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Attorneys for Plaintiff
ELVIA GARCIA

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF ORANGE

Assigned for All Purposes

Judge Theodore Howard

ELVIA GARCIA, an individual,

Plaintiff,

vs.

LINDO MICHOACAN CORPORATION, a
California Corporation; LINDO
MICHOACAN SANTA ANA
CORPORATION, a California Corporation;
IVAN LOPEZ, an individual; JANET LOPEZ,
an individual; MARTIN LOPEZ, an
individual; AMALIA LOPEZ MUNIZ, an
individual; LILIAN CEBALLOS, an
individual; and DOES 1 – 100, inclusive,

Defendant.

Case No. 30-2022-01254275-CU-OE-CJC

PLAINTIFF'S COMPLAINT FOR:

1. Failure to pay overtime
2. Failure to provide rest periods
3. Failure to provide meal periods
4. Failure to pay minimum wage
5. Failure to pay all wages owed at separation
6. Failure to provide accurate, itemized wage statements
7. Failure to timely produce employee records
8. Failure to timely produce personnel records
9. Unlawful business practices
10. Civil penalties pursuant to the Private Attorneys General Act

Amount demanded exceeds \$25,000.

JURY TRIAL DEMANDED

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

3. Ms. Garcia brings this action against the following Individual Defendants and Entity Defendants, alter egos, agents, and other persons/entities engaged with Individual Defendants and Entity Defendants in a joint enterprise of providing restaurant services:

5. LINDO MICHOACAN CORPORATION is a California corporation registered with the Secretary of State with an entity address located at 327 S Anaheim Blvd, Suite C Anaheim, CA

1 92805, which is also its reported principal place of business. On information and belief, this may
2 be a suspended corporation.

3 6. LINDO MICHOACAN SANTA ANA CORPORATION is an active California
4 corporation registered with the Secretary of State with an entity address located at 4412 W. 5th
5 Street Santa Ana, California 92703, which is also its reported principal place of business.

6 7. On information and belief, Individual Defendants IVAN LOPEZ, JANET LOPEZ,
7 MARTIN LOPEZ, AMALIA LOPEZ MUNIZ, LILIAN CEBALLOS and DOES 1 through 50
8 were officers, directors and/or managing agents of LINDO MICHOACAN and restaurant
9 locations identified above. These Individual Defendants were also supervisors who 1) either
10 directly participated in and/or encouraged the illegal conduct described herein and/or 2) ratified
11 the illegal conduct of employees/co-employees under their supervision. While acting on behalf
12 of LINDO MICHOACAN and/or corporations referenced above, these Individual Defendants
13 caused the California laws referenced herein to be violated by establishing and/or implementing
14 employment, wage, and/or payroll procedures and/or policies that violated said laws. Therefore,
15 to the extent permitted by Labor Code § 558.1 the Individual Defendants are individually liable
16 for the violations of law as alleged herein.

17 8. Defendants DOES 51 through 100 are unidentified persons or entities who are legally
18 responsible in some actionable manner for the illegal acts and omissions complained of herein.
19 To the extent said Defendants are a business entity, the form of said Defendants is unknown at
20 the present time.

21 9. On information and belief, each ENTITY DEFENDANT referenced herein was a joint
22 employer of Ms. Garcia working at one or more of LINDO MICHOACAN's locations.

23 10. Each of the above Defendants had authority to set LINDO MICHOACAN's policies,
24 procedures, and practices as well as the authority to hire, transfer, promote, assign, reward,
25 discipline the workers working at LINDO MICHOACAN and/or to effectively recommend said
26 actions. Additionally, said Defendants also had responsibility to act on employee grievances
27 and/or to effectively recommend action on employee grievances, including but not limited to
28 Ms. Garcia's. These Defendants also had the responsibility to direct Ms. Garcia and other

1 aggrieved employees' daily work activities at each Entity Defendants' principal place of
2 business. The exercise of said authority and responsibility by said Defendants required the use
3 of independent judgment of all said individual Defendants.

4 11. While acting on behalf of LINDO MICHOACAN, Defendants IVAN LOPEZ, JANET
5 LOPEZ, MARTIN LOPEZ, AMALIA LOPEZ MUNIZ, LILIAN CEBALLOS and DOES 1
6 through 50 (who were owners, directors, officers and/or managing agents of LINDO
7 MICHOACAN) caused the California laws regarding the wages, hours of work, and working
8 conditions set forth below to be violated by establishing and/or implementing employment,
9 wage, and/or payroll procedures and/or policies that violated the Labor Code and/or Industrial
10 Wage Order No. 5-2001 ("Wage Order"). Therefore, to the extent permitted under Labor Code
11 § 558.1, said Individual Defendants are as liable as LINDO MICHOACAN for such violation(s).

12 12. At all times herein and for many prior years, Defendants LINDO MICHOACAN, IVAN
13 LOPEZ, JANET LOPEZ, MARTIN LOPEZ, AMALIA LOPEZ MUNIZ, LILIAN CEBALLOS
14 and DOES 1 through 100 either employed/jointly employed individuals in California and/or were
15 involved in managing businesses and/or employees in California. On information and belief,
16 during those years, said Individual Defendants were provided with notifications from various
17 governmental agencies as well as employment law publications, advising them of the
18 requirements of the employment laws referenced herein. Accordingly, Individual Defendants
19 knew the obligations owed to workers under California law. As such, Individual Defendants'
20 failures to comply with the applicable Labor Code sections, the Industrial Wage Order,
21 regulations, and local laws as described herein were done willfully, intentionally and with full
22 knowledge of their illegality. Despite said knowledge, said Individual Defendants deliberately
23 approved, established and/or implemented company-wide policies, procedures and/or practices
24 they knew violated California law as set forth herein and did so for the purpose of maximizing
25 the profits of LINDO MICHOACAN as well as their own personal gain (monetary or otherwise)
26 to the illegal detriment of employees working at one or more LINDO MICHOACAN's locations,
27 including Ms. Garcia's.

28 13. Additionally, based on requirements set forth in the Labor Code and the Wage Order

1 applicable to Defendants' businesses, at all times herein, Individual Defendants knew it was
2 necessary to possess, and Individual Defendants did possess, a certain level of knowledge and
3 skill in order to comply with the labor and employment laws applicable to their area of business.
4 Said knowledge was vastly superior to that of Entity Defendants' employees. Moreover, as set
5 forth herein, Entity Defendants' employees depended on Individual Defendants to know, record
6 and/or track certain information to ensure California labor laws and/or employment laws were
7 followed. Such things include: the dates and times worked by employees, when wages were
8 owed to employees, the minimum and overtime wages owed to employees, the number of rest
9 breaks and meal breaks the employees were entitled to, when rest breaks and meal breaks were
10 required to be provided, the information required to be included on wage statements, when
11 employees should be paid their final wages under the Labor Code, etc.

12 14. On information and belief, LINDO MICHOACAN and each DOE Defendant that was a
13 business entity or organization at the relevant times herein, has been and continues to be a
14 privately-owned business authorized to do business in the State of California.

15 Alter-Ego / Single Enterprise Allegations

16 15. All Entity Defendants herein are and at all times herein mentioned were the alter-egos of
17 each and every other Entity Defendant and there exists, and at all times herein mentioned has
18 existed, a unity of interest and ownership between said Individual Defendants, such that any
19 separateness between them has ceased to exist in that the Individual Defendants have completely
20 controlled, dominated, managed, and operated the business and have intermingled the assets of
21 each to suit their convenience. Further, the business Entity Defendants are, and at all times
22 mentioned herein were, mere shells, instrumentalities, and conduits through which the Individual
23 Defendants carried out their business by its name while exercising complete control and
24 dominance of the business such that individuality or separateness did not exist. Additional facts
25 supporting the existence of an alter ego relationship between Defendants include the following:
26 on information and belief, Individual Defendants commingled funds and other assets,
27 Defendants held themselves out as a single entity, Individual Defendants share equitable
28 ownership, they use the same offices, Individual Defendants have disregarded corporate

1 formalities, and Individual Defendants have shared or share the same directors and officers, etc.

2 16. Individual Defendants and Entity Defendants and DOES 1 - 100 were also engaged in a
3 single enterprise of providing restaurant, catering and/or bakery services in which each said
4 Defendant contributed skill, effort, knowledge, and/or money to achieve a common purpose of
5 maximizing the profits of the single enterprise.

6 Agency Relationship Allegation

7 17. Plaintiff believes and therefore alleges that at all times herein mentioned, each of the
8 Defendants was the agent and employee of each of the other Defendants, and in doing the acts
9 alleged herein, was acting within the scope of such agency and employment. Plaintiff further
10 believes and therefore alleges that conduct of each of the Defendants as alleged herein was
11 ratified by each of the other Defendants, and the benefits thereof were accepted by each of the
12 other said Defendants.

13 General Allegations re Fictitious DOE Defendants

14 18. The facts linking the fictitiously designated Defendants with the causes of action alleged
15 herein and/or the true names and capacities, whether individual, corporate, partnership, or
16 otherwise of Defendants, DOES 1 through 100, are unknown to Ms. Garcia(s) at this time, who
17 therefore sue said Defendants by such fictitious names and will seek to amend this Complaint to
18 show their true names and/or capacities when ascertained. Said Defendants are sued as
19 employers, principals and/or agents, servants, and/or employees of said employers or principals
20 who were performing acts within the course and scope of their authority and/or employment.
21 Each and every Defendant designated herein as a “DOE” is responsible in some actionable
22 manner for the events and happenings referred to herein which proximately caused the injuries,
23 damages, losses and/or penalties as alleged herein.

24 Defendants' Failure to Comply with Labor Code §§ 226 and 1198.5 Request(s)

25 19. Ms. Garcia does not have copies of all of her employment records with Individual
26 Defendants and Entity Defendants and both the Individual Defendants and Entity Defendants
27 have failed to provide Ms. Garcia with copies of all of her employment records (including work
28 schedules, time sheets, rest break/meal period records, sick time records, business expense and

1 reimbursement records) even though such records pertain to Ms. Garcia's employment with
2 Defendants and said records were requested from Defendants by Ms. Garcia pursuant to Labor
3 Codes §§ 226 and 1198.5. Said records were also not produced by Defendants after a complaint
4 was filed with the LWDA (and concurrently served on Defendants) in which it was alleged that
5 said records had not been provided in accordance with Labor Codes §§ 226 and 1198.5. Ms.
6 Garcia also does not have access to the employment records of other similarly aggrieved
7 employees. After Defendants have produced said employment records during discovery
8 processes in this action, additional facts in support of each cause of action pled in this complaint
9 may be discovered.

10 11 **FACTUAL ALLEGATIONS**

12 20. Ms. Garcia worked for Defendants from about February 2015 through November 2021,
13 and from the start, Ms. Garcia worked about six days a week, approximately 60 hours a week.
14 She would often stay way past her shift, working at least half an hour more during the weekdays,
15 and at least two hours more during the weekend. Even with the hours accumulated on the job,
16 Ms. Garcia was never given proper overtime compensation. Given that Defendants failed to also
17 maintain timekeeping records, Ms. Garcia's wage statements did not include proper payment for
18 all hours worked. Even further, Ms. Garcia was not properly compensated for the legally
19 required minimum wage rate. Namely, as Defendant's required Ms. Garcia to work past her
20 shift—without any overtime compensation—Ms. Garcia's aggregate wage rate did not meet the
21 legal minimum wage requirement.

22 21. When Ms. Garcia needed to take a rest or meal break, Ms. Garcia was never allowed to
23 do so. For instance, whenever a customer appeared at the register, Ms. Garcia was expected to
24 pause her rest and/or meal break and attend to the customer. Typically, whenever a customer
25 needed any service whatsoever, Defendants obliged Ms. Garcia to perform. Defendants
26 continued to further govern Ms. Garcia's breaks by not allowing her to leave the premises.

27 22. At one point, it appeared that there was an agreement in place with Ms. Garcia to pay her
28 back over \$5000 that was admittedly owed to her for her wages. Despite this agreement, Ms.

1 Garcia has yet to be paid in full for those wages owed, and she is entitled to penalties as described
2 herein for failure to pay her for all wages owed when the employment relationship ended on or
3 about November of 2021.

4 23. As a result, Ms. Garcia's rights have been violated by Defendants' failure to pay proper
5 overtime compensation, failure to let Ms. Garcia take her rest and meal breaks, and failure to pay
6 her the legally required minimum wage.

7
8 **FIRST CAUSE OF ACTION FOR FAILURE TO PAY OVERTIME WAGES**

9 24. Ms. Garcia restates and incorporates by reference each and every allegation of the
10 foregoing paragraphs as though fully set forth herein.

11 25. At all times relevant to this Complaint, the Wage Order § 3 and Labor Code §§ 510 and
12 1194 were in effect and applicable to Defendants.

13 26. Wage Order § 3 states

14 that employees shall not be employed more than eight hours in any workday or more than
15 forty hours in any workweek unless the employee receives one and one-half times his or
16 her regular rate of pay for all hours worked in excess of eight hours up to and including
17 twelve hours in any workday, and for the first eight hours worked on the seventh
18 consecutive day of work in a workweek, and double the employee's regular rate of pay
for all hours worked in excess of twelve hours in any workday and for all hours worked
in excess of eight hours on the seventh consecutive day of work in a workweek.

19 27. Labor Code § 510 states that:

20 any work in excess of eight hours in one workday and any work in excess of 40
21 hours in any one workweek and the first eight hours worked on the seventh day of
22 work in any one workweek shall be compensated at the rate of no less than one and
23 one-half times the regular rate of pay for an employee. Any work in excess of 12
24 hours in one day shall be compensated at the rate of no less than twice the regular
rate of pay for an employee. In addition, any work in excess of eight hours on any
seventh day of a workweek shall be compensated at the rate of no less than twice
the regular rate of pay of an employee.

25 28. Labor Code § 1194 states that:

26 any employee receiving less than the legal overtime compensation is entitled to recover
27 the unpaid balance of the full amount of this overtime compensation, including interest,
reasonable attorneys' fees, and costs.

28 29. Because Plaintiff and other aggrieved employees were regularly working in excess of

1 eight hours in one workday and often for six or even seven days a week, Ms. Garcia and other
2 aggrieved employees were accumulating large amounts of overtime hours, for which Defendants
3 were required to pay the overtime premium. Defendants failed to do this.

4 30. Defendants required Ms. Garcia and other aggrieved employees to work more than eight
5 hours in a 24-hour period but did not pay them overtime.

6 31. Additionally, Wage Order § 20 provides for civil penalties:

7 In addition to any other civil penalties provided by law, any employer . . . who
8 violates, or causes to be violated, the provisions of this order, shall be subject to the
9 civil penalty of: (1) Initial Violation – \$50.00 for each underpaid employee for each
10 pay period during which the employee was underpaid in addition to the amount
which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00
for each underpaid employee for each pay period during which the employee was
underpaid in addition to an amount which is sufficient to recover unpaid wages.

11 32. Ms. Garcia is entitled to these civil penalties in an amount to be proven at trial. By
12 violating Wage Order § 3 and Labor Code §§ 510 and 1194, Defendants are liable for Ms.
13 Garcia's reasonable attorneys' fees and costs pursuant to Labor Code § 1194.

14 33. As a direct and foreseeable result of the aforesaid acts of Defendants, Ms. Garcia has lost
15 and will continue to lose income and benefits in an amount to be proven at trial. Ms. Garcia
16 claims such amount as general damages for mental and emotional distress, aggravation, and
17 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
18 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

19
20 **SECOND CAUSE OF ACTION FOR FAILURE TO PROVIDE REST PERIODS**

21 34. Ms. Garcia restates and incorporates by reference each and every allegation of the
22 foregoing paragraphs as though fully set forth herein.

23 35. At all times relevant to this Complaint, Wage Order § 12 and Labor Code § 226.7 were
24 in effect and applicable to Defendants.

25 36. Wage Order § 12 provides:

26 Every employer shall authorize and permit all employees to take rest periods, which
27 insofar as practicable shall be in the middle of each work period. The authorized rest
28 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.”

1 37. Labor Code § 226.7 provides that:

2 no employer shall require an employee to work during any rest period mandated by an
3 applicable Wage Order.

4 38. The Court has explained this to mean that “during required rest periods, employers must
5 relieve their employees of all duties and relinquish any control over how employees spend their
6 break time.” Augustus v. ABM Security Services, Inc., (2016) 2 Cal.5th 257, 260.

7 39. During the relevant statutory time period, Defendants systematically, routinely, and
8 willfully failed to permit Ms. Garcia to take uninterrupted, non-captive rest periods of at least
9 ten minutes for every four hours worked.

10 40. Defendants’ failure to provide legally compliant rest periods resulted from the following
11 acts and omissions: suffering or permitting Ms. Garcia to work for longer than four hours without
12 receiving an uninterrupted, non-captive rest periods of at least ten minutes.

13 41. As a direct result, Ms. Garcia has suffered and continues to suffer substantial damages
14 in an amount to be proven at trial and are entitled to all appropriate legal remedies provided by
15 the Labor Code and the Wage Order, including unpaid wages, liquidated damages, interest,
16 attorneys’ fees, and costs of suit.

17 42. Ms. Garcia is entitled to seek and do seek from Defendants one additional hour of pay at
18 the regular rate of compensation for each workday that a rest period was not provided, pursuant
19 to Wage Order § 12 and Labor Code § 226.7(c). Further, pursuant to Labor Code § 1194, Plaintiff
20 is entitled to their attorneys’ fees and costs and interest according to proof.

21 **THIRD CAUSE OF ACTION FOR FAILURE TO PROVIDE MEAL PERIODS**

22 43. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
23 paragraphs as though fully set forth herein.

24 44. At all times relevant to this Complaint, Wage Order § 11 and Labor Code § 512(a) were
25 in effect and applicable to Defendants.

26 45. Both Wage Order § 11 and Labor Code § 512(a) state that:

27 an employer shall not employ an employee for a work period of more than five hours
28 without a meal period of no less than thirty minutes, except that if a work period of not

1 more than six hours will complete the day's work, the meal period may be waived by
2 mutual consent of the employer and employee.

3 46. Labor Code § 226.7 provides that:

4 no employer shall require an employee to work during any meal period mandated by an
5 applicable IWC Wage Order.

6 47. During the relevant statutory time period, Defendants systematically, routinely, and
7 willfully failed to permit Plaintiff to take uninterrupted, non-captive meal periods of at least
8 thirty minutes for every five hours worked, occurring before the end of the fifth hour of work.

9 48. Defendants' failure to provide legally compliant meal periods resulted from the
10 following acts and omissions: suffering or permitting Plaintiff to work for longer than five hours
11 without receiving an uninterrupted, non-captive meal period of at least thirty minutes.

12 49. As a direct result, Plaintiff has suffered substantial damages in an amount to be proven
13 at trial and is entitled to all appropriate legal remedies provided by the Labor Code and Wage
14 Order, including unpaid wages, liquidated damages, interest, attorneys' fees, and costs of suit.

15 50. For all the days on which Plaintiff were denied a valid meal period, they are entitled to
16 seek and do seek from Defendants one additional hour of pay at the regular rate of compensation
17 for each workday that a meal period was not provided, pursuant to Wage Order § 11 and Labor
18 Code § 226.7(c). Further, pursuant to Labor Code § 1194, Plaintiff is entitled to their attorneys'
19 fees and costs and interest according to proof.

20 **FOURTH CAUSE OF ACTION FOR FAILURE TO PAY MINIMUM WAGE**

21 51. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
22 paragraphs as though fully set forth herein.

23 52. At all times during the applicable statutes of limitations period, Defendants, and each of
24 them willfully, knowingly, and intentionally failed to calculate and compensate LINDO
25 MICHOACAN's non-exempt employees including Ms. Garcia's, the minimum wages they were
26 entitled to under Labor Code § 1182.12, the applicable Wage Order and/or local regulation for
27 all the hours they worked for Defendants including as follows:

28 a. Said employees have not been paid at least the minimum wage for on-duty meal

1 periods as set forth herein.

- 2 b. Said employees have not been paid at least the minimum wage owed to them due
3 to “rounding” and “adjustment” of clock-in/out times which have consistently
4 worked to the unfair advantage of LINDO MICHOACAN’s as set forth herein.

5 53. As applicable under California law to the allegations made in this cause of action,
6 Ms. Garcia is entitled to recover the wages, damages, penalties, awards, and other remedies set
7 forth below in the Prayer for Damages, Awards and Other Relief.

8
9 **FIFTH CAUSE OF ACTION FOR FAILURE TO PAY WAGES OWED AT**
10 **TIME OF SEPARATION**

11 54. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
12 paragraphs as though fully set forth herein.

13 55. At all times relevant to this Complaint, Labor Code §§ 201 and 203 were in effect and
14 applicable to Defendants.

15 56. Labor Code § 201 states that if the employee and employer relationship is separated, then
16 the wages earned and unpaid at the time of discharge are due and payable immediately.

17 57. Defendants terminated Plaintiff’s employment on about November 2021 and so were
18 required to pay Plaintiff all wages earned and unpaid on that date. Plaintiff’s final paycheck did
19 not include all hours earned, so it failed to comply with the requirement of Labor Code § 201
20 that all outstanding wages be paid on the day of separation. As of April 11, 2022, Defendants
21 still have not paid Plaintiff those premiums.

22 58. Labor Code § 203 states that:

23 if an employer willfully fails to pay, without abatement or reduction . . . any wages
24 of any employee who is discharged or who quits, the wages of the employee shall
25 continue as a penalty from the due date thereof at the same rate until paid or until
an action therefor is commenced; but the wages shall not continue for more than
30 days.”

26 59. Accordingly, as a result of Defendants’ conduct, Plaintiff is entitled to waiting time
27 penalties in the amount of thirty days’ wages under Labor Code § 203, with interest
28 thereon and reasonable attorneys’ fees and costs pursuant to Labor Code §§ 218.5 and

1 1194.

2 60. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff has lost
3 and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
4 claims such amount as general damages for mental and emotional distress, aggravation,
5 and physical harm, in an amount to be proven at trial, together with pre-judgment interest
6 pursuant to Civil Code § 3287 and any other provision of law providing for pre-judgment
7 interest.

8
9 **SIXTH CAUSE OF ACTION FOR FAILURE TO PROVIDE ACCURATE,**
10 **ITEMIZED WAGE STATEMENTS**

11 61. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
12 paragraphs as though fully set forth herein.

13 62. Labor Code § 226(a) requires an employer to furnish its employees with an accurate
14 itemized statement in writing showing, among other things, gross wages earned, net wages
15 earned, all applicable hourly rates in effect during the pay period, and the corresponding number
16 of hours worked at each hourly rate by the employee.

17 63. Under Labor Code § 226(e), an employee suffering injury as a result of a knowing and
18 intentional failure by an employer to comply with § 226(a) is entitled to recover the greater of
19 all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 for each
20 violation in a subsequent pay period, up to a maximum amount of \$4,000.

21 64. Wage Order § 7 requires that employers furnish to each employee an itemized statement
22 in writing showing all deductions, the inclusive dates of the period for which the employee is
23 paid, the employee's name or social security number, and the employer's name.

24 65. Defendants are required to provide employees with accurate, itemized wage statements
25 stating, among other things, gross wages earned, total hours worked, net wages earned, all
26 applicable hourly rates in effect during the pay period, and the number of hours worked at each
27 hourly rate. Plaintiff's time sheets and pay stubs did not include the overtime premium for all
28 overtime hours she had worked, or the time she was legally under Defendants' control during

1 her rest periods.

2 66. As a direct and proximate result of Defendants' conduct, Plaintiff has been injured by,
3 among other things, not being paid all wages due, not knowing how many hours she worked and
4 at what rates and being required to file this action to recover her wages and determine the number
5 of hours worked and wages due.

6 67. Defendants are in violation of Labor Code § 226(a) and are liable to Plaintiff for damages.
7 Plaintiff is entitled to recover the damages or penalties provided by Labor Code § 226(e),
8 including interest thereon, and reasonable attorneys' fees and costs.

9 68. Additionally, Wage Order § 20 provides for civil penalties:

10 In addition to any other civil penalties provided by law, any employer . . . who
11 violates, or causes to be violated, the provisions of this order, shall be subject to the
12 civil penalty of: (1) Initial Violation – \$50.00 for each underpaid employee for each
13 pay period during which the employee was underpaid in addition to the amount
14 which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00
for each underpaid employee for each pay period during which the employee was
underpaid in addition to an amount which is sufficient to recover unpaid wages.

15 69. Plaintiff is entitled to these civil penalties in an amount to be proven at trial.

16 70. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff has lost
17 and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff claims
18 such amount as general damages for mental and emotional distress, aggravation, and physical
19 harm, in an amount to be proven at trial, together with pre-judgment interest pursuant to Civil
20 Code § 3287 and any other provision of law providing for pre-judgment interest.

21
22 **SEVENTH CAUSE OF ACTION FOR FAILURE TO TIMELY PROVIDE**

23 **EMPLOYMENT RECORDS**

24 71. Ms. Garcia restates and incorporates by reference each and every allegation of the
25 foregoing paragraphs as though fully set forth herein.

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

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

4 74. Pursuant to Labor Code § 226(b), Ms. Garcia (via written and/or oral correspondence)
5 requested all of the records pertaining to her employment with LINDO MICHOACAN.

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

10 76. As applicable under California law to the allegations made in this cause of action, Ms.
11 Garcia is entitled to recover the wages, damages, penalties, awards, and other remedies set forth
12 below in the Prayer for Damages.

13
14 **EIGHTH CAUSE OF ACTION FOR FAILURE TO PROVIDE PERSONNEL**
15 **RECORDS**

16 77. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
17 paragraphs as though fully set forth herein.

18 78. Labor Code § 1198.5(a) – (b) states that every current and former employee has the right
19 to inspect and receive a copy of the personnel records that the employer maintains relating to the
20 employee's performance or to any grievance concerning the employee. Further, the employer
21 shall make the contents of those personnel records available for inspection to the current or
22 former employee no later than thirty calendar days from the date the employer receives a written
23 request.

24 79. On March 7, 2022, Plaintiff's counsel requested Plaintiff's employee records, Pursuant
25 to Labor Code §§ 226, 247.5, 432, 11989.5, and 1199, Defendants were obligated to produce
26 Plaintiff's personnel records by April 6, 2021. As of the filing of this Complaint, Defendants
27 have not produced Plaintiff's personnel records.

28 80. As a result, Plaintiff is entitled to receive, and Defendants are required to pay, a penalty

1 of \$750 as provided by Labor Code § 11985(k).

2
3 **NINTH CAUSE OF ACTION FOR UNLAWFUL BUSINESS PRACTICES**

4 81. Plaintiff restates and incorporates each and every allegation of the foregoing paragraphs
5 as though fully set forth herein.

6 82. Defendants' actions and conduct alleged herein constitute unlawful, unfair, deceptive,
7 and misleading business practices, prohibited by Business & Professions Code §§ 17200 et seq.

8 83. Plaintiff is informed and believes, and thereon alleges, that Defendants utilized improper,
9 unlawful, and tortious means to unjustly enrich themselves, and to cause deliberate injury to
10 Plaintiff.

11 84. Among other things, Plaintiff seeks restitution and a return of all moneys obtained by
12 Defendants through their wrongful conduct.

13
14 **TENTH CAUSE OF ACTION FOR CIVIL PENALTIES PURSUANT TO THE**
15 **PRIVATE ATTORNEYS GENERAL ACT**

16 85. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
17 paragraphs as though fully set forth herein.

18 86. Pursuant to Labor Code § 2699.3, Plaintiff provided notice to the Labor and Workforce
19 Development Agency ("LWDA") and written notice by U.S. certified mail to Defendants of the
20 specific provisions of the Labor Code alleged to have been violated and the facts and theories to
21 support the alleged violations. These notices were sent on February 1, 2022. The LWDA did not
22 respond to the notice within sixty-five calendar days. Thus, under Labor Code § 2699.3(a)(2)(C),
23 Plaintiff is permitted to commence a civil action pursuant to Labor Code § 2699.

24 87. Defendants' conduct as set forth herein has caused injury to Plaintiff and similarly
25 aggrieved employees and has violated various provisions of the Labor Code. As such, Ms. Garcia
26 brings this claim as a representative action on behalf of herself and similarly aggrieved
27 employees.

28 88. Under Labor Code § 2699(f), "[f]or all provisions of this code except those for which a

1 civil penalty is specifically provided, there is established a civil penalty for a violation of these
2 provisions, as follows: . . . If, at the time of the alleged violation, the person employs one or more
3 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay
4 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
5 pay period for each subsequent violation.”

6 89. As alleged herein, Ms. Garcia and similarly aggrieved employees seek, and Defendants
7 are liable for, penalties for the violations of Labor Code, including the following:

8 90. Violation of Labor Code § 226.7 for failure to provide rest periods to Plaintiff and
9 similarly aggrieved employees;

10 91. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal breaks to Plaintiff
11 and similarly aggrieved employees;

12 92. Violation of Labor Code §§ 510 and 1194 for failure to pay overtime wages to Plaintiff
13 and similarly aggrieved employees

14 93. Violation of Labor Code §§ 201 and 203 for failure to pay all wages owed at termination
15 to Plaintiff and similarly aggrieved employees

16 94. Violation of Labor Code § 226 for failure to provide accurate, itemized wage statements
17 to Plaintiff and similarly aggrieved employees

18 95. Violation of Labor Code § 1174 for failure to maintain records for Plaintiff and similarly
19 aggrieved employees

20 96. Plaintiff and similarly aggrieved employees are also entitled to seek all reasonable
21 attorneys’ fees and costs of suit pursuant to Labor Code § 2699(g).

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

24 For all unpaid wages due to Plaintiff in amounts to be proven at trial, not less than
25 \$82,628;

26 For the full amount of liquidated damages due Plaintiff pursuant to Labor Code §§ 1194
27 and 1194.2;

28 For recovery as authorized by Labor Code § 226(e);

1 For restitution of all unpaid wages due Plaintiff;
2 For all applicable statutory penalties, in amounts to be proven at trial;
3 For an award of waiting time penalties pursuant to Labor Code § 203, in amounts to be
4 proven at trial;
5 For general damages including compensatory damages according to proof;
6 For pre-judgment interest as allowed by Labor Code §§ 218.6 and 1194(a) as well as
7 Civil Code § 3287 and to the extent permitted by law, the California Constitution, and/or deemed
8 equitable by the Court;
9 For all applicable interest on damages, wages, and penalties due;
10 For injunctive relief to prevent further violations of the Labor Code;
11 For declaratory relief that Defendants engaged in unfair practices;
12 For declaratory relief that Defendants violated Labor Code §§ 201-203, 226, 226.7, 510,
13 512, 1194, and 1197;
14 For restitution of all moneys due to Plaintiff, and disgorged profits from the unlawful
15 and/or unfair business practices of Defendants, pursuant to Business & Professions Code
16 §17200;
17 For one hour of pay at each of the employees' regular rate of compensation for each
18 workday that a legally compliant rest period was not provided;
19 For one hour of pay at each of the employees' regular rate of compensation for each
20 workday that a legally compliant meal period was not provided;
21 For costs of suit, expenses, and attorneys' fees pursuant to Labor Code §§226(e) and (h),
22 1194(a), and all other applicable law, and;
23 For all such other and further relief that the Court may deem just and proper.
24

25 Dated: April 11, 2022

JAFARI LAW GROUP, INC.



David V. Jafari
Saul Acherman
Attorneys for Plaintiff
ELVIA GARCIA

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues so triable in the Complaint.

Dated: April 11, 2022

JAFARI LAW GROUP, INC.



David V. Jafari
Saul Acherman
Attorneys for Plaintiff
ELVIA GARCIA