or managing agent of defendants all entitling Plaintiff to the recovery of
26 exemplary and punitive damages.
27
28

1 **NINTH CAUSE OF ACTION**

2 **Retaliation in Violation of Cal. Lab. Code § 1102.5, *et seq.***

3 **(Against All Defendants)**

4 74. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
5 section as though fully set forth herein.
6

7 75. Labor Code § 1102.5, subdivision (a), prohibits employers from
8 making, adopting, or enforcing any rule, regulation or policy that prevents
9 employees from disclosing information to his or her employer or to governmental
10 agencies where the employee has reasonable cause to believe that the information
11 discloses a violation of state or federal law, or a violation or noncompliance with a
12 state or federal rule or regulation.
13
14

15 76. Labor Code § 1102.5, subdivision (b), prohibits employers from
16 retaliating against an employee for disclosing information to his employer or a
17 governmental agency where the employee has reasonable cause to believe the
18 information discloses a violation of state or federal law, or a violation or
19 noncompliance with a state or federal rule or regulation.
20
21

22 77. As alleged above, Defendants violated Labor Code § 1102.5, *et seq.*
23 because Defendants retaliated against Plaintiff because he disclosed and reported
24 that his coworker assaulted him with a deadly weapon and threatened to injure him
25 and damage his vehicle while at work. Plaintiff also threatened to file a grievance
26 with the appropriate governmental agency, in this case the police department, for
27
28

1 conduct he observed that he reasonably believed to be unlawful conduct and
2 practices by his coworker during work hours, which violated federal and state laws
3 and regulations regarding assault with a deadly weapon and assault.
4

5 78. As a proximate result of Defendants' actions, Plaintiff has suffered
6 and continues to suffer damages in an amount according to proof, but at least in the
7 amounts alleged above, plus penalties of at least \$10,000 per incident pursuant to
8 LC 1102.5.
9

10
11 79. In doing the things herein alleged, Defendants were guilty of
12 oppression, fraud and malice, and, insofar as the things alleged were attributable to
13 employees of Defendants, said employees were employed by Defendants with
14 advance knowledge of the unfitness of the employees and they were employed
15 with a conscious disregard for the rights of others; or Defendants authorized or
16 ratified the wrongful conduct; or there was advance knowledge, conscious
17 disregard, authorization, ratification or act of oppression, fraud or malice on the
18 part of an officer, director or managing agent of defendants all entitling Plaintiff to
19 the recovery of exemplary and punitive damages.
20
21
22

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiff prays for judgment against Defendants, as follows:

25 1. For compensatory damages, including but not limited to, those pursuant to Labor Code
26 §§ 200, 201, 203, 218, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 246, 350-356, 500, 510,
27 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1194.3, 1197.1, 1198, 1198.5, 1770-1781, 2802,
28

2699, et seq., California Wage Orders, and other statutes and laws, which include, but are not limited to, at least \$744.00 in liquidated damages pursuant to LC Section 1194.2, at least \$2,112.00 in unpaid overtime wages, at least \$44,220.00 in meal and rest period premium wages, at least \$4,000.00 in damages for inaccurate paycheck statements pursuant to LC Section 226, at least \$228,800 in loss of earnings and benefits for wrongful termination and retaliation in violation of public policy, and at least \$457,600.00 in general damages for emotional distress and humiliation for wrongful termination and retaliation in violation of public policy;

2. For pre-judgment interest pursuant to all applicable statutes including but not limited to, Labor Code §§218.6, et seq., including but not limited to interest of at least \$74.40 for liquidated damages pursuant to LC Section 1194.2, at least \$211.20 in interest on unpaid overtime wages, at least \$4,422.00 in interest on meal and rest period premium wages, interest on loss of earnings and benefits damages, and pursuant to Civil Code §§ 3287(b) and 3289;

3. For penalties pursuant to Labor Code §§ 203 of at least \$5,280.00 , 225.5, 226, 226(f) and 1198.5 of at least \$1,500.00 for failure to timely provide requested personnel file and records, 226.3, 226.7, 246, 350-356, 512, 558 of at least \$2,550.00, 558.1, 1174.5 of at least \$500.00, 1194.2, 1197.1, 2802, civil penalties pursuant to section 2699, et seq. of at least \$5,100.00 per claimed violation regarding Plaintiff's claims plus civil penalties regarding the other aggrieved employees in an amount to be proven at trial, and at least \$10,000.00 pursuant to LC 1102.5 per violation regarding wrongful termination and retaliation, and other statutes and laws;

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

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

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

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

- 1 8. For all remedies available pursuant to Business and Professions Code section 17200 et
2 seq.;
3 9. For all other appropriate injunctive, declaratory and equitable relief;
4 10. For interest to the extent permitted by law; and
5 11. For such other and further relief as the Court may deem proper.
6

7 Dated: September 13, 2021


Rodolfo Ruiz-Velasco, Esq.
Attorneys for Plaintiff,
JOSE PEREZ

EXHIBIT 1

RUIZ-VELASCO LAW FIRM

June 28, 2021

Via Electronic Submission

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

By Certified Mail:

Mr. David Paul Fischbach
Ms. Adele Nelson Fischbach
Mr. Peter Rodriguez
Mutual Partners, Inc.
1640 Oceanside Blvd
Oceanside, CA 92054

Re: **Perez v. Mutual Partners, Inc., et al.**
Notice of PAGA Action

To Whom It May Concern:

We represent Jose Perez individually and on behalf of all other aggrieved employees (collectively “Plaintiffs”), who are either former or current employees of Mutual Partners, Inc. dba Beachfront Vacation Only Rental and its owners, officers, directors, and managers David Paul Fischbach, Adele Nelson Fischbach, and Peter Rodriguez (collectively, “Defendants”). 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 Attorneys General Act of 2004 (“PAGA”). A copy of this letter is also being sent to Defendants via certified mail, and their counsel via email.

Defendants employed Plaintiffs as maintenance workers who provide maintenance labor to several beachfront property rentals. Plaintiffs are regularly required to work over 8 hours per day and/or over 40 hours in a week, without receiving at least their minimum wage compensation for all hours worked, and without receiving overtime pay for overtime hours worked (“wage theft”). For instance, Plaintiffs Perez and the other aggrieved employees regularly were required during the summer months in particular to clock out during their meal period, but to keep working through them, however, they were not paid any wages for this work. Further, Defendants often call Plaintiffs to take care of emergency repairs from their meal period and they forget to

clock back in. Defendants, however, do not credit them for the time worked off the clock during these emergencies or during the time they forget to clock back in. This wage theft does not cover at least the minimum wage and does not cover the requisite overtime wages at the overtime rate.

As a result, Defendants failed to provide Plaintiffs with paycheck statements with accurate hours worked, rate of pay, and all wages earned. Defendants also failed to keep accurate time records of Plaintiffs, in violation of Section 7 of the Wage Orders, where Plaintiffs are required to clock out their meal periods but work through them during busy times, particularly during the summer months.

Plaintiffs were not paid all of their wages owed at the time of their termination of work in violation of LC Sections 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 are not allowed to and are not able to be fully relieved of their duties during their rest periods, and Defendants require Plaintiffs to work through their meal periods and/or interrupt their meal periods during busy times, particularly during the busy summer months.

On or about February 16, 2021 and April 12, 2021, Plaintiff Perez made a written request for his employee file and records to Defendants. To date, Defendants have failed to produce any of his employee file or records pursuant to his written request.

On or about January 16, 2021 during their work shift, an employee named Luis Reyes assaulted Plaintiff Perez with a deadly knife and threatened to injure him and to damage his vehicle. Plaintiff Perez reported the assault and threats to his supervisor Peter Rodriguez, and requested that he be placed in a different shift from Mr. Reyes because he did not feel safe working in the same shift as Mr. Reyes due to his threats and assault with a deadly weapon. Plaintiff Perez also requested to Mr. Rodriguez that he or someone at the company report the incident to the police or that he would have to, out of concern for his safety and that of his coworkers, particularly given Mr. Reyes' history of assaulting and threatening other employees, and of damaging other employees' vehicles. The following week on Plaintiff Perez's next shift, Mr. Rodriguez terminated Perez's employment with the company in retaliation for reporting the assault and threats made by the , despite Mr. Perez having worked there for over 5 years with an exemplary record.

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 Sections 510, 558, 558.1, 1194, 1198. Meal and rest periods are required pursuant to Labor Code Sections 226.7, 512, 558, 558.1. Sick pay wages are required pursuant to Labor Code Section 246, et seq. 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 Sections 226, 226.3. Failure to produce employee file and records in response to a written request is a violation of LC Sections 226, 1198.5, and 432. Failure to maintain proper time records is a violation of Wage Order Section 7. Retaliation and threats for requesting his or her rights and reporting illegal behavior is a violation of Labor Code Sections 98.6, 1102.5, among other laws and statutes. The individual defendants are jointly and severally liable for the above violations pursuant to LC Sections 558, 558.1, 1197.1, 98.6, 1102.5, among others. Illegal deductions are in violation of LC Sections 220, 221, 222, 223, 224, et seq. 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, 225.5, 226.7, 227, 227.3, 510, 512, 558, 558.1, 1102.5, 1194, 1194.2, 1197.1, 2810, 2810.3, 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 aggrieved 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 flourish at the end.

Rodolfo Ruiz-Velasco, Esq.