

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Bruce Iwasaki

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JONATHAN ROSADO,

Plaintiff,

vs.

CABO CANTINA, LLC; MICHAEL
BEZERRA; and DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: **22STCV09821**

) **COMPLAINT FOR DAMAGES FOR:**

) **1) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**

COMES NOW Plaintiff, JONATHAN ROSADO (hereinafter "Plaintiff"), and alleges
as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
County of Los Angeles in this judicial district because Defendants CABO CANTINA, LLC;
MICHAEL BEZERRA; and DOES 1 to 25, inclusive, do business in the County of Los
Angeles, and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's

1 damages sought herein exceed \$25,000.

2 2. Plaintiff is a male resident of the County of Los Angeles, State of California.

3 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
4 CABO CANTINA, LLC is a California corporation, doing business in the County of Los
5 Angeles, State of California, and with the address of 8272 W. Sunset Blvd., Suite D, West
6 Hollywood, CA 90046, according to its paystubs.

7 4. Defendant MICHAEL BEZERRA is an individual, who at all relevant times and
8 on information and belief resided in Los Angeles County, California. Plaintiff is informed and
9 believes that MICHAEL BEZERRA was acting on behalf of and was the managing agent and
10 owner of CABO CANTINA, LLC. Plaintiff is informed and believes and thereon alleges that
11 MICHAEL BEZERRA was involved in the day-to-day operations of the business, including
12 being responsible for creating and enforcing wage and hour policies, and as such, controlled
13 the wages, hours, and working conditions of Plaintiff and other similarly situated aggrieved
14 employees and is therefore being included in this complaint pursuant to California Labor Code
15 section 558.1. CABO CANTINA, LLC and MICHAEL BEZERRA are collectively referred to
16 herein as “CABO CANTINA” or “Defendant(s)”.

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

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

5 **GENERAL ALLEGATIONS**

6 7. Plaintiff started working for CABO CANTINA (Newport Beach location) as a bartender/
7 “manager on duty” approximately 6 months ago in mid-2021. Plaintiff was classified as an
8 hourly, non-exempt employee and earned approximately \$14/hour as a bartender and
9 \$16.50/hour as a manager on duty. Plaintiff’s work schedule was 5 days per week. Plaintiff
10 stopped working for CABO CANTINA on or around late 2021 or early 2022.

11 8. It is Plaintiff’s position that CABO CANTINA has committed numerous labor code
12 violations against Plaintiff and other hourly, non-exempt employees who worked for CABO
13 CANTINA at any of their California locations during the relevant PAGA period.

14 9. CABO CANTINA did not provide Plaintiff and other similarly situated aggrieved
15 employees with the minimum wages to which they were entitled for all work performed and
16 did not compensate him and others for all hours worked pursuant to California Labor Code
17 sections 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and
18 consistently worked “off the clock”. This is so because Plaintiff and others would consistently
19 be required to perform work duties after clocking out for work. Furthermore, Plaintiff and
20 others would be clocked out, their timesheets altered, and their hours worked changed by
21 management, which resulted in Plaintiff and others not getting paid for all hours worked and
22 not getting paid at least the minimum wage. For instance, on one occasion, Plaintiff worked
23 approximately a 9-hour shift, but was only given credit for 6 hours. Moreover, CABO
24 CANTINA had a policy and practice of rounding down hours worked and “time shaving”,
25 which led to Plaintiff and others not being paid for all hours worked, which would include the
26 minimum wage. Moreover, to the extent employees such as Plaintiff and others worked
27 through their meal periods, they were not compensated for that time, which would be akin to a
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1 minimum wage violation. Additionally, CABO CANTINA violated Labor Code Section 351
2 by taking some of the tips meant for employees and also deducting the tips from Plaintiff's and
3 others' earned wages. CABO CANTINA also deducted the credit card fee from Plaintiff's and
4 others' tips and did not timely provide the credit card and even cash tips to Plaintiff and other
5 similarly situated aggrieved employees.

6 10. Due to the above "off the clock" violations and as a matter of company policy, CABO
7 CANTINA violated Labor Code §510 because it failed to pay Plaintiff and other similarly
8 situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12
9 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and others'
10 actual work hours, which included the "off the clock" work as described above, entitled them to
11 overtime, however, it was not company policy to keep accurate track of all hours worked and to
12 pay employees all due overtime. In addition, CABO CANTINA did not include bonuses and/or
13 incentive payments in calculating employees' true regular rate of pay for purposes of deciphering
14 their correct overtime rate of pay.

15 11. CABO CANTINA violated Labor Code § 226.7 along with Industrial Welfare
16 Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated
17 aggrieved employees 10-minute rest periods for every four hours of work, or majority portion
18 thereof, throughout their employment. CABO CANTINA did not completely relieve Plaintiff
19 of all duty during said rest periods. CABO CANTINA did not pay to Plaintiff one additional
20 hour of pay at Plaintiff's regular rate of compensation for each workday that one or more
21 statutory rest periods was not provided. Rest breaks were not authorized or enforced at the
22 restaurant. In fact, it was not part of CABO CANTINA's culture for employees such as Plaintiff
23 and others to take at least one 10-minute rest break every day wherein they are relieved of all
24 work duties. The latter was due to understaffing of servers/bartenders and bartenders/managers
25 on duty such as Plaintiff being too busy to be able to take rest breaks or not being able to take
26 rest breaks because there was no coverage at the bar. Taking rest breaks meant leaving customers
27 unattended and that could not happen.
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12. CABO CANTINA also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare 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. CABO CANTINA did not completely relieve Plaintiff of all duties during said meal periods. CABO CANTINA 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 CABO CANTINA 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 CABO CANTINA 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/manager on duty 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 rarely an uninterrupted 30-minute meal period for any employees, including Plaintiff, that was taken before the 5th hour worked. As was the case with rest periods, meal breaks were definitively not part of the CABO CANTINA'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. Moreover, even if Plaintiff was somehow able to get a meal period, it would be interrupted by work-related tasks. Time records were altered to make it seem like full meal periods were taken before the 5th hour worked. Furthermore, even if CABO CANTINA did in fact provide meal period penalties to Plaintiff and others for late, short, interrupted, or no meal periods, that does not absolve CABO CANTINA of PAGA penalties. *In Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, the Court stated that "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay" (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the

violation has been paid. *See also Wert v. U.S. Bancorp* (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4).

13. Furthermore, during the relevant time period, CABO CANTINA 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. CABO CANTINA 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 for meal and rest breaks, the correct legal name and address of employing, the correct beginning and end of the pay period, all applicable hourly rates, and all identifying employee information, among other items. As such, CABO CANTINA did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

14. CABO CANTINA violated Labor Code § 203 because it willfully failed to pay Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked including minimum wages and overtime compensation, tips, and premiums for the missed meal and rest breaks.

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

16. Additionally, during the relevant time period, Plaintiff and others incurred necessary, business-related expenses and costs that were not reimbursed by CABO CANTINA. These costs include, but are not limited to, use of personal cell phones for work purposes (including setting up emails on his personal cell phone) and reimbursement for uniforms. Accordingly, CABO CANTINA was in violation of California Labor Code sections 2800 and 2802.

1 17. In addition, CABO CANTINA failed to provide a suitable rest break area for employees
2 such as Plaintiff and others in contravention of Industrial Welfare Commission Wage Order no.
3 5-2001, section 13(b).

4 **FIRST CAUSE OF ACTION**

5 **PRIVATE ATTORNEYS GENERAL ACT**

6 **Individual and Representative Claim for PAGA penalties under California Labor Code**
7 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 351, 510, 512, 558, 1174,**
8 **1174.5, 1194, 1197, 1198, 2802, and the applicable Industrial Welfare Commission Wage**
9 **Order No. 5-2001, including section 13(b)**

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

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

13 19. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
14 Defendants of the specific violations of the California Labor Code that Defendants
15 and DOE defendants have violated and continue to violate.

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

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

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

28 23. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged

1 violator and had one or more of the alleged violations committed against him, and therefore is
2 properly suited to represent the interests of other current and former hourly, non-exempt
3 employees who worked for CABO CANTINA in the State of California at any and all
4 locations during the PAGA period.

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

8 25. 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 26. California Labor Code section 2699 et seq. imposes penalties upon culpable
13 Defendants for violating the Labor Code.

14 27. California Labor Code section 558 establishes a civil penalty as follows: Any
15 employer or other person acting on behalf of an employer who violates, or causes to be
16 violated, a section of this chapter or any provision regulating hours and days of work in any
17 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
18 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
19 dollars (\$50) for each underpaid employee for each pay period for which the employee was
20 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
21 employee for each pay period for which the employee was underpaid ...;

22 28. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
23 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
24 seeking individual/victim specific relief or underpaid wages under this particular cause of
25 action.

26 29. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
27 the following:
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Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 351, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802 via 2698 and 2699 any other Labor Codes and Wage Orders (including no. 5-2001, section 13b) violated on the facts alleged in this Complaint.

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

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

1. For the imposition of civil penalties;
2. For maximum civil penalties available under Labor Code Section 2699 against Defendants in a manner and amount authorized by that statute, as described more particularly in the Complaint and representative PAGA claims;
3. For all costs and disbursements incurred in this suit;
4. Reasonable attorney's fees where available by law, including but not limited to, pursuant to the California Labor Code, including section 2698 et seq., and/or other applicable laws; and
5. For such other and further relief as this Court may deem proper.

DATED: March 21, 2022

MESSRELIAN LAW INC.

By 
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Attorneys for Plaintiff Jonathan Rosado