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Superior Court of California,
County of San Diego
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Attorneys for Plaintiff JUAN CARLOS TRISTAN VARGAS

SUPERIOR COURT OF CALIFORNIA
SAN DIEGO COUNTY

JUAN CARLOS TRISTAN VARGAS, an
individual,

Plaintiff,

v.

DUK MOO HAN, individually and doing
business as NOZOMI II SUSHI & BBQ; SON
A HAN, individually and doing business as
NOZOMI II SUSHI & BBQ; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: 37-2022-00004713-CU-OE-CTL

COMPLAINT FOR DAMAGES:

1. FAILURE TO PAY WAGES
2. FAILURE TO TIMELY FURNISH
ACCURATE ITEMIZED WAGE
STATEMENTS
3. UNFAIR BUSINESS PRACTICES
4. WAITING TIME PENALTIES PER
LABOR CODE §203
5. MEAL AND REST PERIOD
VIOLATIONS
6. FAILURE TO TIMELY PROVIDE A
COPY OF PAYROLL RECORDS AND
EMPLOYEE FILE
7. FAILURE TO REIMBURSE
8. PRIVATE ATTORNEYS GENERAL
ACT OF 2004 ("PAGA") PER LABOR
CODE §2699, et seq.

[IMAGED FILE]

1 Plaintiff JUAN CARLOS TRISTAN VARGAS, an individual (hereinafter “Plaintiff”)
2 alleges as follows:

3 **GENERAL ALLEGATIONS**

4 The public policy of California declares:

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

12 (Labor Code §90.5 subd. (a).)

13 Despite this clear mandate, DEFENDANTS blatantly violated the California Labor Code
14 and the Industrial Welfare Commission (“IWC”) Wage Orders. Defendants willfully and
15 maliciously failed to pay mandated overtime and minimum wage compensation, failed to provide
16 meal and rest periods, failed to reimburse required business expenditures, and failed to provide
17 and maintain proper employee records to their employees.

18 1. This lawsuit is brought in response to the Defendants’ refusal to pay Plaintiff,
19 who is a former employee of Defendants, and the other aggrieved employees all wages that he
20 earned during his employment with Defendants, among other Labor Code violations.

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

24 **JURISDICTION AND VENUE**

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

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

PARTIES

5. Plaintiff JUAN CARLOS TRISTAN VARGAS is an individual over the age of eighteen (18) and was an employee of Defendants during the last 4 years.

6. Plaintiff is informed and believes that Defendant DUK MOO HAN is an individual who during the relevant time period has owned, managed and operated and continues to own, manage and operate NOZOMI II SUSHI, a restaurant in La Jolla, California, and who at all times mentioned in this Complaint herein resided within the jurisdiction of this Court.

7. Plaintiff is informed and believes that Defendant SON A HAN is an individual who during the relevant time period has owned, managed and operated and continues to own, manage and operate NOZOMI II SUSHI, a restaurant in La Jolla, California, and who at all times mentioned in this Complaint herein resided within the jurisdiction of this Court.

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

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

///

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

8 11. Plaintiff is informed and believes, and based upon such information and belief
9 alleges that the Defendants, and each of them, are now and/or at all times mentioned in this
10 Complaint were in some manner legally responsible for the events, happenings and
11 circumstances alleged in this Complaint.
12

13 12. Plaintiff is further informed and believes, and based upon such information and
14 belief alleges, that at all times herein mentioned, all Defendants, and each of them, were and are
15 the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants,
16 and were, at all such times, acting within the course and scope of said employment and/or
17 agency; furthermore, that each and every Defendant herein, while acting as a high corporate
18 officer, director and/or managing agent, principal and/or employer, expressly directed, consented
19 to, approved, affirmed and ratified each and every action taken by the other co-Defendants, as
20 herein alleged and was responsible in whole or in part for the matters referred to herein.
21

22 13. Plaintiff is further informed and believes, and based upon such information and
23 belief alleges, that at all times herein mentioned, Defendant, and each of them, proximately
24 caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
25 damages alleged in this Complaint.
26

27 ///

28 ///

1 14. Plaintiff is further informed and believes, and based upon such information and
2 belief alleges, that at all times herein mentioned, Defendants, and each of them were co-
3 employers and/or joint employers of Plaintiff.

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

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

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

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES**

5 **(Against all Defendants)**

6
7 18. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
8 section as though fully set forth herein.

9 19. Plaintiff was an “employee” of Defendants (as defined by section 350 of the
10 Labor Code) but Defendants failed to pay Plaintiff and the other aggrieved employees for all
11 hours worked. Plaintiff and the other aggrieved employees were employed as cooks, food
12 preparers, dishwashers, servers, and bussers.

13
14 20. Pursuant to Labor Code section 1197, payment of less than the minimum wage
15 fixed by the commission is unlawful.

16 21. During the entire period of time that Plaintiff and the other aggrieved employees
17 were employed by Defendants, and for the four (4) years preceding the filing of this lawsuit,
18 Defendants were required to compensate them at least at the minimum wage, but failed to carry
19 out their duties and responsibilities as an employer imposed under the laws and regulations of the
20 State of California and violated the law by failing to pay Plaintiff and the other aggrieved
21 employees at least a minimum wage for all hours worked pursuant to all applicable wage orders
22 and in accordance with Labor Code sections 200, 226, 500, 510, 558.1, 1194, 1194.2, and 1197.

23
24 22. Further, Plaintiff and the other aggrieved employees worked split shifts, however,
25 they were not paid split shift premiums, which is a minimum wage violation pursuant to
26 California Wage Order No. 5.

27
28 /././

1 23. Defendants regularly failed to pay Plaintiff and the other aggrieved employees all
2 of the wages that they earned. In violation of state law, Defendants have knowingly and
3 willfully refused to perform their obligations to compensate Plaintiff and the other aggrieved
4 employees for all minimum wages earned and all hours worked. As a direct result, Plaintiff and
5 the other aggrieved employees have suffered, and continue to suffer, substantial losses related to
6 the use and enjoyment of such unpaid wages, lost interest on such wages, costs and attorneys'
7 fees in seeking to compel Defendants to fully perform its obligation under state law, all to their
8 damage in amounts according to proof at the time of trial, but in amounts in excess of the
9 minimum jurisdiction requirement of this Court. Defendants committed the acts alleged herein
10 knowingly and willfully and maliciously, with wrongful and deliberate intent.
11

12 24. Defendants' conduct described herein violates Labor Code sections 200, 226, 500,
13 510, 558, 558.1, 1194, 1194.2, and 1197. As a proximate result of the aforementioned
14 violations, Plaintiff and the other aggrieved employees have been damaged in an amount
15 according to proof at the time of trial. Plaintiff is therefore entitled to recover the unpaid balance
16 of minimum wages and damages for minimum wage violations of at least \$3,295.00, plus
17 liquidated damages pursuant to LC §1194.2 of at least \$3,295.00, plus interest of at least
18 \$659.00, plus penalties, attorneys' fees, expenses, and costs of suit.
19

20 25. Pursuant to Labor Code §200, "wages" includes all amounts for labor performed
21 by employees of every description, whether the amount is fixed or ascertained by the standard of
22 time, task, piece, commission basis, or other method of calculation.
23

24 26. Plaintiff is thus entitled to their earned unpaid wages in an amount to be proven at
25 trial, plus interest, penalties, attorneys' fees and costs.
26

27 27. Under California law, including but not limited to, Labor Code sections 200, 226,
28 500, 510, 558, 558.1, and 1198, Defendants were required to compensate Plaintiff and the other

1 aggrieved employees for all overtime, which is calculated at one and one-half (1.5) times the
2 regular rate of pay for hours worked in excess of forty (40) per week or after eight (8) in one day,
3 and double time (2) times the regular rate of pay for hours worked on the seventh consecutive
4 work day, or after twelve (12) hours in any workday.

5
6 28. Throughout his employment with Defendants, Plaintiff regularly worked on
7 average over 55 to 77 hours per week. Plaintiff and the other aggrieved employees are or were
8 non-exempt employees entitled to overtime pay under California law, including but not limited
9 to Labor Code sections 200, 226, 500, 510, 558, 558.1, 1194 and 1198. Throughout Plaintiff's
10 employment, Defendants regularly failed to pay Plaintiff and the other aggrieved employees at
11 the overtime wage rate for their overtime hours worked. Specifically, Defendants would
12 intentionally fail to pay Plaintiff, and other aggrieved employees, at the overtime rate where
13 Defendants paid them at the regular rate of pay for overtime hours worked or nothing at all.
14

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

18 30. As a direct result, Plaintiff and the other aggrieved employees have suffered
19 substantial losses related to the use and enjoyment of such wages, lost interest on such wages,
20 and expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligation
21 under state law, all to their respective damage in amounts according to proof at the time of trial,
22 but in amounts in excess of the jurisdiction of this Court. Defendants committed the acts alleged
23 herein knowingly and willfully and maliciously, with the wrongful and deliberate intention of
24 injuring Plaintiff, from improper motives amounting to malice, and in conscious disregard of
25 Plaintiff's rights. Plaintiff is thus entitled to recover nominal, actual, compensatory damages in
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27
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1 amounts according to proof at the time of trial, but in amounts in excess of the jurisdiction of this
2 Court.

3 31. Defendants' conduct described herein violates Labor Code sections 200, 226, 500,
4 510, 558, 558.1, 1194, and 1197.1. As a proximate result of the aforementioned violations,
5 Plaintiff has been damaged in an amount according to proof at the time of trial, but in an amount
6 in excess of the jurisdiction of this Court. Therefore, pursuant to Labor Code sections 200, 203,
7 226, 558, 558.1, and 1194, Plaintiff is entitled to recover the unpaid balance of overtime
8 compensation Defendants owe to Plaintiff of at least \$5,826.00, plus interest of at least \$582.60,
9 plus penalties, attorneys' fees, expenses, and costs of suit.
10

11 32. Defendants committed the acts alleged herein knowingly and willfully, with the
12 wrongful and deliberate intention of injuring Plaintiff, from improper motives amounting to
13 malice, and in conscious disregard of Plaintiffs' rights. Specifically, Defendants know that they
14 owe wages to Plaintiff and yet have failed to pay him his owed wages and instead have taken
15 efforts to deprive Plaintiff of his owed wages to annoy, harass, oppress, hinder, delay and
16 defraud him in violation of Labor Code section 216.
17

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO TIMELY FURNISH**

20 **ACCURATE ITEMIZED WAGE STATEMENTS**

21 **(Pursuant to Labor Code §226(a) and (e))**

22 **(Against all Defendants)**

23
24 33. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
25 section as though fully set forth herein.

26 34. Plaintiff is informed and believes and thereon alleges that Defendants, in violation
27 of Labor Code §226(a), engaged in a practice with respect to Plaintiff and the other aggrieved
28

1 employees of regularly failing to furnish them with accurate, itemized statements in writing
2 showing (1) all gross wages earned, (2) all deductions, (3) net wages earned, and/or (4) accurate
3 rate of pay during each respective pay period for which wages have been and continue to be due
4 and owing, as well as all other information required by section 226 of the Labor Code.
5 Specifically, Defendants failed to provide wage statements to Plaintiff and the other aggrieved
6 employees showing the above required information.
7

8 35. Plaintiff seeks damages pursuant to Labor Code §226(e) for each violation by
9 Defendants of Labor Code §226 of at least \$4,000.00, and pursuant to §§ 226.3, 558.1, plus
10 attorneys' fees and costs. In addition, Plaintiff seeks preliminary and permanent injunctive relief
11 pursuant to Labor Code §226(h).
12

13 **THIRD CAUSE OF ACTION**

14 **UNFAIR BUSINESS PRACTICES**

15 **(BUSINESS & PROFESSIONS CODE §17200, et seq.)**

16 **(Against all Defendants)**

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

19 37. Defendants have engaged in unfair business practices in California by utilizing
20 and engaging in an unlawful pattern and practice of failing to properly pay employee
21 compensation as described throughout this Complaint, specifically, by requiring the Plaintiff and
22 the other aggrieved employees to perform the work without proper payment of overtime, regular,
23 minimum pay earned, without meal and rest periods, without reimbursement of required business
24 expenditures, and failed to pay and report proper taxes to the US and California governments.
25 Defendants' use of such practices constitutes a statutorily illegal, and thus, unfair business
26 practice and provides an unfair advantage over Defendants' competitors.
27
28

38. Plaintiff seeks full restitution by Defendants as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair business practices complained of herein.

39. Plaintiff seeks the appointment of a receiver, as necessary, to oversee said restitution, including all wages earned and unpaid, including interest thereon.

40. The acts complained of herein, occurred, at least in part, within the last 4 years preceding this Complaint for Damages.

41. Further, if Defendants are not enjoined from the unlawful conduct described above, Defendants will continue unabated in its unlawful conduct, which will continue to result in irreparable injury to members of the general public, including, but not limited to Plaintiff and the other aggrieved employees, who are current and former employees of the Defendants, and for which there is no adequate remedy at law. Thus, Plaintiff requests that the Court issue a preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing conduct.

FOURTH CAUSE OF ACTION

FAILURE TO PAY WAGES UPON SEPARATION OF EMPLOYMENT

WAITING TIME PENALTIES PURSUANT TO LABOR CODE §203

(Against all Defendants)

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

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

1 44. Defendants' failure to pay Plaintiff and the other aggrieved employees all wages
2 due was willful and done with malice. Plaintiff and the other aggrieved employees are therefore
3 entitled to penalties pursuant to Labor Code §203 of at least \$5,250.00 and pursuant to §§ 558,
4 558.1, plus attorneys' fees and costs.

5
6 **FIFTH CAUSE OF ACTION**

7 **MEAL AND REST PERIOD VIOLATIONS**

8 **LABOR CODE §§ 226.7 and 512**

9 **(Against all Defendants)**

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

12
13 46. Under California Labor Code sections 226.7, 512 and California Wage Orders,
14 Off Duty Meal Periods of 30 minutes are required for all non-exempt employees who work at
15 least 5 hours in a shift, except that when a work period of not more than 6 hours will complete
16 the day's work then the meal period may be waived by mutual consent of the employer and
17 employee. Time records of meal periods must be kept except that meal periods during which
18 operations cease need not be recorded. Employers must provide non-exempt employees 2 Off
19 Duty Rest Periods of 10 minutes each in a normal 8 hour shift. Rest Periods need not be
20 recorded. The Meal Periods are unpaid unless the employee is not fully relieved of all duties.
21 Rest Periods must be paid. An employer who fails to provide off duty meal and rest periods
22 (breaks) must pay the employee an additional 1 hour regular pay for each category of break not
23 provided in a work day.
24

25
26 47. At all times mentioned herein, Defendants violated Labor Code sections 226.7
27 and 512 by refusing to allow Plaintiff and the other aggrieved employees to be timely fully
28 relieved of their duties during their meal periods.

1 48. Accordingly, Plaintiff seeks damages available pursuant to the Labor Code,
2 including but not limited to Labor Code sections 226.7 and 512 of at least \$3,256.00 in premium
3 wages, sections 558, and 558.1, plus interest of at least \$325.60.
4

5 **SIXTH CAUSE OF ACTION**

6 **EMPLOYEE FILE & PAYROLL RECORDS VIOLATION**

7 **LABOR CODE §§ 1198.5, 432, 226(b), (c), and (f)**

8 **(Against all Defendants)**

9 49. Plaintiff incorporates by reference and re-alleges each and every one of the
10 allegations contained in this Complaint as though fully set forth herein.
11

12 50. On or about September 7, 2021, Plaintiff, through his counsel, requested in
13 writing and via certified US mail, that Defendants provide Plaintiff with a copy of certain
14 documents in his employee file and payroll and time records. Defendants failed to timely furnish
15 Plaintiff with a copy of his full employee file and payroll and time records in violation of Labor
16 Code §§432, and 226(b),(c), (f), and 1198.5; IWC Orders 1 through 15, Section 7, and IWC
17 Order 16, Section 6, despite multiple requests to do so. Plaintiff is entitled to recover any and all
18 penalties and compensation provided by the Labor Code, including the above mentioned sections
19 and section 558.1, for Defendant's failure to furnish the requested personnel and payroll and time
20 records including at least \$750.00 in penalties pursuant to LC §§226(f), 1198.5, and 558.1, plus
21 attorneys' fees and costs.
22

23 **SEVENTH CAUSE OF ACTION**

24 **FAILURE TO REIMBURSE**

25 **(Against All Defendants)**

26
27 51. Plaintiff incorporates by reference and re-alleges each and every one of the
28 allegations contained in this Complaint as though fully set forth herein.

1 52. Pursuant to Labor Code §2802(a), an employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
4 the employer.

5
6 53. Defendants required Plaintiff and the other aggrieved employees to incur
7 expenditures for the benefit of the Defendants including but not limited to working gloves and
8 back support braces for lifting heavy objects, incurred in the discharge of their daily duties.
9 Defendants, however, failed to reimburse Plaintiff and the other aggrieved employees for such
10 expenditures.

11
12 54. Therefore, pursuant to Labor Code §§ 2802(c) and 558.1, Plaintiff is entitled to
13 recover reimbursement for all necessary expenditures for purchase of work gloves and back
14 support braces, and other business expenditures incurred in discharge of his daily duties for
15 Defendants of at least \$165.00, plus interest of at least \$16.50, plus penalties, attorneys' fees,
16 expenses, and costs of suit.

17
18 **EIGHTH CAUSE OF ACTION**

19 **PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA")**

20 **PER LABOR CODE §2699, et seq.**

21 **(Against All Defendants)**

22
23 55. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
24 section as though fully set forth herein.

25 56. On or about November 1, 2021, pursuant to Labor Code sections 2699(a) and
26 2699.3, Plaintiff, through his counsel, provided notice in writing by online submission to the
27 California Labor Workforce Development Agency ("LWDA") and via certified US Mail to
28

1 Defendants and each of them, that Plaintiff intended to assert a PAGA claim pursuant to section
2 2699(a) on his own behalf, and in a representative capacity on behalf of other aggrieved
3 employees of Defendants, for violations of specified provisions of the California Labor Code.
4 See Exhibit 1 attached to this Complaint. The LWDA did not respond within 65 days.
5

6 57. As a result, Plaintiff has perfected his right to sue Defendants in a civil action, and
7 to collect statutory penalties, pursuant to Labor Code section 2699.3(a)(2)(A)(1) on behalf of all
8 aggrieved employees (PAGA Employees).
9

10 58. As a result of the acts alleged above, Plaintiff brings this action on his own behalf,
11 and in a representative capacity on behalf of other current or former aggrieved employees
12 (PAGA Employees), for penalties pursuant to California Labor Code section 2699 for
13 Defendants' violations of the enumerated Labor Code sections, including, but not limited to
14 sections 200, 201, 202, 203, 210, 216, 220, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 227,
15 227.3, 246, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1194, 1194.2, 1197.1, 1198,
16 1198.5, 1199, 1770-1781, and 2802.
17

18 59. Pursuant to California Labor Code section 2699, Plaintiff and PAGA Employees
19 are entitled to be awarded twenty-five (25%) percent of all penalties due under California law, in
20 addition to interest, attorney's fees and costs.
21

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

24 61. Plaintiff, on behalf of the State of California and the aggrieved employees,
25 therefore seek to recover from Defendants, and each of them, allowable damages and civil
26 penalties for the violations claimed above regarding Plaintiff's claims of at least \$5,100.00, plus
27 interest, costs, attorneys' fees, and plus civil penalties regarding the other aggrieved employees'
28

1 claims in an amount according to proof at trial, in accordance with Labor Code sections 2699, *et*
2 *seq.*

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

15
16 63. Labor Code Section 558.1(a) provides in pertinent part: “Any employer or other
17 person acting on behalf of an employer, who violates, or causes to be violated, any provision
18 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
19 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
20 2802, may be held liable as the employer for such violation.”

21
22 64. Defendants violated/violate, or caused/causes to be violated, multiple sections of
23 the Labor Code as well as provisions regulating hours and days of work in any order of the
24 Industrial Welfare Commission including those requiring payment of minimum and regular
25 wages and payment of overtime wages, meal and rest periods, failure to reimburse business
26 expenditures, and records violations, as set forth in detail throughout this Complaint.
27
28

65. Accordingly, Plaintiff is also entitled to recovery of wages, premium wages, damages, and penalties pursuant to Labor Code Sections 558 and 558.1 of at least \$29,970.70.

PRAYER FOR RELIEF

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

1. For compensatory damages, including but not limited to, those pursuant to Labor Code §§ 200, 201, 203, 218, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 246, 350-356, 500, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1194.3, 1197.1, 1198, 1198.5, 1770-1781, 2802, 2699, et seq., California Wage Orders, and other statutes and laws, which include, but are not limited to:

- i) at least \$5,826.00 in unpaid overtime wages,
- ii) at least \$3,295.00 in minimum wage violations damages,
- iii) at least \$3,295.00 in liquidated damages pursuant to LC §1194.2,
- iv) at least \$3,256.00 in meal period premium wages,
- v) at least \$4,000.00 in damages for inaccurate paycheck statements pursuant to LC §226,
- vi) at least \$165.00 in failure to reimburse business expenditures in violation of LC §2802;

2. For pre-judgment interest pursuant to all applicable statutes including but not limited to, Labor Code §§218.6, et seq., 558, et seq., and pursuant to Civil Code §§ 3287(b) and 3289, more specifically including but not limited to:

- i) at least \$582.60 in interest on unpaid overtime wages,
- ii) at least \$659.00 in interest on minimum wage violations, including for LC §1194.2 liquidated damages,
- iii) at least \$325.60 in interest on meal period premium wages,

iv) at least \$16.50 in interest on failure to reimburse business expenditures;

3. For penalties pursuant to Labor Code §§ 203, 225.5, 226, 226(f), 1198.5, 226.3, 226.7, 246, 350-356, 512, 558, 558.1, 1174.5, 1194.2, 1197.1, 2802, civil penalties pursuant to section 2699, et seq., and other statutes and laws, including but not limited to:

i) at least \$5,250.00 in waiting time penalties pursuant to LC §203,

ii) at least \$750.00 in penalties for failure to timely produce employee file and records pursuant to LC §§ 226(f), 1198.5,

iii) at least \$5,100.00 in penalties pursuant to LC §2699, et seq.,

iv) at least \$29,970.70 in penalties pursuant to LC 558, 558.1;

4. For all damages available pursuant to all applicable sections of the Labor Code and the Industrial Wage Orders;

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

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

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

8. For all remedies available pursuant to Business and Professions Code section 17200 et seq.;

9. For all other appropriate injunctive, declaratory and equitable relief;

10. For interest to the extent permitted by law; and

11. For such other and further relief as the Court may deem proper.

Dated: February 4, 2022

Rodolfo Ruiz-Velasco, Esq.
Attorneys for Plaintiff,
Juan Carlos Tristan Vargas

EXHIBIT 1

RUIZ-VELASCO LAW FIRM

November 1, 2021

Via Electronic Submission

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

All By Certified Mail

Duk Moo Han
Son A Han
Nozomi II Sushi & BBQ
Nozomi La Jolla
4150 Regents Park Row Suite 190
La Jolla, CA 92037

Re: **Tristan Vargas v. Han dba Nozomi II Sushi & BBQ, et al.**

To Whom It May Concern:

We represent Juan Carlos Tristan Vargas individually and on behalf of all other individuals (collectively “Plaintiffs”) who are either former or current employees of Duk Moo Han and Son A Han, who own, manage, and do business as Nozomi II Sushi & BBQ and Nozomi La Jolla restaurants (collectively “Defendants”). Pursuant to Labor Code section 2699.3, this letter constitutes written notice of Defendant’s Labor Code violations and of our client’s intent to recover statutory penalties under the Labor Code Private Attorney General Act of 2004. A copy of this letter is also being sent to Defendants via certified mail pursuant to Labor Code section 2699.3.

Plaintiffs were employed by Defendants as cooks, food preparers, dishwashers, servers, and bussers. Plaintiffs are regularly required to work on average at least 11 hours per day 5 to 7 days per week, which amounts to over 55 to 77 hours of work per week without receiving overtime compensation, but instead getting paid at the regular rate of pay for some of the overtime hours worked, causing minimum and overtime wage violations (“wage theft”). Further, Plaintiffs’ shifts are split yet they are not provided split shift wage premiums, in violation of minimum wage laws. Defendants underpay their employees, and thus owe them minimum, regular, and overtime wages.

As a result of the violations above and below, Defendants failed to provide paycheck statements with accurate hours worked, rate of pay, and regular and overtime hours. Defendants also failed to provide all required information on the paycheck

statements. Further, Defendants failed to keep accurate time records regarding Plaintiffs, in violation of Section 7 of the Wage Orders and Labor Code section 1174.5.

Plaintiffs were not paid all of their wages owed at the time of their separation of work in violation of LC §§ 203 and 204.

In addition, Defendants failed to fully relieve Plaintiffs from their meal periods and to pay them any premiums for their on-duty meal periods. Specifically, Plaintiffs and other current and former employees were not fully relieved of their duties during their meal periods because Defendants required them to work through their meal periods.

Defendants required Plaintiffs to purchase supplies used in performance of their duties such as working gloves and back support braces for lifting heavy objects, however, they did not reimburse Plaintiffs for said expenditures in violation of LC §2802.

The payment of a less wage than the California minimum wage and minimum wage violations, including failure to pay split shift premiums, are unlawful pursuant to Labor Code Sections 1197, 1197.1, 1194, 558, 558.1. Overtime compensation is statutorily required by California Labor Code Section 510, 558, 558.1. Meal and rest periods are required pursuant to Labor Code section 226.7 and 512, 558, 558.1. Failure to reimburse for expenses incurred in the course of one's employment is a violation of Labor Code Section 2802, et seq. Accurate wage statements must be timely given to employees pursuant to Labor Code section 226. Illegal deductions are in violation of LC Sections 220, 221, 222, 223, 224, et seq. Taking of gratuities from aggrieved employees is a violation of Labor Code sections 350-356. Failure to pay sick pay wages is a violation of LC 246. Defendants' employment practices implicate violations of numerous other Labor Code sections, including but not limited to the following: Labor Code §§ 98.6, 201, 202, 203, 204, 220, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 227.3, 350-356, 510, 512, 558, 558.1, 1102.5, 1194, 1194.2, 1197.1, 2802, et seq., and 2698, et seq.

Accordingly, Plaintiffs respectfully request that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, Plaintiffs will pursue these claims for statutory penalties on behalf of themselves and all other current and former employees. If you have any questions or concerns regarding the above, do not hesitate to contact us.

Very truly yours,



Rodolfo Ruiz-Velasco, Esq.