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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

NELLY AQUINO,

Plaintiff,

vs.

EL CAMARON DE SINALOA, INC; LOS
QUINTEROS INC. dba SUSHINALOA;
GERARDO QUINTERO CASTANEDA;
ARTURO QUINTERO CASTANEDA; and
DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: 21-CIV-06807

) **COMPLAINT FOR DAMAGES FOR:**

-) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**
) **2) FAILURE TO PAY MINIMUM**
) **WAGES;**
) **3) FAILURE TO PAY OVERTIME;**
) **4) FAILURE TO PROVIDE ACCURATE**
) **ITEMIZED WAGE STATEMENTS;**
) **5) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**
) **6) VIOLATION OF LABOR CODE**
) **SECTION 558;**
) **7) FAILURE TO MAINTAIN**
) **ACCURATE RECORDS;**
) **8) FAILURE TO GIVE REST BREAKS;**
) **9) FAILURE TO GIVE MEAL BREAKS;**
) **10) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) **11) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS**
) **12) FAILURE TO REIMBURSE**
) **BUSINESS EXPENSES**
) **13) WRONGFUL CONSTRUCTIVE**
) **DISCHARGE IN VIOLATION OF**
) **PUBLIC POLICY;**
) **14) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200.**

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) **DEMAND FOR JURY TRIAL**

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COMES NOW Plaintiff, NELLY AQUINO (hereinafter “Plaintiff”), and alleges:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of San Mateo in this judicial district because Defendants EL CAMARON DE SINALOA, INC; LOS QUINTEROS INC. dba SUSHINALOA; GERARDO QUINTERO CASTANEDA; ARTURO QUINTERO CASTANEDA; and DOES 1 to 25, inclusive, do business in the County of San Mateo, and because Defendants’ obligations and liabilities arise therein. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a female resident of the County of San Mateo, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant EL CAMARON DE SINALOA, INC was and is a domestic California corporation organized and operating in the County of San Mateo, State of California at 2761 El Camino Real, Redwood City, CA 94061, and which employed Plaintiff. Plaintiff is further informed and believes that at all times herein mentioned, Defendant LOS QUINTEROS INC. dba SUSHINALOA is and was California corporation organized and operating in the County of San Mateo, State of California at 2505 Middlefield Road, Redwood City, CA 94061, and which employed Plaintiff. EL CAMARON DE SINALOA, INC and LOS QUINTEROS INC. dba SUSHINALOA are collectively referred to as Defendants or “EMPLOYER” or “Defendant(s)”.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant

1 GERADO QUINTERO CASTANEDA is a male resident of the County of San Mateo, State of
2 California and was the President, owner, and managing agent of EL CAMARON DE
3 SINALOA INC and LOS QUINTEROS INC. GERARDO QUINTERO CASTANEDA is
4 being included in this lawsuit pursuant to California Labor Code Section 558.1 as he controlled
5 the hours, wages, and working conditions of Plaintiff and other similarly situated aggrieved
6 employees.

7 5. Plaintiff is informed and believes that at all times herein mentioned, Defendant
8 ARTURO QUINTERO CASTANEDA is a male resident of the County of San Mateo, State of
9 California and was the President, owner, and managing agent of LOS QUINTEROS INC.
10 ARTURO QUINTERO CASTANEDA is being included in this lawsuit pursuant to California
11 Labor Code Section 558.1 as he controlled the hours, wages, and working conditions of
12 Plaintiff and other similarly situated aggrieved employees.

13 6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
14 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
15 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
16 defendants, numbers 1 to 25, reside in the State of California and are in some manner
17 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
18 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
19 and capacities of these fictitiously named defendants.

20 7. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
21 that information and belief, alleges that at all times herein mentioned, each of the remaining
22 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
23 under the authority of their agency, employment, or representative capacity, with the consent
24 of his/her codefendants.

GENERAL ALLEGATIONS

8. Plaintiff started working at El Camaron De Sinaloa Restaurant on or around June 2020. She was then transferred to Sushinaloa on or around April 2021 and worked there until early July 2021. Plaintiff was working as a Kitchen Cook and was classified as an hourly, non-exempt employee and her latest rate of pay was \$17/hour.

9. It is Plaintiff's position that EMPLOYER has committed numerous labor code violations against Plaintiff and other hourly, non-exempt employees.

10. EMPLOYER did not provide Plaintiff and other similarly situated aggrieved employees with the minimum wages to which they were entitled for all work performed and did not compensate her and others for all hours worked pursuant to California Labor Code sections 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and consistently worked "off the clock". This is so because EMPLOYER did not have a formal timekeeping system that was digital. Instead, it seems like Plaintiff and others would manually write in their hours, which would not reflect the reality of the hours worked, especially since there was preparation before opening in the morning and cleaning up before closing at night. Moreover, EMPLOYER had a policy of rounding down hours worked by employees, which led to time shaving and resulted in Plaintiff and others not receiving wages for all hours worked. Moreover, to the extent employees such as Plaintiff and others worked through their meal periods and their meal periods were interrupted, they were not compensated for that time, which would be akin to a minimum wage violation.

11. Additionally, EMPLOYER violated Labor Code Sections 351 and 353 by not providing Plaintiff and others with their earned tips. Since the tips are considered the employee's property, management and ownership cannot take the tips, however, that's exactly what was happening at both restaurants.

12. Due to the above "off the clock" violations and as a matter of company policy, EMPLOYER violated Labor Code §510 because it failed to pay Plaintiff and other similarly situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12

1 hours per day, and/or 40 hours per week throughout their employment. In fact, the company did
2 not have a policy of paying overtime. Since Plaintiff generally worked from 9:30am to 10:30pm
3 Wednesday through Sunday, she was unequivocally entitled to overtime and even double time.
4 EMPLOYER did not believe in paying overtime and employees such as Plaintiff simply were
5 not compensated overtime wages.

6 13. EMPLOYER violated Labor Code § 226.7 along with Industrial Welfare Commission
7 Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated aggrieved
8 employees 10-minute rest periods for every four hours of work, or majority portion thereof,
9 throughout their employment. EMPLOYER did not completely relieve Plaintiff of all duty
10 during said rest periods. EMPLOYER did not pay to Plaintiff one additional hour of pay at
11 Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods
12 was not provided. Rest breaks were not authorized or enforced at either restaurant. In fact, it was
13 not part of EMPLOYER's culture for employees such as Plaintiff and others to take at least one
14 10-minute rest break every day wherein they are relieved of all work duties. The latter was due
15 to understaffing of employees as there was no way Plaintiff or others were going to be able to
16 take a ten-minute, uninterrupted rest break. Additionally, Plaintiff did not have anyone to cover
17 her for any rest break and as such she had to work continuously through her shift.

18 14. EMPLOYER also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
19 Commission Wage Order No. 5 because it failed to provide Plaintiff and other similarly situated
20 aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours
21 of work throughout their employment, and Plaintiff did not validly waive said meal periods.
22 EMPLOYER did not completely relieve Plaintiff of all duties during said meal periods.
23 EMPLOYER did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of
24 compensation for each workday that one or more statutory meal periods was not provided. For
25 the same reasons as listed above for rest periods, Plaintiff and others did not receive statutory,
26 timely meal periods during their employment. As was the case with rest periods, meal breaks
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1 were definitively not part of the EMPLOYER's culture. The meal periods were not authorized
2 and were not enforced. Moreover, if Plaintiff was fortunate enough to receive a meal, it would
3 often be after the 5th hour worked and would also consistently be interrupted. In addition, when
4 Plaintiff and others were fortunate enough to get a meal break, management would force Plaintiff
5 and others to cut their breaks short (less than 30 minutes) due to the demands of the business.

6 15. Furthermore, during the relevant time period, EMPLOYER failed to pay Plaintiff and
7 other similarly situated aggrieved employees all wages due to them within any time period
8 specified by California Labor Code section 204, including the minimum wages and overtime as
9 described above as well as meal/rest break premiums. EMPLOYER was also in violation of
10 California Labor Code section 226(a) by failing to include pertinent information on the wage
11 statements, including but not limited to, all hours worked, tips earned, gross wages earned, net
12 wages earned, all deductions, premium payments for meal and rest breaks, the correct legal name
13 and address of the employer, the beginning and end of the pay period, all applicable hourly rates,
14 and all identifying employee information, among other items. As such, EMPLOYER did not
15 provide Plaintiff and other similarly situated aggrieved employees with complete, accurate
16 itemized wage statements. In fact, EMPLOYER did not provide Plaintiff and others with any
17 itemized paystubs whatsoever, which is a facial violation.

18 16. EMPLOYER violated Labor Code § 203 because it willfully failed to pay Plaintiff and
19 other similarly situated aggrieved employees earned and due wages upon separation of
20 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
21 These earned but unpaid wages include compensation for all hours worked including minimum
22 wages and overtime compensation, tips, and premiums for the missed meal and rest breaks.
23 During the relevant time period, EMPLOYER also failed to keep accurate and complete
24 payroll records showing the actual hours worked per day (including the time for meal periods)
25 and the wages paid to Plaintiff and other aggrieved employees pursuant to California Labor Code
26 sections 1174(d).

27 17. Moreover, Plaintiff and other aggrieved employees incurred necessary, business-related
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1 expenses and costs that were not reimbursed by EMPLOYER. These costs include, but are not
2 limited to, employees paying for their uniforms. Accordingly, EMPLOYER was in violation of
3 California Labor Code sections 2800 and 2802.

4 18. Moreover, EMPLOYER failed to provide sick pay pursuant to Labor Code sections 232
5 and 246 and also failed to provide Worker's Compensation coverage for Plaintiff and other
6 aggrieved employees in violation of Labor Code Section 3700.5. In addition, Plaintiff has claims
7 against LOS QUINTEROS INC. for constructive wrongful termination in violation of public
8 policy in that Plaintiff was forced to quit her employment due to the rampant labor code
9 violations that were occurring, including the fact that Plaintiff's tips would not be given to her
10 and the fact that Plaintiff was not receiving proper statutory breaks and was also not being paid
11 any overtime at all despite working over 12-hour days. The latter became intolerable for Plaintiff
12 and she was forced to quit her employment in July 2021.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

15 **(California Industrial Welfare Commission Order 5-2001, California Code of**
16 **Regulations Title 8 Section 11050, and California Labor Code Section 1198)**

17 **(Plaintiff against all named defendants and all DOE defendants)**

18 19. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 18, inclusive, of this Complaint as though fully set forth herein.

20 20. At all times relevant herein, Defendants were required to compensate its employees for
21 all hours worked upon reporting for work at the appointed time stated by the employer
22 pursuant to Industrial Welfare Commission Order 5-2001, California Code of Regulations,
23 Title 8, Section 11050.

24 21. For the three (3) years preceding filing of this action, Defendants failed to compensate
25 Plaintiff for all hours worked.

26 22. Under the aforementioned wage order and regulations, Plaintiff is to recover
27 compensation for all hours worked but not paid by Defendants for the three (3) years
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preceding the filing of this Complaint.

23. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

24. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable attorney's fees and costs of suit.

25. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs which will equal an amount known to Plaintiff once she has obtained all of her payroll records from Defendants.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(California Labor Code Sections 1194, 1194.2, 1197)

(Plaintiff against all named defendants and all DOE defendants)

26. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 25, inclusive, of this Complaint as though fully set forth herein.

27. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the minimum wage rate for all hours worked as required by the applicable Industrial Welfare Commission (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations, Title 8, Section 11050, subdivision 4.

28. Pursuant to IWC Wage Order no. 5-2001, subdivision 2(K), at all relevant times, "hours worked" included "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so..."

1 29. During her employment, Plaintiff was regularly required as a matter of uniform
2 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
3 was paid less than the minimum wage rate by Defendants for hours worked in violation of
4 California Labor Code Section 1197 and the applicable California Industrial Wage
5 Commission wage order(s).

6 30. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
7 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
8 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
9 to believe that their acts or omissions were not contrary to California law.

10 31. For all hours worked by Plaintiff for which she was paid less than the minimum wage
11 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
12 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
13 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
14 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

15 32. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
16 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
17 trial.

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19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO PAY OVERTIME**

21 **(California Industrial Welfare Commission Order 5-2001, California Code of**
22 **Regulations Title 8 Section 11050)**

23 **(Plaintiff against all named defendants and all DOE defendants)**

24 33. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 32, inclusive, of this Complaint as though fully set forth herein.

26 34. Pursuant to Industrial Welfare Commission Order No. 5-2001, California Code of
27 Regulations, Title 8, Section 11050, for the period of Plaintiff's employment, Defendants were
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1 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
2 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
3 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
4 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
5 week.

6 35. Plaintiff was a non-exempt employee entitled to the protections of the California
7 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations, Title 8,
8 Section 11050.

9 36. Plaintiff worked more than eight (8) hours in a single workday, more than twelve (12)
10 hours in a single day, or forty (40) hours in a single workweek on numerous occasions.

11 37. Plaintiff was entitled to the above overtime premiums.

12 38. Defendants did not pay Plaintiff premium wages of at least one and one-half times
13 Plaintiff's regular rate of pay for hours worked past eight (8) in a day or two times Plaintiff's
14 regular rate of pay for hours worked past twelve (12) in a day.

15 39. Defendants did not pay Plaintiff premium wages of at least one and one-half times
16 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

17 40. Plaintiff worked at least one pay period in which she was not properly paid overtime
18 within the three (3) years prior to the initiation of this lawsuit.

19 41. Defendants know or should know the actual dates of overtime worked, the amount of
20 overtime worked, and the amount of unpaid overtime due.

21 42. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
22 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
23 Court.

24 43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
25 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the
26 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
27 reasonable attorney's fees and costs of suit.

28 44. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged

1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
2 trial.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

5 **(California Labor Code Section 226)**

6 **(Plaintiff against all named and all DOE defendants)**

7 45. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 44, inclusive, of this Complaint as though fully set forth herein.

9 46. Pursuant to California Labor Code Section 226, every employer must furnish each
10 employee an itemized statement of wages and deductions at the time of payment of wages.

11 47. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
12 accurately reflected all information required by Labor Code Section 226, including but not
13 limited to, gross wages earned, including overtime, net wages earned, total hours worked by
14 the employee, all deductions, and premium pay for missed meal breaks and rest breaks.
15 Therefore, Defendants failed to maintain and provide accurate itemized wage statements to
16 Plaintiff in accordance with California Labor Code Section 226(a).

17 48. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
18 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
19 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
20 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
21 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
22 the 1-year period immediately preceding the date this lawsuit was filed.

23 49. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
24 sustained damages, including loss of earnings, in an amount to be established at trial. As a
25 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
26 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
27 and attorney's fees pursuant to statute.
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1 50. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
2 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
3 trial.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

6 **(California Labor Code Section 204)**

7 **(Plaintiff against all named defendants and all DOE defendants)**

8 51. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.

10 52. California Labor Code Section 204 establishes the fundamental right of all employees
11 in the State of California to be paid wages in a timely fashion for their work.

12 53. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
13 full amount of all owed wages when due as required by California Labor Code Section 204.

14 54. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
15 informed, believes, and thereon alleges, that all times relevant during the liability period,
16 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
17 including overtime hours and the minimum wage along with premiums for missed meal breaks
18 and rest breaks.

19 55. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
20 amount, subject to proof, to the extent she was not paid all wages each pay period. The precise
21 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
22 from Defendants' records or indirectly based on information from Defendants' records.

23 56. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
24 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
25 trial.

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SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE SECTION 558
(California Labor Code Section 558)

(Plaintiff against all named defendants and all DOE defendants)

57. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.

58. California Labor Code Section 558 states that any person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was filed.

59. Plaintiff hereby alleges that named Defendants violated Labor Code Section 558. Thus, Defendants are subject to civil penalties under the following laws:

a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular wages, including minimum wages for all hours worked and overtime wages for overtime hours worked. As such, Defendants violated Section 558 under which penalties are due. Plaintiff therefore prays for penalties of \$50.00 for the first pay period and \$100.00 for each subsequent violation for each pay period for which Plaintiff was underpaid in addition to an amount sufficient to recover underpaid wages.

b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for

1 relief associated with Plaintiff's prosecution of this cause of action under California
2 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
3 paying Plaintiff for her overtime hours worked and minimum wages for all hours
4 worked.

- 5 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
6 fees for relief associated with Plaintiff's prosecution of this cause of action under
7 California Labor Code Sections 200, et seq.
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9 60. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under
10 the statutes, regulations, and wage orders alleged in this cause of action along with any
11 allowable interest, penalties, attorney's fees, and costs according to proof at trial.

12 61. Plaintiff also prays for Labor Code Section 211 and 218.5 recovery of costs an
13 attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO MAINTAIN ACCURATE RECORDS**

16 **(California Labor Code Section 1174(d))**

17 **(Plaintiff against all named defendants and all DOE defendants)**

18 62. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 61, inclusive, of this Complaint as though fully set forth herein.

20 63. Labor Code section 1174(d) requires that employers, including Defendants, maintain
21 accurate records showing the hours worked daily by its employees and to whom wages were
22 paid.

23 64. Additionally, the "Records" section of the applicable IWC Wage Order obligates the
24 employer, including Defendants, to keep accurate information with respect to each one of their
25 employees including, but not limited to, the total wages paid each payroll period, and time
26 records showing when the employee begins and ends each work period, meal periods, split
27 shift intervals; the total daily hours worked; the total hours worked in the payroll period, and
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the applicable rates of pay.

65. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails to maintain accurate and complete records required by Labor Code section 1174(d) is subject to a penalty. On information and belief, Defendants intentionally failed to maintain accurate records of Plaintiff's total daily hours, the total hours worked in the payroll period, the applicable rates of pay, and total wages earned for the payroll period.

66. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to Defendants' failure to record and maintain records of meal and rest periods as well as time records.

67. Plaintiff seeks all available remedies for Defendants' violations including, but not limited penalties, and costs to the extent permitted by law and according to proof at trial.

EIGHTH CAUSE OF ACTION

FAILURE TO GIVE REST BREAKS

(Plaintiff against all named defendants and all DOE defendants)

68. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 67, inclusive, of this Complaint as though fully set forth herein.

69. Plaintiff brings this cause of action under the following laws, for the following reasons:

- a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which provides that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.

The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

- b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each

workday that the rest period is not provided;

c. Title 8 of the California Code of Regulations sections 11050(20)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and

d. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at employee's regular rate of compensation for each work day that the rest period is not provided.

70. Plaintiff alleges that she was not authorized and permitted to take a ten (10) minute rest break after every four (4) hours of work or major fraction thereof, as required by California law.

71. Under this cause of action, Plaintiff prays for wages due to her under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

72. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees as well as interest under Labor Code section 218.6.

73. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

FAILURE TO GIVE MEAL BREAKS

74. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 73, inclusive, of this Complaint as though fully set forth herein.

a. California Labor Code section 512(a), which requires that employees be given a 30-minute uninterrupted meal break after five (5) hours of work, and a second uninterrupted meal break after ten (10) hours of work;

c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11050, which states that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;

COMPLAINT FOR DAMAGES

- 1 codified under Title 8 of the California Code of Regulations Section 11050, which
2 requires an employer to maintain records documenting its employees' meal periods;
- 3 e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as
4 codified under California Code of Regulations Section 11050, which penalizes the
5 employer \$50.00 for each initial violation, per employee, of any provision of the
6 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
7
- 8 f. California Labor Code section 1171 and 1173, which have given the California
9 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5)
10 as enforceable law.

11 76. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks
12 after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted
13 to take a second relieved meal break after ten (10) hours of work, as required by California
14 law. California Labor Code section 512(a) and California Industrial Welfare Commission
15 Order No. 5, as codified under California Code of Regulations Sections 11050 et. seq. requires
16 that employees receive uninterrupted meal periods every five (5) hours of consecutive work,
17 and that the meal period be at least 30 minutes in length, wherein employee is relieved of all
18 work duty. California Labor Code section 226.7 provides that employers may not require their
19 employees to work through their meal periods. California Labor Code section 226.7 and
20 California Code of Regulations section 11050 requires that if the employer fails to provide the
21 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
22 of pay for each work day that the meal period is not given.
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24 77. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
25 regulations, and wage orders alleged in this cause of action along with any allowable interest,
26 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
27 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
28

1 78. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
2 fees as well as interest under Labor Code section 218.6.

3 79. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
4 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
5 trial.

6 **TENTH CAUSE OF ACTION**

7 **PRIVATE ATTORNEYS GENERAL ACT**

8 **Individual and Representative Claim for PAGA penalties under California Labor Code**
9 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 232, 246, 510, 512, 558,**
10 **1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5)**

11 **(Plaintiff Against all Named Defendants and all DOE Defendants)**

12 80. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 79, inclusive, of this Complaint as though fully set forth herein.

14 81. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
15 Defendants of the specific violations of the California Labor Code that Defendants
16 and DOE defendants have violated and continue to violate.

17 82. Pursuant to California Labor code section 2699.3, no response was received from the
18 LWDA within 65 days of the postmark date of the above-alleged letter.

19 83. Plaintiff therefore has exhausted all administrative remedies required of her under
20 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
21 cause of action and pursue penalties in a representative action for Defendants' violations of the
22 Labor Code.

23 84. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
24 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
25 departments, divisions, commissions, boards, agencies, or employees for violation of the code
26 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
27
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1 on behalf of himself or herself and other current or former employees pursuant to the
2 procedures specified in California Labor Code section 2699.3.

3 85. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
4 violator and had one or more of the alleged violations committed against her, and therefore is
5 properly suited to represent the interests of other current and former hourly, non-exempt
6 employees who worked for EMPLOYER during the relevant PAGA Period.

7 86. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks
8 penalties under California Labor Code sections 2698 and 2699 because of Defendants’
9 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

10 87. Plaintiff therefore has exhausted all administrative remedies required of her under
11 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
12 cause of action and pursue penalties in a representative action for Defendants’ violations of the
13 Labor Code.

14 88. California Labor Code section 2699 et seq. imposes penalties upon culpable
15 Defendants for violating the Labor Code.

16 89. California Labor Code section 558 establishes a civil penalty as follows: Any
17 employer or other person action on behalf of an employer who violates, or causes to be
18 violated, a section of this chapter or any provision regulating hours and days of work in any
19 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
20 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
21 dollars (\$50) for each underpaid employee for each pay period for which the employee was
22 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
23 employee for each pay period for which the employee was underpaid...

24 90. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
25 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
26 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved
27 employees in this specific cause of action under the Private Attorneys General Act.
28

1 91. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
2 the following:

3 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
4 226.3, 226.7, 232, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5
5 via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage
6 Order Provisions (no. 5) violated based on the facts alleged in this Complaint.

7 92. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
8 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
9 employees as alleged herein in an amount to be shown according to proof at trial and within the
10 jurisdictional limits of this Court.

11 **ELEVENTH CAUSE OF ACTION**

12 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

13 **(California Labor Code Sections 201, 202, 203)**

14 **(Plaintiff against all named defendants and all DOE defendants)**

15 93. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 92, inclusive, of this Complaint as though fully set forth herein.

17 94. Pursuant to California Labor Code Section 201(a), an employer who discharges an
18 employee must immediately pay for all compensation due and owing.

19 95. Pursuant to California Labor Code Section 202, when an employee resigns, the
20 employer must pay all compensation due and owing within 72 hours of resignation, or on the
21 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

22 96. Pursuant to California Labor Code Section 203, if an employer willfully fails to
23 pay, without abatement or reduction, any wages of an employee whose employment ends, the
24 wages of the employee shall continue as a penalty from the due date at the same rate until paid
25 or until an action is commenced; however, the wages shall not continue for more than 30 days
26 for failure to pay an employee owed wages.
27
28

1 97. After Plaintiff's employment with Defendants ended, Defendants willfully
2 refused and continue to refuse to pay her unpaid wages as required by Labor Code Section 203.

3 98. Under this cause of action, Plaintiff prays for penalties due under the statutes
4 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
5 proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 1 year
6 immediately preceding the filing of this lawsuit.

7 99. Under this cause of action, Plaintiff also prays for attorney's fees and costs
8 under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages
9 as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

10 100. Under this cause of action, Plaintiff prays for penalties due under the statutes
11 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
12 proof at trial.

13 **TWELFTH CAUSE OF ACTION**

14 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

15 **(Plaintiff against all Defendants and DOE Defendants, and each of them)**

16 101. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 100, inclusive, of this Complaint as thought fully set forth herein.

18 102. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
19 employee for all necessary expenditures or losses incurred by the employee in direct
20 consequence of the discharge of his or her duties."

21 103. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
22 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
23 of completing her job duties, which were not reimbursed by Defendant. These expenses
24 include, but are not limited to employees paying for their uniforms

25 104. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
26 and attorney's fees and costs, under Labor Code section 2802.
27
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THIRTEENTH CAUSE OF ACTION

WRONGFUL CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY

(Against Defendant LOS QUINTEROS only and all DOE Defendants)

105. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 104, inclusive, of this Complaint as though fully set forth herein.

106. At all times during her employment with Defendant LOS QUINTEROS INC., Plaintiff performed her duties with the utmost diligence and competence.

107. Plaintiff is informed and believes and thereon alleges that Defendants' decisions and actions to treat her differently and ultimately make her work environment intolerable in an effort to get Plaintiff to quit her employment as alleged herein, was motivated by Plaintiff's whistleblowing and complaints about illegal activity at the workplace as well as wage and hour violations being committed against Plaintiff. Defendant LOS QUINTEROS intentionally created the aforementioned retaliation, thereby not giving Plaintiff an opportunity to work in an environment free of retaliation. This situation became intolerable for Plaintiff and Plaintiff had no alternative but to resign.

108. The employment of Plaintiff was constructively wrongfully terminated July 2021 in violation of the fundamental public policy of the State of California with respect to retaliating against an employee on account of her whistleblowing. Moreover, Plaintiff was forced to hire an attorney to assist her to end these illegal activities. Said conduct violated statutory and constitutional expressions of public policy including, the California Labor Code and the California Constitution, Article 1 section 8.

109. As set forth above, said actions by Defendants were wrongful and in violation of the fundamental principles of the public policy of the State of California as reflected in its laws, objectives and policies. Said statutes and constitutional expressions of public policy include, but are not limited to, California Labor Code and the California Constitution, Article 1 section 8. These laws inure to the benefit of the public at large, and not just the private interests of the employers and employees whom they govern or protect.

1 110. As a direct and proximate result of the aforementioned acts and omissions of
2 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
3 loss of income (past and future), loss of employment benefits (past and future), general and
4 compensatory damages (past and future), mental pain and anguish and emotional distress (past
5 and future), and will continue to suffer in the future, in an amount to be proved at trial.

6 111. The foregoing conduct engaged in by Defendants and each of their directors, officers
7 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
8 and carried on with a conscious and willful disregard of their workers' right to work in an
9 environment free of retaliation due to whistleblowing, so as to justify the imposition of
10 punitive damages to punish and set an example of said Defendants.
11

12 **FOURTEENTH CAUSE OF ACTION**

13 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

14 **(California Business and Professions Code Section 17200)**

15 **(Plaintiff against All Named Defendants and all DOE defendants)**

16 112. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 111, inclusive, of this Complaint as though fully set forth herein.
18

19 113. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
20 constitutes unfair and unlawful business practices under California Business and Professions
21 Code Section 17200, et seq.

22 114. Defendant's violations of California labor laws and the Labor Code constitutes a
23 business practice because it was done repeatedly over a significant period of time in a
24 systematic manner that was detrimental to Plaintiff.

25 115. For the four years preceding the filing of this action, Plaintiff has suffered damages
26 and request damages and/or restitution of all monies and profits to be disgorged from
27 Defendants in an amount according to proof at time of trial, but in excess of the
28 jurisdiction of this Court.

1 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
2 follows:

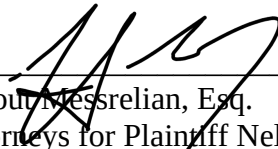
- 3 1. For compensatory damages including lost past and future wages, regular wages,
4 overtime, and all other sums of money, including employment benefits, together
5 with interest on said amounts, and any other economic injury to Plaintiff, according to
6 proof;
- 7 2. For general damages according to proof;
- 8 3. For special and consequential damages to the extent allowed by law;
- 9 4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
10 at trial;
- 11 5. For an award of punitive damages against Defendant LOS QUINTEROS INC.
12 according to proof;
- 13 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
14 subject to proof at trial;
- 15 7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
16 proof at trial;
- 17 8. For restitution and disgorgement for all unfair business practices by Defendants
18 against Plaintiff in an amount subject to proof at trial;
- 19 9. For an order enjoining Defendants from further unfair and unlawful business
20 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 21 10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
22 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 23 11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
24 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 25 12. For maximum civil penalties available under the Labor Code and applicable Wage
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Order against Defendants as described more particularly in the Complaint and representative PAGA claim;

13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law via PAGA;
14. For the imposition of civil penalties and/or statutory penalties;
15. For all interest as allowed by law;
16. For all costs and disbursements incurred in this suit;
17. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, Labor Code section 1102.5, and/or other applicable laws; and
18. For such other and further relief as this Court may deem proper.

DATED: December 29, 2021

MESSRELIAN LAW INC.

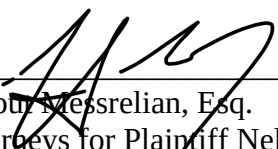
By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Nelly Aquino

DEMAND FOR JURY TRIAL

Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

DATED: December 29, 2021

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Nelly Aquino