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Assigned for all Purposes
Judge William Claster
CX-104

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE – CIVIL JUSTICE CENTER

CARLOS CRUZ and
NATALIO CERVANTES,
individually and on behalf of other
aggrieved employees,

Plaintiff,
v.

ZOV’S BISTRO, INC., ZOV’S BISTRO II,
INC., ZOV’S ENTERPRISES, INC.,
ARMEN KARAMARDIAN, and
DOES 1 to 50,

Defendants.

Case No.: 30-2021-01233089-CU-OE-CXC

**COMPLAINT FOR DAMAGES,
PENALTIES, & OTHER RELIEF:**

Individual Employment Law Claims

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Failure to Pay Tips
4. Meal Period Violations
5. Rest Break Violations
6. Sick Leave Violations
7. Failure to Pay/Timely Pay Wages
8. Failure to Indemnify for Expenditures
9. Failure to Provide Accurate Wage Statements
10. Failure to Timely Pay Wages Owed at Time of Termination/Separation
11. Misclassification of Employees
12. Failure to Provide Employment Records

UCL Claim

13. Unfair Business Practices Claims

PAGA Claims

14. Violation of Labor Laws Giving Rise to an Action Under the PAGA

FEHA Claims By Plaintiff Carlos Cruz

15. Harassment (Gov. Code §§ 12940 (j) and (k))
16. Discrimination (Gov. Code §§ 12940 (a) and (k))
17. Retaliation (Gov. Code §§ 12940 (h))

Jury Trial Demanded

GENERAL INTRODUCTORY ALLEGATIONS

1. Plaintiffs herein are CARLOS CRUZ and NATALIO CERVANTES (also referred to as “Plaintiffs” or “Mr. Cruz” and/or Mr. Cervantes”). At all times herein, Plaintiffs were residents of the County of Orange, State of California. CARLOS CRUZ was employed by Defendants, and each of them, from approximately 7/6/16 through 4/5/17. NATALIO CERVANTES worked for Defendants, and each of them, from approximately 12/20/16 through 5/25/17 and from 7/14/18 through 6/18/21.

2. The gravamen of this action is multiple illegal employment practices giving rise to the following:

- a) Causes of action for multiple violations of various wage/hour and related laws which deprived CARLOS CRUZ and NATALIO CERVANTES of employment benefits and rights mandated under California law.
- b) Unfair and unlawful business practice claims related to Defendants’ unlawful employment practices.
- c) An action brought by Plaintiffs CARLOS CRUZ and NATALIO CERVANTES on their own behalf and on behalf of other aggrieved employees under the Private Attorneys General Act (Labor Code § 2699 aka PAGA) for violations of various California employment wage/hour laws.
- d) Defendants’ harassing, discriminatory and retaliatory conduct toward Plaintiff CARLOS CRUZ in violation of the Fair Employment and Housing Act (FEHA).

General Allegations re Defendants

3. Plaintiffs bring this action against the following Defendants and said Defendants’

successors in interest, alter egos, and other persons/entities engaged with Defendants in a joint enterprise of providing restaurant, catering, and/or bakery services:

- a) Defendants ZOV'S BISTRO, INC., ZOV'S BISTRO II, INC., ZOV'S ENTERPRISES, INC., and DOES 1 through 10 (hereinafter collectively referred to as ZOV'S) were the employers/joint employers of Plaintiffs and the other aggrieved employees referenced herein providing restaurant, catering, and/or bakery services via restaurant locations in the State of California including, but not limited to ZOV'S TUSTIN located at 17440 17TH Street, Tustin, CA 92780, ZOV'S IRVINE located at 3915 Portola Parkway, Irvine, CA 92602, ZOV'S NEWPORT COAST located at 21123 Newport Coast Dr., Newport Beach, CA 92657, ROXY'S aka ROXY'Z located at 1801 E. Katella Ave., Anaheim, CA 92805.
- b) ZOV'S BISTRO, INC. is an active California corporation registered with the Secretary of State with an entity address located at 17440 E. 17th St., #A, Tustin, CA 92780 which is also its reported principal place of business.
- c) ZOV'S BISTRO II, INC. is an active California corporation registered with the Secretary of State with an entity address located at 17440 E. 17th St., #A, Tustin, CA 92780 which is also its reported principal place of business.
- d) ZOV'S ENTERPRISES, INC. is an active California corporation registered with the Secretary of State with an entity address located at 17440 E. 17th St., #A, Tustin, CA 92780 which is also its reported principal place of business.
- e) Defendants ARMEN KARAMARDIAN (hereinafter also referred to as KARAMARDIAN) and DOES 11 – 30 were officers, directors and/or managing agents of the entities and restaurant locations identified above. Said Defendants were also supervisors at ZOV's who 1) either directly participated in and/or encouraged the illegal conduct described herein and/or 2) ratified the illegal conduct of employees/co-employees under their supervision. While acting on behalf of ZOV's, said Defendants caused the California laws referenced herein to

be violated by establishing and/or implementing employment, wage, and/or payroll procedures and/or policies that violated said laws. Therefore, to the extent permitted by Labor Code § 558.1 and/or the FEHA, said Defendants are individually liable for the violations of law as alleged herein.

f) Defendants DOES 31 through 50 are unidentified persons or entities who are legally responsible in some actionable manner for the illegal acts and omissions complained of herein. To the extent said Defendants are a business entity, the form of said Defendants is unknown at the present time.

g) Each Defendant referenced herein was a joint employer of Plaintiff's and the other employees working at one or more ZOV'S locations.

4. Each of the above Defendants had authority to set ZOV'S policies, procedures, and practices as well as the authority to hire, transfer, promote, assign, reward, discipline the workers working at ZOV'S or to effectively recommend said actions. Additionally, said Defendants also had responsibility to act on employee grievances and/or to effectively recommend action on employee grievances. Said Defendants also had the responsibility to direct Plaintiffs' and other aggrieved employees' daily work activities at ZOV'S. The exercise of said authority and responsibility by said Defendants required the use of independent judgment of all said individual Defendants.

5. While acting on behalf of ZOV'S, Defendants KARAMARDIAN and DOES 11-30 (who were owners, directors, officers and/or managing agents of ZOV'S) caused the California laws regarding the wages, hours of work, and working conditions set forth below to be violated by establishing and/or implementing employment, wage, and/or payroll procedures and/or policies that violated the Labor Code and/or applicable Industrial Wage Order. Therefore, to the extent permitted under Labor Code § 558.1, said Defendants are as liable as ZOV'S for such violation(s).

6. At all times herein and for many prior years, Defendants ZOV'S, KARAMARDIAN, and DOES 1 through 50 either employed/jointly employed individuals in California and/or were involved in managing businesses and/or employees in California. During those years,

1 said Defendants were repeatedly provided with notifications from various governmental
2 agencies as well as employment law publications advising them of the requirements of the
3 employment laws referenced herein. Accordingly, said Defendants knew the obligations
4 ZOV'S owed to workers under California law. As such, Defendants' failures to comply with
5 the applicable Labor Code sections, Industrial Wage Orders, regulations, and local laws as
6 described herein were done willfully, intentionally and with full knowledge of their illegality.
7 Despite said knowledge, said Defendants deliberately approved, established and/or
8 implemented company-wide policies, procedures and/or practices they knew violated
9 California law as set forth herein and did so for the purpose of maximizing the profits of
10 ZOV'S as well as their own personal gain (monetary or otherwise) to the illegal detriment of
11 employees working at one or more ZOV'S locations, including Plaintiffs.

12 7. Additionally, based on requirements set forth in the Labor Code and wage orders
13 applicable to Defendants' businesses, at all times herein, Defendants knew it was necessary to
14 possess, and Defendants did possess, a certain level of knowledge and skill in order to comply
15 with the labor and employment laws applicable to their area of business. Said knowledge was
16 vastly superior to that of Defendants' employees. Moreover, as set forth herein, Defendants'
17 employees depended on Defendants to know, record and/or track certain information to ensure
18 California labor laws and/or employment laws were followed. Such things include: the dates
19 and times worked by employees, when wages were owed to employees, the minimum and
20 overtime wages owed to employees, the number of rest breaks and meal breaks the employees
21 were entitled to, when rest breaks and meal breaks were required to be provided, the
22 information required to be included on wage statements, when employees should be paid their
23 final wages, what business expenditures employees were required to be reimbursed for under
24 the Labor Code, etc.

25 8. ZOV'S and each DOE Defendant that was a business entity or organization at the
26 relevant times herein, was a privately-owned business authorized to do business in the State of
27 California.

Alter-Ego / Single Enterprise Allegations

9. All business entity Defendants herein are and at all times herein mentioned were the alter-egos of each and every other Defendant and there exists, and at all times herein mentioned has existed, a unity of interest and ownership between said Defendants such that any separateness between them has ceased to exist in that the defendants have completely controlled, dominated, managed, and operated the business entity defendants and have intermingled the assets of each to suit their convenience. Further, the business entity defendants are, and at all times mentioned herein were, mere shells, instrumentalities and conduits through which Defendants carried out their business by its name while exercising complete control and dominance of the business such that individuality or separateness did not exist. Additional facts supporting the existence of an alter ego relationship between Defendants include the following: Defendants commingled funds and other assets, Defendants held themselves out as a single entity, Defendants share equitable ownership, they use the same offices, Defendants have disregarded corporate formalities, Defendants share the same directors and officers, etc.

10. Defendants ZOV'S, KARAMARDIAN, and DOES 1 – 30 were also engaged in a single enterprise of providing restaurant, catering and/or bakery services in which each said Defendant contributed skill, effort, knowledge, and/or money to achieve a common purpose of maximizing the profits of the single enterprise.

General Allegations re Fictitious DOE Defendants

11. The facts linking the fictitiously designated Defendants with the causes of action alleged herein and/or the true names and capacities, whether individual, corporate, partnership, or otherwise of Defendants, DOES 1 through 50, are unknown to Plaintiff(s) at this time, who therefore sue said Defendants by such fictitious names and will seek to amend this Complaint to show their true names and/or capacities when ascertained. Said Defendants are sued as employers, principals and/or agents, servants, and/or employees of said employers or principals who were performing acts within the course and scope of their authority and/or employment. Each and every Defendant designated herein as a "DOE" is responsible in some actionable

manner for the events and happenings referred to herein which proximately caused the injuries, damages, losses and/or penalties as alleged herein.

Defendants' Failure to Comply with Labor Code § 226 Request(s)

12. Plaintiff does not have copies of all of his employment records with Defendants and Defendants have failed to provide Plaintiff with copies of all of his employment records (including work schedules, time sheets, rest break/meal period records, sick time records, business expense and reimbursement records) even though such records pertain to Plaintiff's employment with Defendants and said records were requested from Defendants by Plaintiff pursuant to Labor Code § 226. Said records were also not produced by Defendants after a complaint was filed with the LWDA (and concurrently served on Defendants) in which it was alleged that said records had not been provided in accordance with Labor Code § 226. Plaintiff also does not have access to the employment records of other similarly aggrieved employees. After Defendants have produced said employment records during discovery processes in this action, additional facts in support of each cause of action pled in this complaint may be discovered.

FIRST CAUSE OF ACTION -- FAILURE TO PAY OVERTIME WAGES BY PLAINTIFFS CARLOS CRUZ AND NATALIO CERVANTES AGAINST ALL DEFENDANTS

13. Plaintiffs, CARLOS CRUZ and NATALIO CERVANTES incorporate paragraphs 1 through 12 of this Complaint as though fully set forth.

Mandated Overtime Pay

14. At all times herein, pursuant to Labor Code § 510, §§550-552 and the applicable Industrial Wage Order, employers/joint employers of non-exempt employees were/are required to pay their non-exempt employees/joint employees overtime pay as follows:

- a) If an employee works in excess of 8 hours in one workday, the employer must pay the employee no less than one and one-half times the employee's regular rate of pay for all hours worked in excess of 8 hours up to and including 12 hours in one workday.

- 1 b) If an employee works in excess of 12 hours in one workday, the employer/joint
2 employer must pay the employee no less than twice the employee's regular rate of
3 pay.
4 c) If an employee works in excess of 40 hours in any one workweek, the
5 employer/joint employer must pay the employee no less than one and one-half
6 times the employee's regular rate of pay for all hours worked in excess of 40
7 hours.
8 d) If an employee works seven days in any workweek, the employer/joint employer
9 must pay the employee no less than one and one-half times the employee's regular
10 rate of pay the first 8 hours worked on the seventh day. Additionally, any work in
11 excess of eight hours on the seventh day must be compensated at the rate of no
12 less than twice the regular rate of pay of an employee.

13 **Defendants' Failure to Pay Legally Mandated Overtime Pay**

14 15. At all times during the statute of limitations period applicable to this cause of action,
15 Defendants, and each of them, willfully, knowingly, and intentionally failed to calculate and
16 compensate their non-exempt employees (including Plaintiffs CARLOS CRUZ and NATALIO
17 CERVANTES) the overtime wages owed to them as required by Labor Code § 510 and/or
18 applicable Industrial Wage Order. This occurred in the following ways:

- 19 a) Non-exempt employees (including Plaintiffs CARLOS CRUZ and NATALIO
20 CERVANTES) working more than 8 hours in a workday have not been paid and
21 one-half for the hours they worked over 8 hours. Instead, depending on the
22 occasion, they were/are either paid regular time wages for time worked over 8
23 hours in the workday or were not paid at all for the overtime hours they worked.
24 b) Non-exempt employees (including Plaintiffs CARLOS CRUZ and NATALIO
25 CERVANTES) working more than 12 hours in a workday have not been paid
26 double time for the hours worked in excess of 12 hours. Instead, depending on
27 the occasion, the employees were either paid regular time wages for time worked
28 over 12 hours in a workday or they were not paid at all for the overtime hours

they worked.

c) Employees (including Plaintiffs CARLOS CRUZ and NATALIO CERVANTES) working more than 40 hours in a workweek have not been paid time and one-half for the hours worked in excess of 40 hours in a workweek. Instead, depending on the occasion, the employees were either paid regular time wages for time worked over 40 hours in a workweek or they were not paid at all for the overtime hours they worked.

d) Non-exempt employees (including Plaintiff CARLOS CRUZ and NATALIO CERVANTES) working seven consecutive days in a workweek have not been paid at the rate of one and one-half times the regular rate of pay for the first 8 hours of work on the seventh or double time for more than 8 hours of work on the seventh day.

16. Additionally, ZOV'S failure to pay their employees (including CARLOS CRUZ and NATALIO CERVANTES) overtime in accordance with the Labor Code and the applicable IWO has been, in part, accomplished by wrongfully failing to include the following times in calculating Employees' wages during each pay-period that Employees were employed by Employers:

- a) Time worked that was not reported on the employees' final timesheets/reports or included in the employees' paychecks.
- b) On-duty travel time in which employees travelled from one ZOV'S location to a different ZOV'S location in the same workday and/or travelled to meet customers of ZOV'S and/or travelled to run errands for ZOV'S.
- c) On-duty meal periods.
- d) Reporting time.
- e) Donning and Doffing time.

17. In addition, ZOV'S has engaged in rounding, estimating, and capping the starting and stopping times of their employees (including CARLOS CRUZ and NATALIO CERVANTES) which has consistently worked to the unfair advantage of ZOV'S and has resulted in their non-

exempt employees (including CARLOS CRUZ and NATALIO CERVANTES) being unfairly denied overtime wages.

18. Moreover, to the extent overtime pay was paid, Defendants failed to pay the applicable overtime rate (e.g., Defendants failed to include nondiscretionary payments for work performed by their employees in determining the employee's overtime rate.)

19. As a result of Defendants' failure to pay their non-exempt employees as set forth above, their employees (including Plaintiffs CARLOS CRUZ and NATALIO CERVANTES) were denied overtime wages as required under Labor Code.

Legal Remedies

20. As applicable under California law to the allegations made in this cause of action, Plaintiffs CARLOS CRUZ and NATALIO CERVANTES are entitled to recover the wages, damages, penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

SECOND CAUSE OF ACTION -- FAILURE TO PAY MINIMUM WAGES BY PLAINTIFFS CARLOS CRUZ AND NATALIO CERVANTES AGAINST ALL DEFENDANTS

21. Plaintiffs, CARLOS CRUZ and NATALIO CERVANTES incorporate paragraphs 1 through 12 of this Complaint as though fully set forth.

Legally Mandated Minimum Wages

22. At all times herein, pursuant to Labor Code § 1182.12, employers/joint employers were/are required to pay their non-exempt employees at least the minimum hourly wage set forth in the Labor Code, the applicable Industrial Wage Order, and/or other applicable local law, ordinance and/or regulation for all time worked by the employees.

Defendants' Failure to Pay Legally Mandated Minimum Wages

23. At all times during the applicable statutes of limitations period, Defendants, and each of them willfully, knowingly, and intentionally failed to calculate and compensate ZOV's non-exempt employees (including CARLOS CRUZ and NATALIO CERVANTES) the minimum

wages they were entitled to under Labor Code § 1182.12, the applicable wage order and/or local regulation for all the hours they worked for Defendants including as follows:

- a) Said employees have not been paid at least the minimum wage for on-duty travel time as set forth herein.
- b) Said employees have not been paid at least the minimum wage for on-duty meal periods as set forth herein.
- c) Said employees have not been paid at least the minimum wage for reporting time as set forth herein.
- d) Said employees have not been paid at least the minimum wage for donning/doffing time as set forth herein.
- e) Said employees have not been paid at least the minimum wage owed to them due to “rounding” and “adjustment” of clock-in/out times which have consistently worked to the unfair advantage of ZOV’s as set forth herein.

Legal Remedies

24. As applicable under California law to the allegations made in this cause of action, Plaintiffs CARLOS CRUZ and NATALIO CERVANTES are entitled to recover the wages, damages, penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Individual Causes of Action for Labor Law Violations.”

THIRD CAUSE OF ACTION -- FAILURE TO PAY TIPS OWED TO EMPLOYEES BY PLAINTIFFS CARLOS CRUZ AND NATALIO CERVANTES AGAINST ALL DEFENDANTS

25. Plaintiffs, CARLOS CRUZ and NATALIO CRVANTES, incorporate paragraphs 1 through 12 of this Complaint as though fully set forth herein.

Duty to Distribute Tips to Employees

26. Pursuant to Labor Code § 351, tips left by customers and collected by employers are the sole property of the employees, not the employer or its agents (which are defined in Labor Code § 350 as those having authority to hire, fire, direct or control the acts of Defendants’

employees).

Failure to Distribute to Tips

27. At all times during the statute of limitations period applicable to this cause of action, Defendants regularly and unlawfully failed to pay their exempt and non-exempt employees (including CARLOS CRUZ and NATALIO CERVANTES) their share of the tips that had been collected from customers of Defendants as required by Labor Code § 351. Instead of distributing all of the tips given by customers to Employees, ZOV's has taken, and continues to take, tips for themselves and their agents. This occurred primarily at banquet/catering events wherein ZOV's charged a 22% gratuity but took 7% off the top. As a result, CARLOS CRUZ, NATALIO CERVANTES and other employees who were/are entitled to all or a portion of the tips given to them by customers have been unlawfully, unfairly, and/or fraudulently denied receipt of such tips.

Legal Remedies

28. As applicable under California law to the allegations made in this cause of action, Plaintiffs CARLOS CRUZ and NATALIO CERVANTES are entitled to recover the monies, wages, damages, penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

FOURTH CAUSE OF ACTION -- FAILURE TO PROVIDE MEAL PERIODS OR PREMIUM PAY BY PLAINTIFFS CARLOS CRUZ AND NATALIO CERVANTES AGAINST ALL DEFENDANTS

29. Plaintiffs, CARLOS CRUZ and NATALIO CERVANTES incorporate paragraphs 1 through 12 of this Complaint as though fully set forth herein.

Legally Mandated Meal Periods

30. At all times herein, pursuant to Labor Code § 512 and the applicable wage order, an employer may not employ an employee to work more than a five hours per day without providing the employee with a thirty-minute meal break within the first five hours of their workday.

31. Labor Code § 512 and the applicable wage order further provide that an employer may not employ an employee for a work period of more than ten hours per day without providing the employee with a second meal period of not less than 30 minutes.

32. California law further requires that for a meal period to qualify as a valid meal period under the law, the meal period must be timely, unrestricted, and uninterrupted.

Defendants' Failure to Provide Legally Mandated Meal Periods

33. At all times during the statute of limitations period applicable to this cause of action, Defendants either deprived its employees (including Plaintiff's CARLOS CRUZ and NATALIO CERVANTES) of taking the meal periods required under California law, required employees (including Plaintiffs CARLOS CRUZ and NATALIO CERVANTES) to take their meal periods after their fifth hour of work, restricted the meal periods of their employees (including Plaintiffs CARLOS CRUZ and NATALIO CERVANTES), and/or interrupted the meal periods of their employees (including Plaintiffs CARLOS CRUZ and NATALIO CERVANTES).

34. As a result, Defendants were required by Labor Code § 226.7 and/or the applicable IWC Wage Order to pay said employees (including Plaintiffs CARLOS CRUZ and NATALIO CERVANTES) "premium pay", i.e., one (1) hour of pay at their regular rate of compensation for each workday that a mandated meal period was not provided at all, was provided in an untimely manner, was restricted and/or was interrupted with work in violation of California law.

35. Nevertheless, Defendants failed to provide their employees (including Plaintiffs CARLOS CRUZ and NATALIO CERVANTES) with meal periods in compliance with Labor Code § 512 and also failed to pay their employees (including Plaintiffs CARLOS CRUZ and NATALIO CERVANTES) the premium pay required for the failure to provide such meal periods under California law. To the extent any premium wages were paid to Defendants' employees, the premium pay was not paid at the employee's regular rate of pay as mandated under California law (e.g., Defendants failed to include nondiscretionary payments for work performed by the Employees in determining the employee's overtime rate.)

36. Additionally, ZOV's required Employees (including CARLOS CRUZ and NATALIO CERVANTES) to sign meal period waivers which are only permitted under the law when employees do not work more than 6 hours in a workday. Thereafter, with respect to said employees who worked more than 6 hours in a workday, ZOV's "rounded" or "adjusted" their clock-in/out records to limit their working time to 6 hours or less so that the employees' time records would fraudulently reflect that they were not entitled to a meal period or premium pay because they had signed a meal period waiver.

37. ZOV's also failed to comply with the record-keeping requirements set forth in the applicable IWO which required ZOV's to keep accurate time records showing when each non-exempt employee took their meal period. No such records have been provided with respect to CARLOS CRUZ and/or NATALIO CERVANTES even though such records were requested via their attorneys, as permitted by the Labor Code. To the extent such records were not maintained by ZOV's such would be a violation of Labor Code § 226 and/or § 1174.

Legal Remedies

38. As applicable under California law to the allegations made in this cause of action, Plaintiffs CARLOS CRUZ and NATALIO CERVANTES are entitled to recover the wages, premium pay, damages, penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

FIFTH CAUSE OF ACTION -- FAILURE TO PROVIDE REST PERIODS OR PREMIUM PAY BY PLAINTIFFS CARLOS CRUZ AND NATALIO CERVANTES AGAINST ALL DEFENDANTS

39. Plaintiffs, CARLOS CRUZ and NATALIO CERVANTES, incorporate paragraphs 1 through 12 of this Complaint as though fully set forth herein.

Legally Mandated Rest Periods

40. At all times herein, pursuant to the California Labor Code, the applicable Industrial Wage Order, and/or applicable regulation, employers must authorize and permit employees to take paid rest periods at the rate of 10 minutes net rest time per four hours or major fraction

thereof (unless the total work time is less than 3 ½ hours). California law further provides that so far as practical, the mandatory rest breaks must be provided in the middle of each work period of the workday.

41. California law further requires that for a rest break to qualify as a valid rest break under the law, the rest break must be timely, unrestricted, and uninterrupted.

Defendants' Failure to Provide Legally Mandated Rest Breaks

42. In violation of Labor Code § 512 and the applicable IWO, at all times during the statute of limitations period ZOV'S deprived their non-exempt employees (including Plaintiffs CARLOS CRUZ and NATALIO CERVANTES) with legally complaint rest breaks in one or more of the following ways: 1) No rest breaks were provided; 2) said employees were required to take their rest breaks in an untimely manner because the rest breaks were too late or not provided in the middle of their shifts, 3) ZOV's restricted the rest breaks of their employees (including Plaintiffs CARLOS CRUZ and NATALIO CERVANTES), and/or 4) ZOV's interrupted the rest breaks of their employees (including CARLOS CRUZ and NATALIO CERVANTES). As a result, Defendants were required by Labor Code § 226.7 and/or the applicable IWC Wage Order to pay said employees (including Plaintiffs) "premium pay", i.e., one (1) hour of pay at their regular rate of compensation for each workday that a mandated rest break was not provided at all, was provided in an untimely manner, was restricted, and/or was interrupted with work in violation of California law.

43. Nevertheless, Defendants failed to provide their employees (including CARLOS CRUZ and NATALIO CERVANTES) with rest breaks in compliance with Labor Code § 512 and also failed to pay their employees (including CARLOS CRUZ and NATALIO CERVANTES) the premium pay required for the failure to provide such rest breaks under California law. To the extent any premium wages were paid to Defendants' employees, the premium pay was not paid at the employee's regular rate of pay as mandated under California law (e.g., Defendants failed to include nondiscretionary payments for work performed by the Employees in determining the employee's overtime rate.)

Legal Remedies

44. As applicable under California law to the allegations made in this cause of action, Plaintiffs CARLOS CRUZ and NATALIO CERVANTES are entitled to recover the wages, damages, penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Individual Causes of Action for Labor Law Violations.”

SIXTH CAUSE OF ACTION -- FAILURE TO PROVIDE/PERMIT USE OF/PAY OUT ACCRUED SICK TIME BY PLAINTIFFS CARLOS CRUZ AND NATALIO CERVANTES AGAINST ALL DEFENDANTS

45. Plaintiffs, CARLOS CRUZ and NATALIO CERVANTES, incorporate paragraphs 1 through 12 of this Complaint as though fully set forth herein.

Requirement that Employees be Provided Supplemental Sick Time/Pay related to COVID-19

46. Pursuant to Labor Code § 248.2 (or other similar statute or regulation), employers such as ZOV’s were/are required to permit their employees who qualify for COVID-19 Supplemental Paid Sick Leave with the sick leave required under California law. Employees who qualify for said supplemental sick leave include the following: 1) Employees subject to a quarantine or isolation period related to COVID-19; 2) Employees who have advised by a healthcare provider to quarantine due to COVID-19; 3) Employees who have experienced symptoms of COVID-19 and are seeking a medical diagnosis; 4) Employees caring for a family member who is either subject to a quarantine or isolation period related to COVID-19 or has been advised by a healthcare provider to quarantine due to COVID-19, 5) Employees caring for a child whose school or place of care is closed or unavailable due to COVID-19 on the premises; 6) Employees attending a vaccine appointment or cannot work or telework due to vaccine-related side effects.

47. Pursuant to Labor Code § 246(h), employers were required to pay out the sick leave pay no later than the payday for the next regular payroll period after the sick leave was taken.

Defendants’ Failure to Comply with Supplemental Sick Leave Laws

48. At all times herein, in violation of Labor Code § 233 and Labor Code § 246.5,

Defendants failed to provide their employees (including NATALIO CERVANTES) with the supplemental sick leave time mandated by law and failed to pay said employees within the timeframe mandated under the law. With respect to NATALIO CERVANTES, when he became infected with COVID-19 in June 2020 and orally requested sick leave from ZOV's, ZOV's wrongfully denied said request.

49. ZOV's has also violated and continues to violate Labor Code § 246(i) and/or §248.2(d)(2)(C)) by failing to notify their employees (including CARLOS CRUZ and NATALIO CERVANTES) as to the amount of their available sick leave hours (including COVID-related variable hours) either in their wage statements or in a separate writing provided to Employees on the designated pay date along with the Employee's payment of wages.

Legal Remedies

50. As applicable under California law to the allegations made in this cause of action, Plaintiffs CARLOS CRUZ and NATALIO CERVANTES are entitled to recover the wages, damages, penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

SEVENTH CAUSE OF ACTION -- FAILURE TO PAY WAGES/TIMELY PAY WAGES FOR ALL TIME WORKED BY PLAINTIFFS CARLOS CRUZ AND NATALIO CERVANTES AGAINST ALL DEFENDANTS

51. Plaintiffs, CARLOS CRUZ and NATALIO CERVANTES incorporate paragraphs 1 through 12 of this Complaint as though fully set forth.

Legal Duty to Pay Wages

52. At all times herein, pursuant to Labor Code § 200, wages in California include all amounts for labor of every description performed by employees, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. Wages under Labor Code § 200 also includes vested benefits such as accrued vacation pay/personal time off (PTO), sick leave benefits owed to the employee, premium pay for missed, untimely, restricted and/or interrupted meal periods and/or rest breaks, split-shift

1 pay, and tips.

2 53. All non-exempt employees must be paid all wages earned within the timeframes set
3 forth in Labor Code § 204.

4 **Defendants' Failure to Pay All Earned Wages**

5 54. At all times herein, Defendants and each of them willfully, knowingly, and intentionally
6 failed to compensate their non-exempt employees (including CRLOS CRUZ and NATATLIO
7 CERVANTES) for all the time they actually worked and earned wages in at least the following
8 ways:

9 a) Said employees have been paid the wages they earned during pay periods after the
10 payday that ZOV's had designated for that pay period. (E.g., on one such occasion
11 during the applicable statute of limitations, NATALIO CERVANTES was not
12 provided his earned wages for about two months.)

13 b) ZOV's regularly permits and suffers said employees to work "off-the-clock" and,
14 thereafter, does not pay them all of their earned wages. Such wages include the
15 following:

16 i. Wages not paid for work performed before the employee's shift begins
17 as follows:

18 1. Wages earned for donning of uniforms off-the-clock that ZOV's
19 requires their employees to wear.

20 ii. Wages not paid for work performed during the employees' workday as
21 follows:

22 1. Employees have not been paid minimum, regular and/or overtime
23 wages owed for on-duty travel time (e.g., travel time going to
24 retail stores to pick-up items needed by the restaurant, traveling
25 to meet with catering/banquet customers, traveling from one
26 ZOV's location to another location during the same workday,
27 traveling to do banking, etc.)

28 2. Employees have not been paid minimum, regular and/or overtime

wages owed for reporting time. (E.g., on 4/5/21 Carlos Cruz reported to work as requested by ZOV's, met with ZOV's management, and was terminated. However, he was not paid for any of the time spent at the restaurant that day).

3. Employees have not been paid the premium pay wages owed by ZOV's for missed, untimely, restricted, interrupted and/or short rest breaks.

4. Employees have not been paid the premium pay wages owed by ZOV's for missed, untimely, restricted, interrupted and/or short meal periods.

iii. Wages not paid for work performed after the employee's scheduled shift has ended as follows:

1. Wages earned by Employees who are required to clock-out and continue finishing work required by Employers (e.g., cleaning, closing out, etc.)
2. Wages earned for doffing of uniforms off-the-clock that ZOV's requires Employees to wear (e.g., shirts, aprons, etc.)
3. Wages for time worked which ZOV's unfairly "rounded" or "adjusted" such that Employees are not paid for all the time they actually work. (E.g, Employees have not been paid minimum, regular and/or overtime wages owed due to "rounding" or "adjustment" of clock times which have consistently worked to the unfair advantage of ZOV's). Moreover, the "rounding" and "adjusting" has consistently worked as an unfair monetary advantage to ZOV's and their owners/managers to the detriment of Employees as set forth herein.

d) ZOV's does not pay Employees the tips they are owed pursuant to Labor Code § 351 as set forth herein.

e) Employees who are owed additional wages due to ZOV's failure to comply with minimum wages laws have not been paid said wages as set forth herein.

55. Because ZOV's employees were not compensated for the above-referenced earned wages, ZOV's employees were also not paid such wages within the timeframes set forth in Labor Code §§ 204-204b.

Legal Remedies

56. As applicable under California law to the allegations made in this cause of action, Plaintiffs CARLOS CRUZ and NATALIO CERVANTES are entitled to recover the wages, damages, penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

EIGHTH CAUSE OF ACTION -- FAILURE TO INDEMNIFY FOR BUSINESS EXPENSES BY PLAINTIFFS CARLOS CRUZ AND NATALIO CERVANTES AGAINST ALL DEFENDANTS

57. Plaintiffs, CARLOS CRUZ and NATALIO CERVANTES, incorporate paragraphs 1 through 12 of this Complaint as though fully set forth herein.

Statutory Requirement that Employees Be Indemnified for Expenditures

58. At all times herein, pursuant to Labor Code § 2802(a), employers in California have been required to indemnify exempt and non-exempt employees for the expenditures incurred in the discharge of the employees' duties or in obedience to the directions of the employer.

Defendants' Failure to Indemnify for Expenditures

59. At all times herein, in violation of Labor Code § 2802(a), Defendants failed to indemnify their exempt and non-exempt employees (including CARLOS CRUZ and NATALIO CERVANTES) for expenditures incurred by said employees in the discharge of their duties and/or in obedience to the directions of Defendants including the following expenditures:

a) Use of employees' personal vehicles resulting in necessary expenditures for gas, vehicle maintenance, and insurance. Said uses of employee vehicles include the

following: Going to the store to pick-up items needed by ZOV's, driving injured employees to Urgent Care, travelling to meet with customers or to work a catered event, going to the bank for ZOV's, etc.,

b) Use of employees' personal cell phone devices to communicate with employees while on-duty, or while they are travelling or are otherwise off-site,

c) Daily availability and/or use of restaurant supplies including but not limited to: pads and writing instruments needed by servers to take customer orders, knives, spatulas, tongs and other instruments/equipment used by the cooks,

d) Purchase of uniforms required by ZOV's for servers (e.g., server aprons and black dress shirts.)

Legal Remedies

60. As applicable under California law to the allegations made in this cause of action, Plaintiffs CARLOS CRUZ and NATALIO CERVANTES are entitled to recover the expenditures, damages, penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

NINTH CAUSE OF ACTION -- FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS BY PLAINTIFFS CARLOS CRUZ AND NATALIO CERVANTES AGAINST ALL DEFENDANTS

61. Plaintiffs, CARLOS CRUZ and NATALIO CERVANTES, incorporate paragraphs 1 through 60 of this Complaint as if fully alleged herein.

Statutory Requirement to Provide Accurate Itemized Wage Statements

62. At all times herein, pursuant to Labor Code § 226(a), each time an employer pays wages to an employee, the employer is required to furnish the employee with an "accurate itemized statement in writing" that itemizes the following: 1) gross wages earned; 2) total hours worked; 3) the number of piece-rate units earned and the applicable piece rates; 4) all deductions; 5) net wages earned; 6) the inclusive dates for which the employee is being paid; 7) name of the employee and only the last 4 digits of his social security number or employee

I.D. number; 8) the name and address of the legal entity of the employer; 9) all hourly rates in effect to the pay period and corresponding number of hours worked at each hourly rate.

Failure to Provide Accurate Itemized Wage Statements

63. At all times during the statute of limitations period applicable to this cause of action, Defendants violated Labor Code § 226(a) in all of the following ways:

- a) ZOV's wage statements do not accurately record the total hours worked and the gross/net wages earned by employees:
 - i. Premium pay wages for missed, untimely, restricted, interrupted and/or short rest breaks as referenced above,
 - ii. Premium pay wages for missed, untimely, restricted, interrupted and/or short meal periods as referenced above,
 - iii. Regular and/or overtime wages for time worked but not reported on ZOV's payroll records,
 - iv. Regular and/or overtime wages for on-duty travel time,
 - v. Regular and/or overtime wages for on-duty meal periods,
 - vi. Regular and/or overtime wages for reporting time,
 - vii. Regular and/or overtime wages for donning/doffing time,
 - viii. Regular and/or overtime wages for "rounding" or "adjustment" to the unfair advantage and benefit of ZOV's,
 - ix. Owed wages due to ZOV's failure to comply with minimum wages laws,
 - x. All of the tips earned by the employees.
- b) ZOV's wage statements do not set forth the accurate name and address of the legal entity that employed ZOV's employees,
- c) ZOV's wage statements do not accurately set forth the premium pay rate related to overtime, missed rest breaks and meal periods.

64. As a result of the above statutory deficiencies in the wage statements provided to Defendants' exempt and non-exempt employees (including CARLOS CRUZ and NATALIO CERVANTES), they were not reasonably able to promptly and easily determine, from the

wage statements alone, one or more of the following items of information:

- a) The accurate amount of the gross wages they were paid during the pay period,
- b) The accurate amount of the net wages they were paid during the pay period,
- c) The accurate total number of hours that they worked,
- d) The amount of the deductions that were made to accurately determine the gross and/or net wages paid during the pay period,
- e) The accurate hourly rates in effect during the pay period and/or the corresponding number of hours worked at each hourly rate,
- f) The accurate name and address of the legal entity of the employer.

Legal Remedies

65. As applicable under California law to the allegations made in this cause of action, Plaintiffs CARLOS CRUZ and NATALIO CERVANTES are entitled to recover the damages, wages, expenditures, penalties, awards, and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

TENTH CAUSE OF ACTION -- FAILURE TO PAY WAGES OWED AT TIME OF SEPARATION BY PLAINTIFFS CARLOS CRUZ AND NATALIO CERVANTES AGAINST ALL DEFENDANTS

66. Plaintiffs, CARLOS CRUZ and NATALIO CERVANTES, incorporate paragraphs 1 through 60 of this Complaint as though fully set forth herein.

Mandated Payment of Wages Owed at Time of Separation

67. Pursuant to Labor Code § 201, employers are required to immediately pay employees all wages due at the time exempt and non-exempt employees are discharged. Additionally, pursuant to Labor Code § 202, if an employee gives at least 72-hours previous notice of their intent to quit/retire, the employer is required to pay the employee all wages due the time the employee quits/retires. Pursuant to Labor Code § 202, if an employee does not give 72-hours previous notice of their intention to quit/retire, the employer is required to pay the employee all wages due the employee within 72-hours of the time the employee leaves employment.

Defendants' Failure to Timely Pay

Wages Owed at the Time of Separation

68. At all times during the statute of limitations period applicable to this count, in violation of Labor Code §§ 201-202, Defendants did not timely pay all wages due to their exempt and non-exempt employees (including CARLOS CRUZ and NATALIO CERVANTES) at the time of their separation from employment even though Defendants knew such payment was owed and it was within Defendants' control to make such payment in accordance with Labor Code §§ 201-202. With respect to CARLOS CRUZ, he was terminated on or about 4/5/21 but was not paid his final wages until about 4/12/21 – about seven days late. With respect to NATALIO CERVANTES, he quit on or about 6/18/21 but was not paid his final wages until about 6/25/21 – about five days late.)

69. Moreover, even when ZOV's paid their employees (including CARLOS CRUZ and NATALIO CERVANTES) their final wages, said wages did not include all of the wages that were owed to the employees including: a) premium pay wages owed at the time of separation for missed, untimely, restricted, interrupted and/or short rest breaks as set forth herein; b) premium pay wages owed at the time of separation for missed, untimely, restricted, interrupted, short and/or on-duty meal periods as set forth herein; c) regular and/or overtime wages owed at the time of separation for time worked but not reported on ZOV's time sheets and/or wage statements as set forth herein; d) regular and/or overtime wages owed at the time of separation for on-duty travel time as set forth herein; e) regular and/or overtime wages owed at the time of separation for reporting time (e.g., on 4/5/21 Carlos Cruz reported to work as requested by ZOV's, met with ZOV's management, and was terminated; but, he was not paid any time for that day; f) regular and/or overtime wages owed at the time of separation for donning/doffing time; g) regular and/or overtime wages owed at the time of separation for time unpaid due to "rounding" and time "adjustment" practices that unfairly worked to the benefit of ZOV's; h) overtime wages owed (including overtime calculated at the employees regular rate of pay) at the time of separation as set forth herein; i) wages owed due to ZOV's failure to pay at least the minimum wage mandated by law as set forth herein.

70. Because Defendants' exempt and non-exempt employees (including CARLOS CRUZ and NATALIO CERVANTES) were not paid the entirety of the wages they were owed at the time of separation in accordance with the timeframes set forth in Labor Code §§ 201-202, pursuant to Labor Code § 203, Defendants were required to pay said employees their regular wages from the due date thereof at the same rate until paid, up to a maximum of thirty (30) days of pay. However, not only did Defendants fail to pay their exempt and non-exempt employees the wages they were owed at the time their separation from employment, but Defendants also failed to provide the employees with the continuous wages mandated under Labor Code § 203.

71. Defendants' failure to pay their exempt and non-exempt employees (including CARLOS CRUZ and NATALIO CERVANTES) the wages the employees were owed as set forth above continued for thirty days after their separation from employment with Defendants.

Legal Remedies

72. As applicable under California law to the allegations made in this cause of action, Plaintiffs CARLOS CRUZ and NATALIO CERVANTES are entitled to recover the damages, wages, expenditures, penalties, awards, and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

ELEVENTH CAUSE OF ACTION – MISCLASSIFICATION OF NON-EXEMPT EMPLOYEES AS EXEMPT EMPLOYEES BY PLAINTIFF CARLOS CRUZ AGAINST ALL DEFENDANTS

73. Plaintiff, CARLOS CRUZ, incorporates paragraphs 1 through 12 of this Complaint as though fully set forth.

Misclassification of ZOV's Employees

74. At all times that Plaintiff CARLOS CRUZ provided work for ZOV'S as a manager of ZOV's, he was misclassified as an exempt employee for the following reasons:

- a) CARLOS CRUZ was not paid a salary that was at least twice the minimum wage for full-time employment,

b) CARLOS CRUZ's primary duties did not consist of administrative, executive, or professional tasks,

c) CARLOS CRUZ's job duties did not involve the use of discretion or independent judgment,

d) Other reasons set forth in the applicable Industrial Wage Order.

75. Other ZOV's employees were also misclassified as exempt employees when they should have been classified as non-exempt employees.

76. Misclassifying CARLOS CRUZ and other ZOV's employees as exempt employees was wilfully done by Defendants for the purpose of maximizing the business profits of ZOV's as well as the personal assets of ARMEN KARAMARDIAN and his family to the illegal detriment of ZOV's employees. This was accomplished by depriving CARLOS CRUZ and other ZOV's employees of employment benefits employers owe to non-exempt employees but do not owe to exempt employees under California law including the following: Provision of overtime pay, provision of timely, uninterrupted, unrestricted rest breaks and the provision of timely, uninterrupted, unrestricted meal periods, etc.

Legal Remedies

77. As permitted under California law, Plaintiff CARLOS CRUZ brings this cause of action to recover the unpaid balance of all the employment benefits and damages owed under the Labor Code for being misclassified as an exempt employee.

78. As applicable under California law to the allegations made in this cause of action, Plaintiff CARLOS CRUZ is entitled to recover the other damages, penalties, awards, and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Individual Causes of Action for Labor Law Violations.”

TWELFTH CAUSE OF ACTION -- FAILURE TO PROVIDE EMPLOYMENT
RECORDS BY PLAINTIFF CARLOS CRUZ AND NATALIO CERVANTES AGAINST
ALL DEFENDANTS

79. Plaintiff, CARLOS CRUZ and NATALIO CERVANTES, incorporate paragraphs 1 through 12 of this Complaint as if fully alleged herein.

Statutory Requirement to Provide Employment Records

80. At all times herein, pursuant to Labor Code § 226(b), employers are required to afford their current and former employees the right to inspect or copy all records pertaining to their employment upon reasonable notice.

81. Pursuant to Labor Code § 226(c), an employer who receives a written or oral request to inspect or copy records must comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.

Defendants' Failure to Provide Employment Records to Plaintiff

82. Pursuant to Labor Code §226(b), Plaintiffs CARLOS CRUZ and NATALIO CERVANTES (via written and/or oral correspondence) requested all of the records pertaining to Plaintiffs' employment with ZOV's.

83. Defendants received the request but failed to provide all of the requested documents. As a result, Defendants have prevented Plaintiffs from discovering all of the facts and/or theories of liability which may support the causes of action pled herein and/or additional causes of action that could have been pled herein.

Legal Remedies

84. As applicable under California law to the allegations made in this cause of action, Plaintiff is entitled to recover the wages, damages, penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

THIRTEENTH CAUSE OF ACTION -- UNFAIR BUSINESS PRACTICES BY PLAINTIFFS CARLOS CRUZ AND NATALIO CERVANTES, INDIVIDUALLY AND ON BEHALF OF OTHER AGGRIEVED EMPLOYEES, AGAINST ALL DEFENDANTS

85. Plaintiffs incorporate by reference and re-allege the allegations contained in paragraphs 1 through 84 of this Complaint as if fully set forth herein.

86. Business and Professions Code §17200 provides in pertinent part ". . . [U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice"

87. Business and Professions Code §17205 provides that unless otherwise expressly provided, the remedies or penalties provided for unfair competition “are cumulative to each other and to the remedies or penalties available under all other laws of this state.”

88. Business and Professions Code §17204 provides that an action for any relief from unfair competition may be prosecuted by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition.

89. Defendants have engaged in unlawful business acts or practices, including those set forth in the preceding paragraphs of the Complaint, and, thereby, has wrongfully deprived Plaintiff of the minimum working standards and conditions due Plaintiff under the California Labor Code, the Code of Regulations and/or applicable IWC Wage Order(s), as set forth herein.

90. Defendants have also engaged in unfair business practices in California by practicing, employing and utilizing the employment practices outlined in the preceding paragraphs, including, but not limited to:

- a) Not paying paying/timely paying employees the requisite compensation (including regular wages, overtime wages, tips, minimum wages),
- b) Not providing employees with the requisite meal periods and/or rest breaks or the applicable premium pay,
- c) Not providing employees with required sick leave benefits,
- d) Not indemnifying employees for necessary business expenditures,
- e) Not paying/timely paying employees all the wages owed them at the time of their separation from employment,
- f) Not providing employees with accurate wage statements,
- g) Not providing employees with the requisite seating.

91. Defendants’ use of such illegal and unfair practices constitutes an unfair business practice, unfair competition, and provides an unfair advantage over Defendants’ competitors who comply with the above-referenced employment laws and regulations.

92. Defendants have engaged in said unlawful and unfair business practices on a continuous

basis for many years up until the present time.

Legal Remedies

93. As a result of said unlawful and/or unfair business practices resulting in unfair competition prohibited by Business and Professions Code § 17200, Plaintiffs and other aggrieved employees have suffered injury in fact and have lost money and/or property as described herein.

94. As a direct and proximate result of Defendants' unlawful and/or unfair business practices in violation of Business and Professions Code § 17200, Defendants are required to pay restitution, as necessary and according to proof, to restore all monies withheld, acquired and/or converted by Defendants by means of the unfair practices complained of herein.

95. Further, if Defendants are not enjoined from the conduct set forth above, Defendants will continue to practice, employ, and utilize the employment practices outlined in the preceding paragraphs. Therefore, the court is requested to issue a permanent injunction prohibiting Defendants from engaging in the foregoing conduct.

96. Defendant is also subject to an award of attorneys' fees and costs of suit on this cause of action pursuant to Code of Civil Procedure §1021.5.

97. As applicable under California law, the other damages, penalties, awards, and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Unfair Business Practices Cause of Action" are also being sought by way of this cause of action.

FOURTEENTH CAUSE OF ACTION -- VIOLATION OF LABOR LAWS GIVING RISE TO AN ACTION PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT (PAGA) -- BY PLAINTIFFS CARLOS CRUZ AND NATALIO CERVANTES ON BEHALF OF THEMSELVES AND OTHER CURRENT AND FORMER AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS

98. Plaintiffs, CARLOS CRUZ and NATALIO CERVANTES incorporate by reference and re-alleges the allegations contained in paragraphs 1 through 84 of this Complaint as if fully set forth herein.

1 99. Plaintiffs bring this cause of action pursuant to the Private Attorneys General Act
2 (Labor Code §2699) on behalf of themselves and all aggrieved employees as described as
3 follows: All aggrieved exempt and non-exempt employees (including Plaintiffs CARLOS
4 CRUZ and NATALIO CERVANTES) who have worked for Defendants in California during
5 the applicable statute of limitations period.

6 **PAGA Claim Notice Filed with the LWDA**

7 100. Plaintiff has exhausted all statutory prerequisites to filing a Private Attorneys General
8 Action in this matter by providing written notice on September 13, 2021, to the Labor and
9 Workforce Development Agency that Defendants had violated and were continuing to violate
10 provisions of the California Labor Code. The same day, Plaintiff mailed a copy of the PAGA
11 notice filed with the LWDA to Defendants. Pursuant to the PAGA, the filing of the PAGA
12 Notice with the LWDA resulted in a tolling of the applicable statute of limitation(s).

13 101. At least sixty-five days has passed since Plaintiff provided written notice (by online
14 submission to the Labor and Workforce Development Agency and by certified mail to
15 Defendants) that Defendants had violated and continued to violate provisions of the California
16 Labor Code. Plaintiff has not received notice from the LWDA that it intends to prosecute an
17 action against Defendants. Therefore, as statutorily permitted by Labor Code § 2699.3, Plaintiff
18 has the right to commence a Private Attorneys General Action (PAGA) pursuant to Labor Code
19 § 2699.

20 **COUNT ONE – FAILURE TO PAY OVERTIME WAGES**

21 102. Plaintiffs incorporate paragraphs 1 through 12 and paragraphs 14 through 19 of this
22 Complaint as though fully set forth.

23 **Legal Remedies**

24 103. As applicable under California law, Plaintiffs (on behalf of themselves and other
25 aggrieved employees) are entitled to recover the other penalties, awards, remedies, and other
26 relief set forth below in the Prayer for Damages, Awards and Other Relief under the section
27 entitled “PAGA Cause of Action.”
28

COUNT TWO -- FAILURE TO PAY MINIMUM WAGES

104. Plaintiffs incorporate paragraphs 1 through 12 and paragraphs 22 through 23 of this Complaint as though fully set forth.

Legal Remedies

105. As applicable under California law, Plaintiff (on behalf of himself/herself and other similarly aggrieved employees) is entitled to recover the other penalties, awards, remedies and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "PAGA Cause of Action."

COUNT THREE – FAILURE TO PAY TIPS

106. Plaintiffs incorporate paragraphs 1 through 12 and paragraphs 26 through 27 of this Complaint as though fully set forth.

Legal Remedies

107. As applicable under California law, Plaintiffs (on behalf of themselves and other aggrieved employees) is entitled to recover the other penalties, awards, remedies and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "PAGA Cause of Action."

COUNT FOUR – FAILURE TO PROVIDE MEAL PERIODS/PREMIUM PAY

108. Plaintiffs incorporate paragraphs 1 through 12 and paragraphs 30 through 37 of this Complaint as though fully set forth.

Legal Remedies

109. As applicable under California law, Plaintiffs (on behalf of themselves and other aggrieved employees) are entitled to recover the other penalties, awards, remedies and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "PAGA Cause of Action."

COUNT FIVE – FAILURE TO PROVIDE REST BREAKS/PREMIUM PAY

110. Plaintiffs incorporate paragraphs 1 through 12 and paragraphs 40 through 43 of this Complaint as though fully set forth.

Legal Remedies

111. As applicable under California law, Plaintiffs (on behalf of themselves and other aggrieved employees) are entitled to recover the other penalties, awards, remedies and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT SIX – FAILURE TO COMPLY WITH SICK LEAVE LAWS

112. Plaintiffs incorporate paragraphs 1 through 12 and paragraphs 46 through 49 of this Complaint as though fully set forth.

Legal Remedies

113. As applicable under California law, Plaintiffs (on behalf of themselves and other aggrieved employees) are entitled to recover the other penalties, awards, remedies, and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT SEVEN – FAILURE TO PAY /

TIMELY PAY WAGES FOR ALL TIME WORKED

114. Plaintiffs incorporate paragraphs 1 through 12 and paragraphs 52 through 55 of this Complaint as though fully set forth.

Legal Remedies

115. As applicable under California law, Plaintiffs (on behalf of themselves and other aggrieved employees) are entitled to recover the other penalties, awards, remedies, and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT EIGHT – FAILURE TO INDEMNIFY FOR BUSINESS EXPENDITURES

116. Plaintiffs incorporate paragraphs 1 through 12 and paragraphs 58 through 59 in this Complaint as though fully set forth.

Legal Remedies

117. As applicable under California law, Plaintiffs (on behalf of themselves and other aggrieved employees) are entitled to recover the other penalties, awards, remedies, and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section

entitled "PAGA Cause of Action."

COUNT NINE – FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

118. Plaintiffs incorporate paragraphs 1 through 12 and paragraphs 62 through 64 of this Complaint as though fully set forth.

Legal Remedies

119. As applicable under California law, Plaintiffs (on behalf of themselves and other aggrieved employees) are entitled to recover the other penalties, awards, remedies, and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "PAGA Cause of Action."

COUNT TEN – FAILURE TO PAY WAGES OWED AT SEPARATION

120. Plaintiffs incorporate paragraphs 1 through 12 and paragraphs 67 through 71 of this Complaint as though fully set forth.

Legal Remedies

121. As applicable under California law, Plaintiffs (on behalf of themselves and other aggrieved employees) are entitled to recover the other penalties, awards, remedies, and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "PAGA Cause of Action."

COUNT ELEVEN -- MISCLASSIFICATION OF EMPLOYEES AS EXEMPT EMPLOYEES

122. Plaintiffs incorporate paragraphs 1 through 12 and paragraphs 74 through 76 of this Complaint as though fully set forth.

Legal Remedies

123. As applicable under California law, Plaintiffs (on behalf of themselves and other aggrieved employees) are entitled to recover the other penalties, awards, remedies, and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "PAGA Cause of Action."

COUNT TWELVE – FAILURE TO PROVIDE RECORDS

124. Plaintiff incorporates paragraphs 1 through 12 and paragraphs 80 through 83 of this

Complaint as though fully set forth.

Legal Remedies

125. As applicable under California law, Plaintiffs (on behalf of themselves and other aggrieved employees) are entitled to recover the other penalties, awards, remedies, and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "PAGA Cause of Action."

COUNT THIRTEEN – FAILURE TO ACCOMODATE SEATING

126. Plaintiffs incorporate paragraphs 1 through 12 of this Complaint as though fully set forth.

Duty to Provide Employees with Seating Accommodation

127. Pursuant to Labor Code § 1198 and/or IWO No. 5 or Other Applicable IWO, employers such as ZOV's are required to provide their employees (including CARLOS CRUZ and NATALIO CERVANTES) with: 1) suitable seating when the nature of the employees' work reasonably permits use of seats (e.g. while performing activities in the kitchen standing in one position) and 2) suitable seating in reasonable proximity to employee's work areas for use by employees when a) they are not engaged in active duty (e.g., they are waiting for orders), b) their work requires standing and c) such seats would not interfere with the performance of their duties.

Defendant's Failure to Provide Seating

128. In violation of § 1198 and/or IWO No. 5 (or other applicable IWO) Zov's failed to provide seating to their kitchen workers (including NATALIO CERVANTES) and failed to provide other employees working in the back end of the restaurant (including CARLOS CRUZ) with seating while said employees were performing activities in the kitchen in one position, while said employees were waiting for orders and/or other times that the employees were entitled to seating under the law.

Legal Remedies

As applicable under California law, Plaintiffs (on behalf of themselves and other aggrieved employees) are entitled to recover the other penalties, awards, remedies, and other relief set forth

below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

**FIFTEENTH CAUSE OF ACTION FOR UNLAWFULL HARASSMENT IN THE
WORKPLACE -- HOSTILE WORK ENVIORMENT IN VIOLATION OF GOV. CODE
§ 12940 (j) AND (k) BY PLAINTIFF, CARLOS CRUZ, AGAINST ALL DEFENDANTS**

129. Plaintiff re-alleges and fully incorporates herein paragraphs 1 through 12 of this Complaint as though fully set forth in this Cause of Action.

(DFEH “Right to Sue” Notification Obtained and Served)

130. Prior to the filing of this complaint, CARLOS CRUZ timely filed a complaint against Defendants with the California Department of Fair Employment and Housing (“DFEH”), alleging violations of Gov. Code § 12940 of the FEHA.

131. Thereafter, Plaintiff CARLOS CRUZ received notification from the DFEH of his “Right to Sue” in the courts of the State of California. Subsequently, Plaintiff served each known Defendant with the Right to Sue Notice via United States Certified Mail, return receipt requested as required by Gov. Code § 12962. As required by law, this complaint is filed within one year of that notification.

132. Plaintiff brings this cause of action against all Defendants for hostile work environment due to severe and/or pervasive harassment occurring and continuing in the workplace in violation of Gov. Code §§ 12940 (j) and (k). Plaintiff was harassed because of his sex/gender, gender identity or expression, sexual orientation, and genetic information or characteristic. Defendant ARMEN KARAMARDIAN and DOES 1 through 30 who were officers, directors, managing agents and/or supervisors who 1) directly harassed Plaintiff CARLOS CRUZ; 2) did nothing to prevent the illegal harassment that CARLOS CRUZ was being subjected to and/or 3) knew (or should have known) about the harassment but failed to take reasonable action to stop the harassment.

**Violation of FEHA’s Prohibition Against
Harassment in the Workplace Because of an Employees Sexual Orientation/Identity
(Government Code § 12940 (j))**

1 133. Pursuant to Gov. Code § 12940 (j), it is unlawful for an employer or any other person to
2 harass an employee or co-employee because of their protected class under the FEHA, including
3 harassment because of an employee's sexual orientation/identity. When such harassing
4 conduct is severe or pervasive, it creates a hostile work environment that results in further
5 violation of the FEHA.

6 134. Accordingly, Defendants were not only prohibited from harassing workers at ZOV's
7 (including Plaintiff CARLOS CRUZ) based on their sexual orientation/identity, but Defendants
8 were prohibited them from allowing such employees to be exposed to a hostile work
9 environment because of their sexual orientation/identity.

10 135. In violation of Gov. Code 12940 (j), Defendants ZOV's, ARMEN KARAMARDIAN,
11 and DOES 1 through 30 (individually and/or through their officers, directors, managing agents
12 and/or supervisors) illegally harassed Plaintiff CARLOS CRUZ by subjecting him to unwanted
13 as well as severe and/or pervasive harassing conduct because of his sexual orientation/identity
14 as a gay person). Said harassing conduct included ongoing and continuous verbal harassment
15 including epithets, derogatory comments, slurs, name calling, belittling, sexually explicit and
16 degrading words, and insinuations, etc. including such things as the following:

- 17 a) On repeated occasions, Plaintiff CARLOS CRUZ' manager, Rafael Rodriguez
18 (who may also be known as Rafael Iniguez) made unwelcomed comments about
19 Plaintiff being gay, e.g., he asked Plaintiff if he liked being on the top or the
20 bottom; he asked Plaintiff if he had ever been straight; after seeing a male customer
21 sitting at the bar, he asked Plaintiff if he had seen that guy's butt (stating it was
22 very nice). After another gay employee who said he knew Plaintiff was hired,
23 Rafael Rodriguez asked Plaintiff if he had ever "fucked him" (referring to the other
24 gay employee.)
25 b) Nickie Robles (the Brand and Culture Manager of ZOV's) said that Plaintiff looked
26 "too gay" for the restaurant. Defendant ARMEN KARAMARDIAN (President of
27 ZOV's) also said that Plaintiff looked "too gay."
28 c) Armen Karamardian (President), Taleene (Armen's sister and ZOV's Creative
Director) and Robert Latona derogatorily commented about the fact that I wore a

mask with diamonds on it. Taleene Karamardian said that I couldn't look more gay wearing a mask with rhinestones on it. This occurred on a repeated basis for about a year and a half, up to the time of my termination.

d) Other employees (specifically including ZOV's cooks and chefs) regularly called Plaintiff names (e.g., "whore" and a "bitch" in Spanish). They also repeatedly commented in a derogatory manner about his eye lashes and the way he dressed. They also made comments about Plaintiff's butt. They would also ignore Plaintiff. These acts occurred on a continual daily basis.

e) Other gay employees or employees who appeared to be gay were similarly harassed.

136. Moreover, despite the fact that supervisors and/or managers knew (or should have known) that said conduct (which was severe and pervasive) was causing a hostile work environment, they failed to prevent such conduct and/or to take immediate and appropriate corrective action to stop such conduct from continuing to occur in the workplace. Said managers/supervisors include the following: Defendant ARMEN KARAMARDIAN, Taleene Karamardian (Armen's sister), Nickie Robles, Robert Latona, Bill (last name unknown), Mark Foshiki, Rafael Rodriguez (who may also be known as Rafael Iniguez) and Kevin Portillo.

137. The above-described harassment (which occurred on a continuing and frequent basis during CARLOS CRUZ' employment with ZOV's) created a hostile work environment for CARLSO CRUZ in violation of the FEHA because the harassment based on his sexual orientation/identity occurred on a continual basis, was severe or pervasive in nature, and unjustly interfered with his job and work environment.

138. Not only would a reasonable employee in CARLOS CRUZ' circumstances consider the work environment at ZOV's to be hostile, but CARLOS CRUZ considered the work environment at ZOV's to be hostile and abusive toward him based on his sexual orientation/identity.

**Defendants' Failure to Prevent Harassment
in Violation of the FEHA (Gov. Code § 12940(k))**

139. Pursuant to Gov. Code § 12940 (k), Defendants were required to take all reasonable

steps necessary to prevent harassment from occurring in the workplace.

140. In violation of Gov. Code § 12940 (k), Defendants (individually and/or through Defendants' officers, directors, managing agents and/or supervisors) failed to take all reasonable steps necessary to prevent discrimination based on an employee's sexual orientation/identity from occurring in the ZOV's workplace, including the following steps that are regularly taken by businesses in California to conform with the FEHA:

- a) They failed to establish and/or implement anti-harassment policies, procedures, and practices in the workplace to reasonably ensure that workers at ZOV's were not illegally harassed based on their sexual orientation/identity.
- b) They failed to establish policies and procedures for investigating complaints of harassment based on sexual orientation/identity and further failed to conduct good faith investigations of complaints (or reasonable suspicions) of illegal harassment based on sexual orientation/identity occurring in the workplace.
- c) They failed to make it practicably known to ZOV's employees that illegal harassment based on sexual orientation/identity would not be tolerated in the workplace and, instead, affirmatively or tacitly encouraged such harassment in the workplace by engaging in such conduct themselves, condoning such conduct of others and/or turning a blind eye to such harassment occurring in the workplace.
- d) They failed to publicize and remind employees that any employee who engaged in illegal harassment based on sexual orientation/identity in the workplace would be subject to appropriate discipline, including possible termination.
- e) They failed to take any other reasonable action to prevent CARLOS CRUZ and other ZOV's employees from being subjected to illegal harassment based on their sexual orientation/identity in violation of the FEHA.

141. As a result of Defendants' failure to take the steps reasonably necessary to prevent illegal harassment based on an employee's sexual orientation/identity from occurring in the workplace as mandated under the FEHA, it became a common business practice for severe,

1 illegal harassment based on sexual orientation/identity to continually and pervasively occur in
2 the workplace, resulting in a persistent hostile work environment for employees, including
3 CARLOS CRUZ.

4 **Defendants' Failure to Take Immediate Corrective Action**
5 **in Violation of the FEHA (Gov. Code § 12940 (j))**

6 142. Gov. Code § 12940 (j) requires that immediate corrective action be taken as soon as an
7 employer knows or should know that an employee is being harassed in violation of the FEHA.

8 143. In violation of Gov. Code § 12940(j), even after Defendants (individually and/or
9 through Defendants' officers, directors, managing agents and/or supervisors) knew or should
10 have known that CARLOS CRUZ (and/or other ZOV's employees) were being harassed in the
11 workplace in violation of the FEHA, said Defendants (individually and/or through and their
12 officers, directors, managing agents and/or supervisors) failed to take immediate and
13 appropriate corrective action as follows:

- 14 a) They continually disregarded the illegal harassing conduct and took no substantive
15 action to reasonably ensure that the harassing conduct would not continue and did
16 so knowing that their failure to take immediate corrective action would allow the
17 illegal harassing conduct to continue.
- 18 b) They failed to reasonably and sufficiently train/retrain ZOV's employees,
19 including those who were involved in (or who were suspected of being involved in
20 in illegal harassment of CARLOS CRUZ in violation of the FEHA, even though
21 they knew (or should have known) that without such training/retraining said
22 employees would continue to illegally harass CARLOS CRUZ in violation of the
23 FEHA.
- 24 c) They failed to appropriately reprimand and/or dismiss ZOV's employees who
25 were involved in illegally harassing CARLOS CRUZ, even though they knew, or
26 should have known, that such harassment was occurring and would continue to
27 occur if the employees involved in such illegal conduct were not appropriately
28 reprimanded and/or dismissed.

- 1 d) They failed to notify or renotify the employees they knew were being illegally
2 harassed (including CARLOS CRUZ) of the availability of reporting such conduct
3 to a designated person or office at ZOV's so that appropriate personnel could
4 intervene as necessary.
- 5 e) They failed to take any other reasonable corrective action to ensure that
6 employees of ZOV's (including CARLOS CRUZ) were not subjected to further
7 harassment in violation of the FEHA.

8 144. As a result of Defendants' failure to take immediate corrective action as mandated
9 under the FEHA, the unlawful harassing behavior based on the sexual orientation/identity of
10 ZOV's employees (including CARLOS CRUZ) that was occurring in the workplace not only
11 unnecessarily continued but became more frequent and more severe.

12 **Direct Involvement / Authorization and Ratification by Officers, Directors and/or**
13 **Managing Agents of ZOV's**

14 145. At all times herein mentioned, Defendants ZOV's, ARMEN KARAMARDIAN and
15 DOES 1 through 50 (individually or by and through their officers, directors and/or managing
16 agents) either directly participated in the illegal harassing conduct set forth herein and/or
17 authorized, ratified, assisted, and encouraged the unlawful harassing acts of others in the
18 workplace in at least the following ways:

- 19 a) Even after they learned that severe harassing conduct in violation of the FEHA
20 was occurring on a pervasive basis at ZOV's, they continually failed to implement
21 and/or enforce anti-harassment policies and practices in the workplace.
- 22 b) Even after they learned that severe harassing conduct in violation of the FEHA
23 was occurring on a pervasive basis at ZOV's, they failed to reprimand, dismiss,
24 train and/or retrain employee(s) involved in the illegal harassing conduct knowing
25 said employee(s) would continue to engage in such illegal harassing conduct
26 without necessary intervention.
- 27 c) They failed to conduct good faith investigations of complaints that employees of
28 ZOV's were being harassed based on their sexual orientation/identity, even though

Defendants knew such harassment was in violation of the FEHA.

- d) Instead of taking action to correct the illegal harassing conduct occurring at ZOV's, they affirmatively and tacitly condoned the illegal harassing conduct perpetrated against CARLOS CRUZ and other employees as described herein.

Additional Allegations of Malice, Oppression and/or Fraud

146. All of the above-described acts and omissions of Defendants ZOV's, ARMEN KARAMARDIAN, and DOES 1 through 50 (individually and/or by their officers, directors, managing agents and supervisors) were part of an ongoing and continuing pattern and practice of shielding their own unlawful behavior and/or the unlawful acts of ZOV's officers, directors, managing agents, supervisors and/or other employees to the detriment of the rights of CARLOS CRUZ and other similarly situated employees of ZOV's.

147. The above-described acts and/or omissions were done maliciously in that Defendants knew said conduct was specifically prohibited by the FEHA, knew said conduct was contrary to public policy as expressed in the FEHA and knew said conduct had caused, and would continue to cause CARLOS CRUZ to unnecessarily suffer severe emotional distress as well as significant economic loss. Nevertheless, Defendants knowingly chose to disregard the probability that such injuries and losses would be suffered by CARLOS CRUZ and either personally engaged in the illegal harassing conduct or permitted others under their supervision and control to continually engage in such conduct thereby disregarding their statutorily imposed duties under the FEHA to prevent such illegal conduct from occurring in the workplace.

148. The above-described acts and/or omissions were done oppressively in that Defendants continually disregarded CARLOS CRUZ' rights as an employee guaranteed under the FEHA and either directly subjected him to ongoing illegal harassment and unjust hardship in the workplace or Defendants consciously disregarded the duties imposed on them under the FEHA to prevent illegal conduct from occurring in the workplace. Moreover, their disregard of CARLOS CRUZ' rights as recognized under the FEHA was done deliberately and continually knowing there was a high probability that the rights of ZOV's employees (including the rights

of CARLOS CRUZ) would continue to be violated resulting in ongoing non-economic and economic damages.

Continuing Violations Doctrine

149. Defendants' violations of the FEHA as set forth herein occurred on a continuous basis during the time of CARLOS CRUZ' employment at ZOV's. Therefore, under the Continuing Violations Doctrine, the statute of limitation for this cause of action did not begin to accrue until the date of his termination on or about April 5, 2021.

Causation, Damages and Other Remedies

150. CARLOS CRUZ' protected class was a substantial motivating factor for Defendants' unlawful conduct toward him in violation of the FEHA as described herein.

151. Defendants' unlawful employment practices in violation of the FEHA as set forth herein were also a substantial factor in causing a disproportionate adverse effect on other employees of ZOV's who were within the same protected class as CARLOS CRUZ.

152. As a direct and proximate result of the above-described unlawful harassing conduct perpetrated against ZOV's employees due to their sexual orientation/identity as well as other employment practices in violation of Gov. Code § 12940 (j) and (k), CARLOS CRUZ is entitled to recover damages and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "FEHA Causes of Action."

SIXTEENTH CAUSE OF ACTION FOR UNLAWFUL DISCRIMINATION IN THE WORKPLACE IN VIOLATION OF GOV. CODE § 12940 (a) AND (k) BY PLAINTIFF, CARLOS CRUZ, AGAINST ZOV'S BISTRO, INC., ZOV'S BISTRO II, INC., ZOV'S ENTERPRISES, INC., AND DOES 1 THROUGH 10 AND DOES 31 THROUGH 50

153. Plaintiff CARLOS CRUZ alleges and fully incorporates herein paragraphs 1 through 12 and 130 through 151 of this Complaint as though fully set forth in this Cause of Action.

154. Plaintiff brings this cause of action against Defendants ZOV'S BISTRO, INC., ZOV'S BISTRO II, INC., ZOV'S ENTERPRISES, INC. and DOES 1 through 10 and DOES 31 through 50 for discrimination in the ZOV's workplace based on Plaintiff's sexual orientation/identity. Said discrimination was in the form of disparate treatment and disparate

1 impact on ZOV's employees (including CARLOS CRUZ) based on their sexual
2 orientation/identity.

3 **Violation of the FEHA's Prohibition Against**

4 **Illegal Discrimination in the Workplace (Gov. Code § 12940 (a))**

5 155. Pursuant to Gov. Code § 12940 (a), as CARLOS CRUZ' employers, Defendants
6 ZOV'S, DOES 1 through 10 and DOES 31 through 50 were prohibited from discriminating
7 against CARLOS in compensation or in terms, conditions, or privileges of employment based
8 on his sexual orientation/identity.

9 156. In violation of Gov. Code § 12940 (a), ZOV'S, DOES 1 through 10 and DOES 31
10 through 50 unlawfully discriminated against CARLOS CRUZ and other similarly situated
11 employees by subjecting them to adverse employment actions because of their sex/gender,
12 gender identity or expression, sexual orientation, and genetic information or characteristic as
13 follows:

- 14 a) They continually disregarded the illegal harassing conduct and took no substantive
15 action to reasonably ensure that the harassing conduct would not continue and did
16 so knowing that their failure to take immediate corrective action would allow the
17 illegal harassing conduct to continue.
- 18 b) They failed to reasonably and sufficiently train/retrain ZOV's employees,
19 including those who were involved in (or who were suspected of being involved in
20 in illegal harassment of CARLOS CRUZ in violation of the FEHA, even though
21 they knew (or should have known) that without such training/retraining said
22 employees would continue to illegally harass CARLOS CRUZ in violation of the
23 FEHA.
- 24 c) They failed to appropriately reprimand and/or dismiss ZOV's employees who
25 were involved in (or supervisors aware of the) illegally harassment of CARLOS
26 CRUZ, even though they knew, or should have known, that such harassment was
27 occurring and would continue to occur if the employees involved in such illegal
28 conduct were not appropriately reprimanded and/or dismissed.

- 1 d) They failed to notify or renotify the employees they knew were being illegally
2 harassed (including CARLOS CRUZ) of the availability of reporting such conduct
3 to a designated person or office at ZOV's so that appropriate personnel could
4 intervene as necessary.
- 5 e) They failed to take any other reasonable corrective action to ensure that
6 employees of ZOV's (including CARLOS CRUZ) were not subjected to further
7 harassment in violation of the FEHA.

8 157. The above adverse employment actions (which occurred on a continuing and frequent
9 basis during CARLOS CRUZ's employment with Defendants), individually or in combination,
10 adversely affected the terms, conditions, or privileges of CARLOS CRUZ' employment with
11 ZOV's, including interfering with his emotional tranquility in working in the workplace,
12 undermining his personal sense of well-being in the workplace, undermining his job in the
13 workplace, making it more difficult for him to be successful in his position, and interfering
14 with his right to work in a workplace that was free of discrimination based on one's sexual
15 orientation/identity.

16 **Defendants' Failure to Prevent Discrimination**
17 **in the Workplace in Violation of the FEHA (Gov. Code § 12940 (k))**

18 158. Pursuant to Gov. Code § 12940 (k), Defendants ZOV's and DOES 1 through 10 and
19 DOES 31 through 50 owed a duty to take all reasonable steps necessary to prevent
20 discrimination in violation of the FEHA from occurring in the ZOV's workplace.

21 159. In violation of Gov. Code § 12940 (k), Defendants ZOV's and DOES 1 through 10 and
22 DOES 31 through 50 (individually and/or through Defendants' officers, directors, managing
23 agents and/or supervisors) failed to take all reasonable steps necessary to prevent illegal
24 discrimination based on an employee's sexual orientation/identity from occurring in the
25 workplace, including the following steps that are regularly taken by businesses in California to
26 reasonably ensure conformance with the FEHA:

- 27 a) They failed to establish and/or implement anti-discrimination policies,
28 procedures, and practices in the workplace to reasonably ensure that employees

1 were not discriminated against based on their sexual orientation/identity.

- 2 b) They failed to establish and/or implement policies and procedures for
3 investigating complaints of discrimination based on one's sexual
4 orientation/identity occurring (or suspected to be occurring) in the workplace,
5 c) They failed to make it known to ZOV's employees that discrimination based on
6 an employee's sexual orientation/identity would not be tolerated in the
7 workplace and, instead, they affirmatively or tacitly encouraged such
8 discrimination in the workplace by engaging in such conduct themselves or
9 condoning such conduct by others,
10 d) They failed to reasonably publicize and remind workers that any worker who
11 engaged in discrimination based on sexual orientation/identity in the workplace
12 would be subject to appropriate discipline, including possible termination,
13 e) In violation of the FEHA, they failed to take other reasonable action to prevent
14 CARLOS CRUZ from being subjected to illegal discrimination based on his
15 sexual orientation/identity.

16 **Direct Involvement/Authorization and Ratification**

17 **by Officers, Directors and/or Managing Agents of ZOV's**

18 160. At all times herein mentioned, Defendants ZOV's and DOES 1 through 10, DOES 31
19 through 50 and/or said Defendants' officers, directors, managing agents and/or supervisors
20 either directly participated in the illegal discriminatory conduct alleged herein and/or
21 authorized, ratified, assisted, and encouraged the unlawful discriminatory acts of others in the
22 workplace in at least the following ways:

- 23 a) They disregarded and failed to conduct good faith investigations of complaints
24 and/or acts of illegal discrimination based on CARLOS CRUZ' sexual
25 orientation/identity which they knew (or reasonably should have suspected) had
26 occurred or was occurring in the workplace.
27 b) They affirmatively and tacitly condoned discrimination based on CARLOS
28 CRUZ's sexual orientation/identity which they knew (or reasonably should have

1 suspected) had been perpetrated against CARLOS CRUZ and/or other similarly
2 situated employees, even though they also knew such conduct was in blatant
3 violation of the FEHA and would likely continue and be encouraged due to their
4 affirmative or tacit condoning of such conduct.

5 c) They failed to implement and/or enforce anti-discrimination policies and
6 procedures to reasonably ensure against discrimination from occurring in the
7 workplace in violation of the FEHA.

8 d) They failed to reprimand, dismiss, train and/or retrain employee(s) and
9 supervisors involved in (or aware of) the discriminatory conduct knowing said
10 employee(s) had engaged in known or suspected discriminatory practices
11 involving CARLOS CRUZ as well as other similarly situated ZOV's employees.
12 They did so knowing that without such interventions, such discrimination would
13 likely continue.

14 e) They failed to take other reasonable action to ensure that CARLOS CRUZ and
15 other similarly situated employees were not further subjected to illegal
16 discrimination in the workplace based on their sexual orientation/identity in
17 violation of the FEHA.

18 **Additional Allegations of Malice, Oppression and/or Fraud**

19 161. When inquires and/or investigations were conducted concerning possible illegal
20 discriminatory conduct toward CARLOS CRUZ and/or other similarly situated employees at
21 ZOV's, Defendants (individually and/or by their officers, directors, managing agents and
22 supervisors) misrepresented and/or concealed material facts uncovered during said
23 investigations for the purpose of protecting themselves or co-employees from further inquiry or
24 from being reprimanded. Moreover, they did so knowing (or reasonably suspecting) that such
25 misrepresentations and/or concealments would result in CARLOS CRUZ and other similarly
26 situated workers being subjected to further discrimination based on their sexual
27 orientation/identity.

28 162. All of the above-described acts and omissions of Defendants (individually and/or by

1 their officers, directors, managing agents and supervisors) were part of an ongoing and
2 continuing pattern and practice of shielding their own unlawful behavior and/or the unlawful
3 acts of ZOV's officers, directors, managing agents, supervisors and/or other employees to the
4 detriment of the rights of CARLOS CRUZ and other similarly situated employees at ZOV's.
5 163. The above-described acts and/or omissions were done maliciously in that Defendants
6 knew said conduct was specifically prohibited by the FEHA, knew said conduct was contrary
7 to public policy as expressed in the FEHA and knew said conduct would cause CARLOS
8 CRUZ and other similarly situated employees at ZOV's to unnecessarily suffer severe
9 emotional distress as well as significant economic loss. Nevertheless, Defendants knowingly
10 chose to disregard the probability that such injuries and losses would be suffered and either
11 personally engaged in the illegal discriminatory conduct or permitted others under their
12 supervision and control to continually engage in such conduct. Said Defendants thereby
13 disregarded the duties imposed on employers under the FEHA to both prevent such conduct
14 from occurring in the workplace and to take immediate corrective action once aware such
15 conduct was occurring in the workplace.

16 164. The above-described acts and/or omissions were done oppressively in that Defendants
17 disregarded CARLOS CRUZ' rights as an employee guaranteed under the FEHA and either
18 directly subjected him to ongoing illegal discrimination in the workplace or consciously
19 disregarded the duties imposed on them under the FEHA to prevent such conduct from
20 occurring in the workplace. Moreover, their disregard of CARLOS CRUZ' rights as recognized
21 under the FEHA was done deliberately and continually knowing there was a high probability
22 that the rights of ZOV's employees (including the rights of CARLOS CRUZ) would continue
23 to be violated, resulting in ongoing non-economic damages as well as economic losses.

24 **Continuing Violations Doctrine**

25 165. Defendants' violations of the FEHA as set forth herein occurred on a continuous basis
26 during the time of CARLOS CRUZ' employment at ZOV's. Therefore, under the Continuing
27 Violations Doctrine, the statute of limitation for this cause of action did not begin to accrue
28 until the date of his termination on or about April 5, 2021.

Causation, Damages and Other Remedies

166. CARLOS CRUZ' protected class based on his sexual orientation/identity was a substantial motivating factor for Defendants' unlawful discriminatory conduct toward CARLOS CRUZ in violation of the FEHA as described herein.

167. As a direct and proximate result of the above-described unlawful harassing conduct perpetrated against ZOV's employees due to their sexual orientation/identity as well as other employment practices in violation of Gov. Code § 12940 (a) and (k), CARLOS CRUZ is entitled to recover damages and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "FEHA Causes of Action."

SEVENTEENTH CAUSE OF ACTION FOR RETALIATION IN VIOLATION OF GOV. CODE § 12940(h) BY PLAINTIFF CARLOS CRUZ AGAINST DEFENDANTS ZOV'S BISTRO, INC., ZOV'S BISTRO II, INC., ZOV'S ENTERPRISES, INC., AND DOES 1 THROUGH 10 AND DOES 31 THROUGH 50

168. Plaintiff re-alleges and fully incorporates herein paragraphs 1 through 12 and paragraphs 130 through 167 of this Complaint above as though fully set forth in this Cause of Action.

Violation of FEHA's Prohibition Against Retaliation

(Government Code § 12940 (h))

169. Pursuant to Gov. Code § 12940(h), it is illegal for an employee to be subjected to one or more adverse employment actions for reporting or complaining of conduct prohibited by the FEHA, including reporting or complaining about discrimination and/or harassment based on one's sexual orientation/identity from occurring in the workplace.

170. In this case, on multiple occasions, CARLOS CRUZ complained about discriminatory and/or harassing behavior occurring in the workplace based on his sexual orientation/identity. Complaints were made to upper management, including but not limited to Bill (last name unknown), Mark Foshiki (Bill's assistant), Rafael Rodriguez (who may also be known as Rafael Iniguez) and his assistant Kevin Portillo.

171. Instead of taking action to correct the illegal behavior or prevent further illegal behavior

in violation of the FEHA, ZOV's wrongfully terminated CARLOS CRUZ on April 5, 2021.

Additional Allegations of Malice, Oppression and/or Fraud

172. The retaliation in violation of the FEHA as alleged herein was part of an ongoing and continuing pattern and practice of ZOV's (instigated through its officers, directors and/or managing agents) to shield their own unlawful behavior and/or the unlawful acts of ZOV's officers, directors, managing agents, supervisors and/or other employees to the detriment of the rights of CARLOS CRUZ.

173. The above-described retaliatory acts were done maliciously in that Defendants knew said conduct was specifically prohibited by the FEHA, knew said conduct was contrary to public policy as expressed in the FEHA and knew said conduct would cause CARLOS CRUZ to unnecessarily suffer severe emotional distress as well as significant economic loss. Nevertheless, Defendants knowingly chose to disregard the probability that such injuries and losses would be suffered and either personally engaged in the illegal retaliatory conduct or permitted others under their supervision and control to continually engage in such conduct thereby disregarding their statutorily imposed duties under the FEHA to prevent retaliatory conduct in violation of the FEHA from occurring in the workplace.

174. The above-described retaliatory acts were done oppressively in that Defendants intentionally disregarded CARLOS CRUZ' rights as an employee guaranteed under the FEHA and, thereby, either directly or indirectly subjected CARLOS CRUZ to ongoing unjust hardship in violation of the FEHA. Moreover, their disregard of CARLOS CRUZ' rights as recognized under the FEHA was done deliberately knowing there was a high probability that she would suffer ongoing non-economic damages as well as economic losses.

Causation, Damages and Other Remedies

175. CARLOS CRUZ' reporting and/or complaining about illegal discriminatory and/or illegal harassing behavior occurring in the workplace were substantial motivating factors for Defendants' unlawful retaliation against CARLOS CRUZ in violation of the FEHA, as described herein.

176. As a direct and proximate result of the above-described unlawful retaliatory conduct

and practices in violation of Gov. Code § 12940 (h), CARLOS CRUZ is entitled to recover damages and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “FEHA Causes of Action.”

PRAYER FOR DAMAGES, AWARDS AND OTHER RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, in an amount within the jurisdiction of the above-entitled court and within the applicable statutes of limitation as follows:

Individual Causes of Action for Labor Law Violations

1. Unpaid/underpaid wages or other pay (including but not limited to regular wages, overtime wages and/or minimum wages and/or tips) owed to Plaintiff under the Labor Code and/or applicable Industrial Wage Order.
2. Actual damages suffered or one day’s pay, whichever is greater, and other appropriate equitable relief as permitted by Labor Code § 233 related to violations of sick leave and pay laws.
3. All premium pay/wages owed to Plaintiff under the Labor Code, applicable Industrial Wage Order(s) and/or local law/ordinance for untimely, missed, or interrupted meal periods and/or rest breaks.
4. Split-shift pay/wages owed to Plaintiff under the Labor Code, applicable Industrial Wage Order(s) and/or local law/ordinance.
5. Continuing wages to the fullest extent permitted by Labor Code § 203.
6. Reimbursement of expenditures to the fullest extent permitted under the Labor Code and/or applicable Industrial Wage Order(s).
7. Penalties set forth in Labor Code § 226(e) for failure to provide accurate wage statements up to a maximum of \$4,000, according to proof.
8. The \$750 penalty set forth in Labor Code § 226(f) for the failure to provide/timely provide copies of Plaintiff’s employment records.
9. All other penalties which the Labor Code permits an individual employee to recover from

- 1 an employer for violation(s) of the Labor Code, applicable Industrial Wage Order(s)
2 and/or applicable local laws/ordinances which were violated with respect to Plaintiff's
3 employment as alleged herein.
- 4 10. All liquidated damages which the Labor Code permits an individual employee to recover
5 from an employer for violation(s) of the Labor Code, applicable Industrial Wage Order(s)
6 and/or applicable local laws/ordinances which were violated with respect to Plaintiff's
7 employment as alleged herein.
- 8 11. Any and all other economic, non-economic and consequential damages to the fullest
9 extent recoverable under California law, according to proof.
- 10 12. All equitable relief permitted under California law, according to proof.
- 11 13. Attorney's fees to the fullest extent permitted under California law, according to proof.
- 12 14. Costs to the fullest extent permitted under California law.
- 13 15. Prejudgment interest to the fullest extent permitted under California law.
- 14 16. Post-judgment interest, as applicable, and to the fullest extent permitted under California
15 law.
- 16 17. For such further relief as the court deems just and proper as permitted under California
17 law.

18 **PAGA Cause of Action**

- 19 1. All civil penalties recoverable under the PAGA for violations of the Labor Code, the
20 applicable Industrial Wage Order(s), and/or applicable regulations, local law/ordinances.
21 To the extent required by the PAGA, the civil penalties recovered on behalf of all
22 aggrieved employees shall be distributed seventy-five percent (75%) to the LWDA and
23 the remaining twenty-five percent (25%) distributed to Plaintiff and all similarly
24 aggrieved employees.
- 25 2. All unpaid/underpaid wages and/or other pay (including regular wages, overtime wages,
26 minimum wages, premium pay wages, split-shift wages, continuing wages) which are
27 recoverable under the PAGA, if any.
- 28 3. Attorneys' fees and/or costs to the full extent permitted under the PAGA, the Labor Code,

- 1 the applicable Industrial Wage Order and/or other applicable California law, according to
2 proof.
- 3 4. Prejudgment interest to the fullest extent permitted under California law, according to
4 proof.
- 5 5. Post-judgment interest if applicable, to the fullest extent permitted by California law,
6 according to proof.
- 7 6. For such further relief as the court deems just and proper as permitted under California
8 law.

9 **Unfair Business Practices Cause of Action**

- 10 1. Full restitution of all monies withheld, acquired and/or converted by Defendants by
11 means of unlawful and/or unfair business practices prohibited by Bus. & Prof. Code §
12 17200.
- 13 2. A preliminary and permanent injunction prohibiting Defendants from engaging in the
14 unlawful and/or unfair employment practices complained of herein.
- 15 3. The appointment of a receiver, as necessary, to establish the total monetary relief sought
16 from Defendants.
- 17 4. Attorneys' fees and costs to the fullest extent permitted under California law, according to
18 proof.
- 19 5. Prejudgment interest to the fullest extent permitted under California law, according to
20 proof.
- 21 6. Post-judgment interest if applicable, to the fullest extent permitted under California law,
22 according to proof.
- 23 7. For such further relief as the court deems just and proper as permitted under California
24 law.

25 **FEHA Causes of Action**

- 26 1. Economic, non-economic and consequential damages to the fullest extent permitted under
27 California law, according to proof;
- 28 2. Punitive damages to the fullest extent permitted under Civil Code § 3294, according to

- 1 proof;
- 2 3. Attorney's fees to the fullest extent permitted under Gov. Code § 12965(b), according to
- 3 proof;
- 4 4. Costs (including expert witness fees) to the fullest extent permitted under Gov't Code §
- 5 12965(b), CCP § 998 and/or CCP § 1032, according to proof;
- 6 5. Prejudgment interest to the fullest extent permitted under California law, including but
- 7 not limited to Civil Code § 3287(b), Civil Code § 3288, Civil Code § 3289, CCP § 998,
- 8 CCP § 1032, and/or CCP § 3291;
- 9 6. Post-judgment interest if applicable, to the fullest extent permitted by law and according
- 10 to proof;
- 11 7. For such further relief as the court deems just and proper as permitted under California
- 12 law.

13 Dated: November 21, 2021

MOORADIAN LAW, APC

14 By: Zorik Mooradian

15 Zorik Mooradian

16 Andrina G. Hanson

17 Nanor C. Kamberian

18 Attorney for Plaintiffs

19 **DEMAND FOR A JURY TRIAL**

20 Plaintiffs, CARLOS CRUZ and NATALIO CERVANTES hereby demand a jury trial in

21 the within matter.

22 Dated: November 21, 2021

MOORADIAN LAW, APC

23 By: Zorik Mooradian

24 Zorik Mooradian

25 Andrina G. Hanson

26 Nanor C. Kamberian

27 Attorney for Plaintiff Charles D'Amelio

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