

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Daniel Murphy

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

PANUNCIO ALTAMIRANO,

Plaintiff,

vs.

GEN WESTGATE, LP; and DOES 1 to 25,
inclusive,

Defendants.

) CASE NO.: **21STCV43406**

) **COMPLAINT FOR DAMAGES FOR:**

-) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**
) **2) FAILURE TO PAY MINIMUM**
) **WAGES;**
) **3) FAILURE TO PAY OVERTIME;**
) **4) FAILURE TO PROVIDE ACCURATE**
) **ITEMIZED WAGE STATEMENTS;**
) **5) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**
) **6) VIOLATION OF LABOR CODE**
) **SECTION 558;**
) **7) FAILURE TO MAINTAIN**
) **ACCURATE RECORDS;**
) **8) FAILURE TO GIVE REST BREAKS;**
) **9) FAILURE TO GIVE MEAL BREAKS;**
) **10) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) **11) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS**
) **12) FAILURE TO REIMBURSE**
) **BUSINESS EXPENSES**
) **13) RETALIATION IN VIOLATION OF**
) **LABOR CODE SECTION 1102.5;**
) **14) WRONGFUL TERMINATION IN**
) **VIOLATION OF PUBLIC POLICY;**
) **15) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200.**

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) **DEMAND FOR JURY TRIAL**
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COMES NOW Plaintiff, PANUNCIO ALTAMIRANO (hereinafter "Plaintiff"), and alleges:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants GEN WESTGATE, LP and DOES 1 to 25, inclusive, (collectively "Defendant(s)" or "GEN WESTGATE") do business in the County of Los Angeles, and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant GEN WESTGATE, LP was and is a domestic Limited Partnership organized and operating in the County of Los Angeles, State of California, and which employed Plaintiff.

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

5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of

1 that information and belief, alleges that at all times herein mentioned, each of the remaining
2 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
3 under the authority of their agency, employment, or representative capacity, with the consent
4 of his/her codefendants.

5 **GENERAL ALLEGATIONS**

6 6. Plaintiff started working for GEN WESTGATE on or around February 2017. His last
7 date of employment was on or around July 27, 2021. Plaintiff was classified as an hourly, non-
8 exempt employee and his latest rate of pay was \$18.00/hour.

9 7. It is Plaintiff's position that GEN WESTGATE has committed numerous labor code
10 violations against Plaintiff and other similarly situated aggrieved employees.

11 8. GEN WESTGATE did not provide Plaintiff and other similarly situated aggrieved
12 employees with the minimum wages to which they were entitled for all work performed and
13 did not compensate him and others for all hours worked pursuant to California Labor Code
14 sections 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and
15 consistently worked "off the clock". This is so because Plaintiff and others would consistently
16 work through their meal breaks even though that time was being deducted from their pay. The
17 latter constitutes a minimum wage violation. Moreover, there would be issues with rounding
18 down the number of hours worked and time shaving, which led to Plaintiff and others not being
19 paid for all hours worked.

20 9. Additionally, GEN WESTGATE violated Labor Code Section 351 by taking some of
21 the tips meant for employees and also deducting the tips from servers' and others' earned
22 wages. GEN WESTGATE also deducted the credit card fee from servers' and others' tips and
23 did not timely provide the credit card and even cash tips to servers and other similarly situated
24 aggrieved employees.

25 10. Due to the above "off the clock" violations and as a matter of company policy, GEN
26 WESTGATE violated Labor Code §510 because it failed to pay Plaintiff and other similarly
27 situated aggrieved employees overtime, even though they worked more than 8 hours per day,
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1 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and
2 others' actual work hours, which included the "off the clock" work as described above, entitled
3 them to overtime, however, it was not company policy to keep accurate track of all hours
4 worked and to pay employees overtime.

5 11. GEN WESTGATE violated Labor Code § 226.7 along with Industrial Welfare
6 Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated
7 aggrieved employees 10-minute rest periods for every four hours of work, or majority portion
8 thereof, throughout their employment. GEN WESTGATE did not completely relieve Plaintiff
9 of all duty during said rest periods. GEN WESTGATE did not pay to Plaintiff one additional
10 hour of pay at Plaintiff's regular rate of compensation for each workday that one or more
11 statutory rest periods was not provided. Rest breaks were not authorized or enforced at the
12 restaurant. In fact, it was not part of GEN WESTGATE's culture for employees such as
13 Plaintiff and others to take at least one 10-minute rest break every day wherein they are
14 relieved of all work duties. The latter was due to understaffing of servers and the fast-paced
15 restaurant work environment. Taking rest breaks meant employees were leaving tables
16 unattended and that could not happen. Additionally, Plaintiff did not have anyone to cover him
17 as a Kitchen Manager for any rest breaks.

18 12. GEN WESTGATE also violated Labor Code §§ 512 and 226.7 along with Industrial
19 Welfare Commission Wage Order No. 5 because it failed to provide Plaintiff and other
20 similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for
21 every five (5) hours of work throughout their employment, and Plaintiff did not validly waive
22 said meal periods. GEN WESTGATE did not completely relieve Plaintiff of all duties during
23 said meal periods. GEN WESTGATE did not pay to Plaintiff one additional hour of pay at
24 Plaintiff's regular rate of compensation for each workday that one or more statutory meal
25 periods was not provided. If GEN WESTGATE had Plaintiff sign a meal period waiver, it
26 would not be valid and enforceable since Plaintiff and others generally worked more than a 6-
27 hour shift. If GEN WESTGATE had Plaintiff sign an on-duty meal period agreement wherein
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1 Plaintiff agreed to work through his meal period, it would also be invalid and unenforceable
2 because the nature of Plaintiff's job as a server does not prevent him from taking a meal period.
3 As such, Plaintiff and others never received statutory, timely meal periods during their
4 employment. As was the case with rest periods, meal breaks were definitively not part of the
5 GEN WESTGATE's culture. The meal periods were not authorized and were not enforced.
6 Furthermore, and as alluded to above, Plaintiff would consistently clock out for his meal
7 breaks but work through them since he did not have coverage and nobody to cover him while
8 he was on his meal breaks. There was a second employee that would come later to help out, but
9 this meant that Plaintiff was consistently not receiving timely, uninterrupted meal periods
10 wherein he was relieved of all work duties. In fact, Plaintiff was clearly working "off the
11 clock" in these instances and is owed not only a meal period premium, but minimum wages
12 (along with liquidated damages for the minimum wage violations).

13 13. Furthermore, during the relevant time period, GEN WESTGATE failed to pay Plaintiff
14 and other similarly situated aggrieved employees all wages due to them within any time period
15 specified by California Labor Code section 204, including the minimum wages and overtime as
16 described above as well as meal/rest break premiums. In addition, employees, including
17 Plaintiff were paid very late as Plaintiff went a full month after starting his employment before
18 getting paid.

19 14. GEN WESTGATE was also in violation of California Labor Code section 226(a) by
20 not providing access to paystubs and failing to include pertinent information on the wage
21 statements, including but not limited to, all hours worked, tips earned, gross wages earned, net
22 wages earned, all deductions, premium payments for meal and rest breaks, the correct legal
23 name and address of the employing entity, the correct beginning and end of the pay period, all
24 applicable hourly rates, and all identifying employee information, among other items. As such,
25 GEN WESTGATE did not provide Plaintiff and other similarly situated aggrieved employees
26 with complete, accurate itemized wage statements.

27 15. GEN WESTGATE violated Labor Code § 203 because it willfully failed to pay
28 Plaintiff and other similarly situated aggrieved employees earned and due wages upon

1 separation of employment, either immediately upon involuntary termination, or within 72
2 hours of resignation. After Plaintiff stopped working at GEN WESTGATE and after
3 Plaintiff's employment with GEN WESTGATE ended, GEN WESTGATE failed and refused
4 to pay all wages earned and due immediately upon separation. These earned but unpaid wages
5 include compensation for all hours worked including minimum wages and overtime
6 compensation and premiums for the missed meal and rest breaks.

7 16. During the relevant time period, GEN WESTGATE also failed to keep accurate and
8 complete payroll records showing the actual hours worked per day (including the time for meal
9 periods) and the wages paid to Plaintiff and other aggrieved employees pursuant to California
10 Labor Code sections 1174(d).

11 17. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
12 business-related expenses and costs that were not reimbursed by GEN WESTGATE. These
13 costs include, but are not limited to, use of personal cell phones for work purposes and certain
14 tools that Plaintiff brought from home to use on the job. Accordingly, GEN WESTGATE was
15 in violation of California Labor Code sections 2800 and 2802.

16 18. Moreover, GEN WESTGATE failed to provide Worker's Compensation coverage for
17 Plaintiff and other aggrieved employees in violation of Labor Code Section 3700.5. Plaintiff also
18 has claims under Labor Code Section 1102.5 as he was terminated following a refusal to sign a
19 false statement at the workplace, which was essentially fabricated allegations of wrongful
20 conduct by Plaintiff at the workplace. Since Plaintiff did not want to sign a document that was
21 fraudulent and that contained false information. Plaintiff was terminated from his employment.

22
23 **FIRST CAUSE OF ACTION**

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

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

27 **(Plaintiff against all named defendants and all DOE defendants)**
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1 19. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 18, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

15 24. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
16 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
17 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
18 reasonable attorney's fees and costs of suit.

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

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY MINIMUM WAGES**

25 **(California Labor Code Sections 1194, 1194.2, 1197)**

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

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

2 27. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
3 to suffer or permit a California employee to work without paying wages at the minimum wage
4 rate for all hours worked as required by the applicable Industrial Welfare Commission
5 (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations, Title
6 8, Section 11050, subdivision 4.

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

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

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

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

25 32. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
26 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
27 trial.
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THIRD CAUSE OF ACTION

FAILURE TO PAY OVERTIME

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

(Plaintiff against all named defendants and all DOE defendants)

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

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

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

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

37. Plaintiff was entitled to the above overtime premiums.

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

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

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

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

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

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

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

13 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

49. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained damages, including loss of earnings, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs and attorney's fees pursuant to statute.

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES OWED EVERY PAY PERIOD

(California Labor Code Section 204)

(Plaintiff against all named defendants and all DOE defendants)

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

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

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

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

and rest breaks.

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

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

SIXTH CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTION 558

(California Labor Code Section 558)

(Plaintiff against all named defendants and all DOE defendants)

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

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

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

- a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular

1 wages, including minimum wages for all hours worked and overtime wages for
2 overtime hours worked. As such, Defendants violated Section 558 under which
3 penalties are due. Plaintiff therefore prays for penalties of \$50.00 for the first pay
4 period and \$100.00 for each subsequent violation for each pay period for which
5 Plaintiff was underpaid in addition to an amount sufficient to recover underpaid
6 wages.

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8 b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for
9 relief associated with Plaintiff's prosecution of this cause of action under California
10 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
11 paying Plaintiff for his overtime hours worked and minimum wages for all hours
12 worked.

13
14 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
15 fees for relief associated with Plaintiff's prosecution of this cause of action under
16 California Labor Code Sections 200, et seq.

17 60. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under
18 the statutes, regulations, and wage orders alleged in this cause of action along with any
19 allowable interest, penalties, attorney's fees, and costs according to proof at trial.

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

22 **SEVENTH CAUSE OF ACTION**

23 **FAILURE TO MAINTAIN ACCURATE RECORDS**

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

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

26 62. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 61, inclusive, of this Complaint as though fully set forth herein.
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1 63. Labor Code section 1174(d) requires that employers, including Defendants, maintain
2 accurate records showing the hours worked daily by its employees and to whom wages were
3 paid.

4 64. Additionally, the “Records” section of the applicable IWC Wage Order obligates the
5 employer, including Defendants, to keep accurate information with respect to each one of their
6 employees including, but not limited to, the total wages paid each payroll period, and time
7 records showing when the employee begins and ends each work period, meal periods, split
8 shift intervals; the total daily hours worked; the total hours worked in the payroll period, and
9 the applicable rates of pay.

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

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

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

20 **EIGHTH CAUSE OF ACTION**

21 **FAILURE TO GIVE REST BREAKS**

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

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

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

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

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

- b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each workday that the rest period is not provided;
- c. Title 8 of the California Code of Regulations sections 11050(20)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- d. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at employee's regular rate of compensation for each work day that the rest period is not provided.

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

71. Under this cause of action, Plaintiff prays for wages due to him under the statutes,

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

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

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

9 10 **NINTH CAUSE OF ACTION**

11 **FAILURE TO GIVE MEAL BREAKS**

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

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

15 75. Plaintiff brings this cause of action under the following laws, for the following
16 reasons:
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- 18 a. California Labor Code section 512(a), which requires that employees be given a 30-
19 minute uninterrupted meal break after five (5) hours of work, and a second
20 uninterrupted meal break after ten (10) hours of work;
- 21 b. California Labor Code section 226.7, which states that (a) no employer shall require
22 any employee to work during any meal period mandated by an applicable order of
23 the Industrial Welfare Commission, and (b) if any employer fails to provide an
24 employee a meal period in accordance with an applicable order of the Industrial
25 Welfare Commission, the employer shall pay the employee one (1) additional hour
26 of pay at the employee's regular rate of compensation for each workday that the
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meal period is not provided;

- c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11050, which states that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11050, which requires an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as codified under California Code of Regulations Section 11050, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5) as enforceable law.

76. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order No. 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of all work

1 duty. California Labor Code section 226.7 provides that employers may not require their
2 employees to work through their meal periods. California Labor Code section 226.7 and
3 California Code of Regulations section 11050 requires that if the employer fails to provide the
4 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
5 of pay for each work day that the meal period is not given.

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

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

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

15
16 **TENTH CAUSE OF ACTION**

17 **PRIVATE ATTORNEYS GENERAL ACT**

18 **Individual and Representative Claim for PAGA penalties under California Labor Code**
19 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 351, 353, 510, 512, 558,**
1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5)

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

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

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

26 82. Pursuant to California Labor code section 2699.3, no response was received from the
27 LWDA within 65 days of the postmark date of the above-alleged letter.
28

1 83. Plaintiff therefore has exhausted all administrative remedies required of him under
2 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
3 cause of action and pursue penalties in a representative action for Defendants' violations of the
4 Labor Code.

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

11 85. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
12 violator and had one or more of the alleged violations committed against him, and therefore is
13 properly suited to represent the interests of other current and former hourly, non-exempt
14 employees who worked for GEN WESTGATE during the relevant PAGA Period.

15 86. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks
16 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
17 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

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

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

24 89. California Labor Code section 558 establishes a civil penalty as follows: Any
25 employer or other person action on behalf of an employer who violates, or causes to be
26 violated, a section of this chapter or any provision regulating hours and days of work in any
27 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
28

1 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
2 dollars (\$50) for each underpaid employee for each pay period for which the employee was
3 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
4 employee for each pay period for which the employee was underpaid...

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

9
10 91. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
11 the following:

12 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
13 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5
14 via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage
15 Order Provisions (no. 5) violated based on the facts alleged in this Complaint.

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

20 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

26 94. Pursuant to California Labor Code Section 201(a), an employer who discharges an
27 employee must immediately pay for all compensation due and owing.
28

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

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

9 97. After Plaintiff's employment with Defendants ended, Defendants willfully
10 refused and continue to refuse to pay him unpaid wages as required by Labor Code Section
11 203.

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

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

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

22 **TWELFTH CAUSE OF ACTION**

23 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

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

27 102. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
28

1 employee for all necessary expenditures or losses incurred by the employee in direct
2 consequence of the discharge of his or her duties.”

3 103. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
4 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
5 of completing his job duties, which were not reimbursed by Defendant. These expenses
6 include, but are not limited use of personal cell phones for work purposes and certain
7 tools that Plaintiff brought from home to use on the job.

8 104. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
9 and attorney’s fees and costs, under Labor Code section 2802.

10
11 **THIRTEENTH CAUSE OF ACTION**

12 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

13 **(Plaintiff against All Named Defendants and DOE Defendants, and each of them)**

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

16 106. At all times material to this Complaint, California Labor Code § 1102.5 was in effect
17 and binding on Defendants. This section requires Defendants to refrain from
18 retaliating against an employee for refusing to participate in an activity that he/she reasonably
19 believes would result in a violation of state or federal statute, or a violation or
20 noncompliance with a state or federal rule or regulation. California Labor Code section
21 1102.5 also requires Defendants to refrain from retaliating against an employee for disclosing
22 information to a person with authority over the employee if the employee has reasonable cause
23 to believe that the information discloses a violation of state or federal statute, or a violation of
24 or noncompliance with a local, state, or federal rule or regulation, regardless of whether
25 disclosing the information is part of the employee’s job duties.

26
27 107. As discussed above, Plaintiff refused to sign what he believed to be a fraudulent
28

document with false information.

108. Defendant GEN WESTGATE retaliated against Plaintiff for his whistleblowing conduct, as alleged above, all in violation of Labor Code § 1102.5.

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

110. Plaintiff requests all available relief under Labor Code § 1102.5 including damages and the imposition of civil penalties of \$10,000 for each violation as well as attorneys fees.

FOURTEENTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Against All Named Defendants and all DOE Defendants)

111. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 110, inclusive, of this Complaint as though fully set forth herein.

112. At all times during his employment with Defendant GEN WESTGATE, Plaintiff performed his duties with the utmost diligence and competence.

113. Plaintiff is informed and believes and thereon alleges that Defendants' decisions and actions to treat him differently and ultimately terminate him as alleged herein, was motivated by Plaintiff's whistleblowing and refusal to sign a fraudulent document at work. Defendant GEN WESTGATE intentionally created the aforementioned retaliation, thereby not giving Plaintiff an opportunity to work in an environment free of retaliation.

114. The employment of Plaintiff was constructively wrongfully terminated on July 27, 2021 in violation of the fundamental public policy of the State of California with respect to retaliating against an employee on account of his whistleblowing. Moreover, Plaintiff was

1 forced to hire an attorney to assist him to end these illegal activities. Said conduct violated
2 statutory and constitutional expressions of public policy including, the California Labor Code
3 and the California Constitution, Article 1 section 8.

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

10 116. As a direct and proximate result of the aforementioned acts and omissions of
11 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
12 loss of income (past and future), loss of employment benefits (past and future), general and
13 compensatory damages (past and future), mental pain and anguish and emotional distress (past
14 and future), and will continue to suffer in the future, in an amount to be proved at trial.

15 117. The foregoing conduct engaged in by Defendants and each of their directors, officers
16 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
17 and carried on with a conscious and willful disregard of their workers' right to work in an
18 environment free of retaliation due to whistleblowing, so as to justify the imposition of
19 punitive damages to punish and set an example of said Defendants.
20

21 **FIFTEENTH CAUSE OF ACTION**

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

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

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

25 118. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 117, inclusive, of this Complaint as though fully set forth herein.

27 119. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
28

1 constitutes unfair and unlawful business practices under California Business and Professions
2 Code Section 17200, et seq.

3 120. Defendant's violations of California labor laws and the Labor Code constitutes a
4 business practice because it was done repeatedly over a significant period of time in a
5 systematic manner that was detrimental to Plaintiff and others.

6 121. For the four years preceding the filing of this action, Plaintiff has suffered damages
7 and request damages and/or restitution of all monies and profits to be disgorged from
8 Defendant GEN WESTGATE in an amount according to proof at time of trial, but in excess of
9 the jurisdiction of this Court.

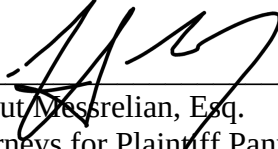
10 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
11 follows:

- 12 1. For compensatory damages including lost past and future wages, regular wages,
13 overtime, and all other sums of money, including employment benefits, together
14 with interest on said amounts, and any other economic injury to Plaintiff, according to
15 proof;
- 16 2. For general damages according to proof;
- 17 3. For special and consequential damages to the extent allowed by law;
- 18 4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
19 at trial;
- 20 5. For an award of punitive damages against Defendants according to proof;
- 21 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
22 subject to proof at trial;
- 23 7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
24 proof at trial;
- 25 8. For restitution and disgorgement for all unfair business practices by Defendants
26 against Plaintiff in an amount subject to proof at trial;
- 27
- 28

9. For an order enjoining Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
12. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and representative PAGA claim;
13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law via PAGA;
14. For the imposition of civil penalties and/or statutory penalties;
15. For all interest as allowed by law;
16. For all costs and disbursements incurred in this suit;
17. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, Labor Code section 1102.5, and/or other applicable laws; and
18. For such other and further relief as this Court may deem proper.

DATED: November 26, 2021

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Panuncio Altamirano

DEMAND FOR JURY TRIAL

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

DATED: November 26, 2021

MESSRELIAN LAW INC.

By 

Harout Messrelian, Esq.
Attorneys for Plaintiff Panuncio Altamirano