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by Superior Court of California, County of San Mateo  
ON 3/22/2022  
By /s/ Una Finau  
Deputy Clerk

Attorneys for Plaintiff ORLANDO PEREZ AVALOS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN MATEO**

ORLANDO PEREZ AVALOS,

Plaintiff,

vs.

MILAGROS RESTAURANT LLC;  
GREGORY HAROLD ST. CLAIRE; and  
DOES 1 to 25, inclusive,

Defendants.

) CASE NO. 22-CIV-01222

) **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) **FAILURE TO PROVIDE**  
) **PERSONNEL RECORDS;**  
) 14) **FAILURE TO PROVIDE PAY**  
) **RECORDS;**  
) 15) **RETALIATION IN VIOLATION OF**  
) **LABOR CODE SECTION 98.6;**  
) 16) **RETALIATION IN VIOLATION OF**  
) **LABOR CODE SECTION 1102.5;**

1 ) 17) WRONGFUL TERMINATION IN  
2 ) VIOLATION OF PUBLIC POLICY;  
3 ) 18) VIOLATION OF CALIFORNIA  
4 ) BUSINESS AND PROFESSIONS  
5 ) CODE SECTION 17200.  
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DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, ORLANDO PEREZ AVALOS (hereinafter "Plaintiff"), and alleges:

**PARTIES, JURISDICTION, VENUE**

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of San Mateo in this judicial district because Defendants MILAGROS RESTAURANT LLC; GREGORY HAROLD ST. CLAIRE and DOES 1 to 25, inclusive, (collectively "Defendant(s)" or "MILAGROS") do business in the County of San Mateo, and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's damages sought herein exceed \$25,000.

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

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant MILAGROS RESTAURANT LLC was and is a domestic limited liability company, operating in the County of San Mateo, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that all times herein mentioned, Defendant GREGORY HAROLD ST. CLAIRE is and was a resident of the County of San Mateo, State of California and was the owner, director, and/or managing agent of MILAGROS RESTAURANT LLC, who was personally involved in the day-to-day activities of the business and hence controlled the wages, hours, and working conditions of Plaintiff and other aggrieved employees.

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or

1 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues  
2 them by these fictitious names. Plaintiff is informed and believes that each of the DOE  
3 defendants, numbers 1 to 25, reside in the State of California and are in some manner  
4 responsible for the conduct alleged herein. Upon discovering the true names and capacities of  
5 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names  
6 and capacities of these fictitiously named defendants. Unless otherwise alleged in this  
7 complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at  
8 all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter  
9 alleged, were acting within the course, scope, and under the authority of their agency,  
10 employment, or representative capacity, with the consent of his/her codefendants.

#### 12 **GENERAL ALLEGATIONS**

13 6. Plaintiff started working for MILAGROS as a bartender on or around April 2021.  
14 Plaintiff was classified as an hourly, non-exempt employee and earned approximately  
15 \$15.00/hour. Plaintiff's employment ended on or around late September 2021.

16 7. It is Plaintiff's position that MILAGROS has committed numerous labor code  
17 violations against Plaintiff and other hourly, non-exempt aggrieved employees.

18 8. MILAGROS did not provide Plaintiff and other similarly situated aggrieved employees  
19 with the minimum wages to which they were entitled for all work performed and did not  
20 compensate her and others for all hours worked pursuant to California Labor Code sections  
21 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and consistently  
22 worked "off the clock". This is so because Plaintiff and others would consistently be required  
23 to perform work duties after clocking out for work and required to stay past their shifts.  
24 Management/ownership would have Plaintiff and others clock out first and then complete end  
25 of the shift tasks. Moreover, MILAGROS had a policy and practice of rounding down hours  
26 worked and "time shaving", which led to Plaintiff and others not being paid for all hours  
27 worked, which would include the minimum wage. Moreover, to the extent employees such as  
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1 Plaintiff and others worked through their meal periods, they were not compensated for that  
2 time, which would be akin to a minimum wage violation.

3 9. Additionally, MILAGROS violated Labor Code Section 351 by taking some of the tips  
4 meant for employees and also deducting the tips from Plaintiff's and others' earned wages.  
5 MILAGROS also deducted the credit card fee from Plaintiff's and others' tips and did not  
6 timely provide the credit card and even cash tips to Plaintiff and other similarly situated  
7 aggrieved employees.

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

15 11. MILAGROS violated Labor Code § 226.7 along with Industrial Welfare Commission  
16 Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated aggrieved  
17 employees 10-minute rest periods for every four hours of work, or majority portion thereof,  
18 throughout their employment. MILAGROS did not completely relieve Plaintiff of all duty  
19 during said rest periods. MILAGROS did not pay to Plaintiff one additional hour of pay at  
20 Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods  
21 was not provided. Rest breaks were not authorized or enforced at the restaurant. In fact, it was  
22 not part of MILAGROS's culture for employees such as Plaintiff and others to take at least one  
23 10-minute rest break every day wherein they are relieved of all work duties. The latter was due  
24 to understaffing of servers/bartenders and bartenders such as Plaintiff being too busy to be able  
25 to take rest breaks or not being able to take rest breaks because there was no coverage at the bar.  
26 Taking rest breaks meant leaving customers unattended and that could not happen.

27 12. MILAGROS also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare  
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Commission Wage Order No. 5 because it failed to provide Plaintiff and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment, and Plaintiff did not validly waive said meal periods. MILAGROS did not completely relieve Plaintiff of all duties during said meal periods. MILAGROS did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory meal periods was not provided. If MILAGROS had Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff and others generally worked more than a 6-hour shift. If MILAGROS had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through his meal period, it would also be invalid and unenforceable because the nature of Plaintiff's job as a bartender does not prevent him from taking a meal period. As such, Plaintiff and others never received statutory, timely meal periods during their employment. In other words, there was never an uninterrupted 30-minute meal period for any employees, including Plaintiff, that was taken before the 5<sup>th</sup> hour worked. As was the case with rest periods, meal breaks were definitively not part of the MILAGROS's culture, especially in a fast-paced restaurant environment. The meal periods were not authorized and were not enforced. Furthermore, Plaintiff was not able to take a meal period because there was no one to relieve him of his job duties as a bartender and no one to cover the bar if Plaintiff was to attempt to take any type of statutory break.

13. Furthermore, during the relevant time period, MILAGROS failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including the minimum wages and overtime as described above as well as meal/rest break premiums.

14. Moreover, Plaintiff and others were paid late and more than 7 calendar days after the end of the pay period in contravention of Labor Code Section 204. MILAGROS was also in violation of California Labor Code section 226(a) by not providing access to paystubs and failing to include pertinent information on the wage statements, including but not limited to, all hours worked, tips earned, gross wages earned, net wages earned, all deductions, premium payments

1 for meal and rest breaks, the correct legal name and address of employing entity (in fact,  
2 Plaintiff's pay stubs reflect the name MILAGROS, LLC and not the true and correct name of  
3 MILAGROS RESTAURANT, LLC which is a facial violation), the correct beginning and end  
4 of the pay period, all applicable hourly rates, and all identifying employee information, among  
5 other items. As such, MILAGROS did not provide Plaintiff and other similarly situated  
6 aggrieved employees with complete, accurate itemized wage statements.

7 15. MILAGROS violated Labor Code § 203 because it willfully failed to pay Plaintiff and  
8 other similarly situated aggrieved employees earned and due wages upon separation of  
9 employment, either immediately upon involuntary termination, or within 72 hours of resignation.  
10 After Plaintiff stopped working at MILAGROS and after Plaintiff's employment with  
11 MILAGROS ended, MILAGROS failed and refused to pay all wages earned and due  
12 immediately upon separation. These earned but unpaid wages include compensation for all hours  
13 worked including minimum wages and overtime compensation, tips, and premiums for the  
14 missed meal and rest breaks.

15 16. During the relevant time period, MILAGROS also failed to keep accurate and complete  
16 payroll records showing the actual hours worked per day (including the time for meal periods)  
17 and the wages paid to Plaintiff and other aggrieved employees pursuant to California Labor Code  
18 sections 1174(d). Additionally, during the relevant time period, Plaintiff and others incurred  
19 necessary, business-related expenses and costs that were not reimbursed by MILAGROS. These  
20 costs include, but are not limited to, the cost of uniforms. Accordingly, MILAGROS was in  
21 violation of California Labor Code sections 2800 and 2802.

22 17. Moreover, MILAGROS failed to provide sick pay pursuant to Labor Code section 246  
23 and also failed to provide Worker's Compensation coverage for Plaintiff and other aggrieved  
24 employees in violation of Labor Code Section 3700.5.

25 18. Plaintiff also has claims under Labor Code Sections 1102.5 and 98.6 (in addition to  
26 wrongful termination in violation of public policy) in that he was terminated from his  
27 employment and reprimanded with a write-up for attempting to take a statutory break to which  
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1 he was legally entitled, but not provided by the company for the reasons given above.

2 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

21 24. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and  
22 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is  
23 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus  
24 reasonable attorney's fees and costs of suit.

25 25. 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 which will equal an  
27 amount known to Plaintiff once he has obtained all of his payroll records from  
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Defendants.

**SECOND CAUSE OF ACTION**

**FAILURE TO PAY MINIMUM WAGES**

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

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

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

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

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

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

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

31. For all hours worked by Plaintiff for which he was paid less than the minimum wage rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum

1 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount  
2 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,  
3 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

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

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8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME**

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

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

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

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

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

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

27 37. Plaintiff was entitled to the above overtime premiums.  
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1 38. Defendants did not pay Plaintiff premium wages of at least one and one-half times  
2 Plaintiff's regular rate of pay for hours worked past eight (8) in a day or two times Plaintiff's  
3 regular rate of pay for hours worked past twelve (12) in a day.

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

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

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

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

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

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

20 **FOURTH CAUSE OF ACTION**

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

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

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

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

26 46. Pursuant to California Labor Code Section 226, every employer must furnish each  
27 employee an itemized statement of wages and deductions at the time of payment of wages.  
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1 47. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that  
2 accurately reflected all information required by Labor Code Section 226, including but not  
3 limited to, gross wages earned, including overtime, net wages earned, total hours worked by  
4 the employee, all deductions, and premium pay for missed meal breaks and rest breaks.  
5 Therefore, Defendants failed to maintain and provide accurate itemized wage statements to  
6 Plaintiff in accordance with California Labor Code Section 226(a).

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

16 **SIXTH CAUSE OF ACTION**

17 **VIOLATION OF LABOR CODE SECTION 558**

18 **(California Labor Code Section 558)**

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

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

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

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

- 7 a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular  
8 wages, including minimum wages for all hours worked and overtime wages for  
9 overtime hours worked. As such, Defendants violated Section 558 under which  
10 penalties are due. Plaintiff therefore prays for penalties of \$50.00 for the first pay  
11 period and \$100.00 for each subsequent violation for each pay period for which  
12 Plaintiff was underpaid in addition to an amount sufficient to recover underpaid  
13 wages.  
14
- 15 b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for  
16 relief associated with Plaintiff's prosecution of this cause of action under California  
17 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not  
18 paying Plaintiff for his overtime hours worked and minimum wages for all hours  
19 worked.  
20
- 21 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's  
22 fees for relief associated with Plaintiff's prosecution of this cause of action under  
23 California Labor Code Sections 200, et seq.

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

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

**SEVENTH CAUSE OF ACTION**

**FAILURE TO MAINTAIN ACCURATE RECORDS**

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

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

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

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

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

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

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

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

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**EIGHTH CAUSE OF ACTION**

**FAILURE TO GIVE REST BREAKS**

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

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

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

- a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which provides that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each workday that the rest period is not provided;
- c. Title 8 of the California Code of Regulations sections 11050(20)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- d. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial

1 Welfare Commission, the employer shall pay the employee one (1) additional hour  
2 of pay at employee's regular rate of compensation for each work day that the rest  
3 period is not provided.

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

7 71. Under this cause of action, Plaintiff prays for wages due to him under the statutes,  
8 regulations, and wage orders alleged in this cause of action along with any allowable interest,  
9 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for  
10 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.  
11

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

14 73. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
15 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
16 trial.  
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## 18 **NINTH CAUSE OF ACTION**

### 19 **FAILURE TO GIVE MEAL BREAKS**

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

21 74. Plaintiff re-alleges and incorporates by reference each and every allegation in  
22 paragraphs 1 through 73, inclusive, of this Complaint as though fully set forth herein.  
23

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

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

- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission, and (b) if any employer fails to provide an employee a meal 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 the employee's regular rate of compensation for each workday that the 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.

1 76. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks  
2 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to  
3 take a second relieved meal break after ten (10) hours of work, as required by California law.  
4 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.  
5 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that  
6 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and  
7 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work  
8 duty. California Labor Code section 226.7 provides that employers may not require their  
9 employees to work through their meal periods. California Labor Code section 226.7 and  
10 California Code of Regulations section 11050 requires that if the employer fails to provide the  
11 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour  
12 of pay for each work day that the meal period is not given.  
13

14 77. Under this cause of action, Plaintiff prays for wages due to him under the statutes,  
15 regulations, and wage orders alleged in this cause of action along with any allowable interest,  
16 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for  
17 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.  
18

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

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

#### 24 **TENTH CAUSE OF ACTION**

#### 25 **PRIVATE ATTORNEYS GENERAL ACT**

26 **Individual and Representative Claim for PAGA penalties under California Labor Code**  
27 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 232, 246, 351, 353, 510, 512,**  
28 **558, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5)**

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

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

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

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

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

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

18 85. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged  
19 violator and had one or more of the alleged violations committed against him, and therefore is  
20 properly suited to represent the interests of other current and former hourly, non-exempt  
21 employees who worked for MILAGROS at all locations in the state of California during the  
22 relevant PAGA Period.

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

26 87. Plaintiff therefore has exhausted all administrative remedies required of him under  
27  
28

1 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this  
2 cause of action and pursue penalties in a representative action for Defendants' violations of the  
3 Labor Code.

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

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

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

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

20 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,  
21 226.3, 226.7, 232, 246, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802,  
22 3700.5 via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission  
23 Wage Order Provisions (no. 5) violated based on the facts alleged in this Complaint.

24 92. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,  
25 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved  
26 employees as alleged herein in an amount to be shown according to proof at trial and within the  
27 jurisdictional limits of this Court.  
28

**ELEVENTH CAUSE OF ACTION**

**FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

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

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

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

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

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

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

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

98. 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. Moreover, Plaintiff prays for the above-mentioned money from 1 year immediately preceding the filing of this lawsuit.

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

100. Under this cause of action, Plaintiff prays for penalties due under the statutes

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

3 **TWELFTH CAUSE OF ACTION**

4 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

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

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

11 103. Beginning at least 3 years prior to the filing of this complaint, in order to discharge  
12 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course  
13 of completing his job duties, which were not reimbursed by Defendant. These expenses  
14 include, but are not limited to, the cost of uniforms.

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

17 **THIRTEENTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE PERSONNEL RECORDS**

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

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

22 106. Labor Code section 1198.5 dictates "every current and former employee, or his or her  
23 representative, has the right to inspect and receive a copy of the personnel records that the  
24 employer maintains relating to the employee's performance or to any grievance concerning the  
25 employee."  
26  
27  
28

1 107. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the employer  
2 shall make the contents of those personnel records available for inspection to the current or  
3 former employee, or his or her representative, at reasonable intervals and at reasonable  
4 times...” On information and belief, Defendants intentionally failed to provide Plaintiff with  
5 personnel records when requested by Plaintiff via letter on October 30, 2021, as required by  
6 law. Plaintiff requested his personnel records in accordance with California Labor Code  
7 section 1198.5(k) on October 30, 2021, via U.S. certified mail, return receipt requested. .  
8

9 108. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his  
10 records within 30 days. As a direct result of Defendants’ violations alleged herein, Plaintiff has  
11 suffered and continues to suffer substantial losses related to Defendants’ failure to provide  
12 personnel records.

13 109. Plaintiff seeks all available remedies for Defendants’ violations including, but not  
14 limited penalties, and costs to the extent permitted by law and according to proof at trial.  
15 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants  
16 in the amount of \$750.00, along with costs and attorney’s fees.

17 **FOURTEENTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE PAY RECORDS**

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

20  
21 110. Plaintiff re-alleges and incorporates by reference each and every allegation in  
22 paragraphs 1 through 109, inclusive, of this Complaint as though fully set forth herein.

23 111. Labor Code section 226 sub-section (b) dictates “an employer...shall afford current  
24 and former employees the right to inspect or copy records pertaining to their employment,  
25 upon reasonable request to the employer...”

26 112. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer who  
27 receives a written or oral request to inspect or copy records pursuant to subdivision (b)  
28

1 pertaining to a current or former employee shall comply with the request as soon as  
2 practicable, but no later than 21 calendar days from the date of the request.” On information  
3 and belief, Defendants intentionally failed to provide Plaintiff with pay records when requested  
4 by Plaintiff via certified letter, return receipt requested, on October 30, 2021, and as required  
5 by law. Plaintiff requested his pay records in accordance with California Labor Code section  
6 226 on October 30, 2021, via certified mail. Defendant failed to provide Plaintiff with an  
7 opportunity to inspect or copy his pay records within 21 days.

8  
9 113. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered and  
10 continues to suffer substantial losses related to Defendants’ failure to provide pay records.  
11 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants  
12 in the amount of \$750.00, along with costs and attorney’s fees.

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

15  
16 **FIFTEENTH CAUSE OF ACTION**

17 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 98.6**

18 **(California Labor Code section 98.6)**

19 **(Plaintiff against MILAGROS RESTAURANT LLC as the corporate Defendant only and**  
20 **all DOE Defendants, and each of them)**

21 115. Plaintiff re-alleges and incorporates by reference each and every allegation in  
22 paragraphs 1 through 114, inclusive, of this Complaint as though fully set forth herein.

23 116. California Labor Code section 98.6 provides, in pertinent part, as follows:

24 “A person shall not discharge an employee or in any manner discriminate, retaliate, or  
25 take any adverse action against any employee or applicant for employment because the  
26 employee or applicant engaged in any conduct delineated in this chapter...or because  
the employee or applicant...made a written or oral complaint that he or she is owed  
unpaid wages...

27 117. In doing the things herein alleged, corporate Defendant MILAGROS RESTAURANT  
28

1 LLC violated Labor Code section 98.6 in that they retaliated against Plaintiff for attempting to  
2 take a statutory break and for complaining about labor code violations that were being  
3 committed by Defendants against him.

4 118. As a direct and proximate result of the aforementioned acts and omissions of  
5 Defendants, Plaintiff suffered general and compensatory damages, including but not  
6 limited to, loss of income (past and future), loss of employment benefits (past and future),  
7 general and compensatory damages (past and future), mental pain and anguish and emotional  
8 distress (past and future), and will continue to suffer in the future, in an amount to be proved at  
9 trial. Moreover, pursuant to Labor Code section 98.6, an employer who violates this section is  
10 liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each  
11 violation of this section.

12 119. The foregoing conduct engaged in by corporate Defendant MILAGROS  
13 RESTAURANT LLC and each of its directors, officers and/or managing agents, constitutes  
14 malice, fraud, and oppression and was authorized, ratified, and carried on with a conscious and  
15 willful disregard of their workers' right to work in an environment free of retaliation, so as to  
16 justify the imposition of punitive damages to punish and set an example of said Defendants.

## 18 **SIXTEENTH CAUSE OF ACTION**

### 19 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

20 **(Plaintiff against corporate Defendant MILAGROS RESTAURANT LLC only and DOE**  
21 **Defendants, and each of them)**

22 120. Plaintiff re-alleges and incorporates by reference each and every allegation in  
23 paragraphs 1 through 119, inclusive, of this Complaint as though fully set forth herein.

24 121. At all times material to this Complaint, California Labor Code § 1102.5 was in effect  
25 and binding on corporate Defendant MILAGROS RESTAURANT LLC. This section requires  
26 corporate Defendant to refrain from retaliating against an employee for refusing to participate  
27 in an activity that he/she reasonably believes would result in a violation of state or federal  
28

1 statute, or a violation or noncompliance with a state or federal rule or regulation. California  
2 Labor Code section 1102.5 also requires Defendants to refrain from retaliating against an  
3 employee for disclosing information to a person with authority over the employee if the  
4 employee has reasonable cause to believe that the information discloses a violation of state or  
5 federal statute, or a violation of or noncompliance with a local, state, or federal rule or  
6 regulation, regardless of whether disclosing the information is part of the employee's job  
7 duties.  
8

9 122. As discussed fully above, Plaintiff complained to Defendants about the company's  
10 illegal conduct and the labor code violations being committed against Plaintiff, including  
11 Plaintiff attempting to take a statutory and lawful break while on the job.

12 123. Corporate Defendant MILAGROS RESTAURANT LLC retaliated against Plaintiff  
13 for his whistleblowing and protected activity in trying to take a statutory break, as alleged  
14 above, all in violation of Labor Code § 1102.5.  
15

16 124. As a direct and proximate result of the aforementioned acts and omissions of  
17 corporate Defendant MILAGROS RESTAURANT LLC, Plaintiff suffered general and  
18 compensatory damages, including but not limited to, loss of income (past and future), loss of  
19 employment benefits (past and future), general and compensatory damages (past and future),  
20 mental pain and anguish and emotional distress (past and future), and will continue to suffer in  
21 the future, in an amount to be proved at trial.  
22

23 125. Plaintiff requests all available relief under Labor Code § 1102.5 including damages  
24 and the imposition of civil penalties of \$10,000 for each violation as well as attorneys fees.  
25

## 26 **SEVENTEENTH CAUSE OF ACTION**

### 27 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

28 **(Plaintiff against corporate Defendant MILAGROS RESTAURANT LLC  
only and DOE Defendants, and each of them)**

1 126. Plaintiff re-alleges and incorporates by reference each and every allegation in  
2 paragraphs 1 through 125, inclusive, of this Complaint as though fully set forth herein.

3 127. At all times during his employment with Defendant MILAGROS, Plaintiff  
4 performed his duties with the utmost diligence and competence.

5 128. Plaintiff is informed and believes and thereon alleges that Defendants' decisions and  
6 actions to treat him differently and ultimately terminate his employment as alleged herein, was  
7 motivated by Plaintiff's whistleblowing and complaints about illegal activity at the workplace  
8 as well as wage and hour violations being committed against Plaintiff, including the fact that  
9 Plaintiff attempted to take a statutory break. Defendant MILAGROS RESTAURANT LLC  
10 intentionally created the aforementioned retaliation, thereby not giving Plaintiff an opportunity  
11 to work in an environment free of retaliation.

12 129. The employment of Plaintiff wrongfully terminated on or around September 2021 in  
13 violation of the fundamental public policy of the State of California with respect to retaliating  
14 against an employee on account of his whistleblowing and in engaging in protected activity  
15 such as attempting to take a statutory break to which he is entitled. Moreover, Plaintiff was  
16 forced to hire an attorney to assist him to end these illegal activities. Said conduct violated  
17 statutory and constitutional expressions of public policy including, the California Labor Code  
18 and the California Constitution, Article 1 section 8.

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

25 131. As a direct and proximate result of the aforementioned acts and omissions of  
26 corporate Defendants, Plaintiff suffered general and compensatory damages, including but not  
27 limited to, loss of income (past and future), loss of employment benefits (past and future),  
28

1 general and compensatory damages (past and future), mental pain and anguish and emotional  
2 distress (past and future), and will continue to suffer in the future, in an amount to be proved at  
3 trial.

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

10 **EIGHTEENTH CAUSE OF ACTION**

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

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

13 **(Plaintiff against MILAGROS RESTAURANT LLC and all DOE defendants)**

14 133. Plaintiff re-alleges and incorporates by reference each and every allegation in  
15 paragraphs 1 through 132, inclusive, of this Complaint as though fully set forth herein.

16 134. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants  
17 constitutes unfair and unlawful business practices under California Business and Professions  
18 Code Section 17200, et seq.

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

22 136. For the four years preceding the filing of this action, Plaintiff has suffered damages  
23 and request damages and/or restitution of all monies and profits to be disgorged from  
24 corporate defendant MILAGROS RESTAURANT LLC in an amount according to proof at  
25 time of trial, but in excess of the jurisdiction of this Court.

26 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as  
27 follows:  
28

1. For compensatory damages including lost past and future wages, regular wages, overtime, and all other sums of money, including employment benefits, together with interest on said amounts, and any other economic injury to Plaintiff, according to proof;
2. For general damages according to proof;
3. For special and consequential damages to the extent allowed by law;
4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof at trial;
5. For an award of punitive damages against Defendants according to proof;
6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to proof at trial;
8. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiff in an amount subject to proof at trial;
9. For an order enjoining corporate 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;

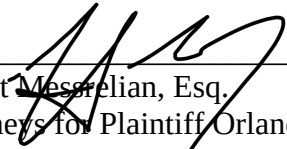
16. For all costs and disbursements incurred in this suit;

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 1102.6, the Labor Code generally; and/or other applicable laws; and

18. For such other and further relief as this Court may deem proper.

**DATED:** March 2, 2022

**MESSRELIAN LAW INC.**

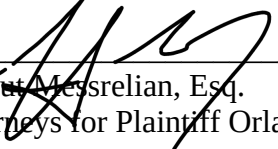
By   
Harout Messrelian, Esq.  
Attorneys for Plaintiff Orlando Perez Avalos

**DEMAND FOR JURY TRIAL**

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

**DATED:** March 2, 2022

**MESSRELIAN LAW INC.**

By   
Harout Messrelian, Esq.  
Attorneys for Plaintiff Orlando Perez Avalos