MESSRELIAN LAW INC.
Harout Messrelian, Esq. (272020)
500 N. Central Ave., Suite 840
Glendale, California 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983
hm@messrelianlaw.com

Attorneys for Plaintiff

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25CV462575
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

LUIS EDUARDO ALVARADO HERNANDEZ,

Plaintiff,

vs.

DUMPLING CAPITAL LLC; DUMPLING DEPOT LLC; DUMPLING CITY LLC; EPIC DUMPLING LLC; DUMPLING GARDEN LLC; KENNY QIU; and DOES 1 to 25, inclusive,

Defendants.

CASE NO.: 25CV462575

COMPLAINT FOR DAMAGES FOR:

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

COMES NOW Plaintiff, LUIS EDUARDO ALVARADO HERNANDEZ (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 SANTA CLARA in this judicial district because Defendants DUMPLING CAPITAL LLC; DUMPLING DEPOT LLC; DUMPLING CITY LLC; EPIC DUMPLING LLC; DUMPLING GARDEN LLC; KENNY QIU and DOES 1 to 25, inclusive (hereinafter collectively "DUMPLING CAPITAL" or "Defendant(s)") do business in the County of SANTA CLARA, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of SANTA CLARA is the subject of this action. Moreover, Plaintiff's damages sought herein exceed $35,000.

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

3. Plaintiff is informed and believes that at all times herein mentioned, Defendants DUMPLING CAPITAL LLC; DUMPLING DEPOT LLC; DUMPLING CITY LLC; EPIC DUMPLING LLC; and DUMPLING GARDEN LLC are California Limited Liability Companies, doing business in the County of SANTA CLARA, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant KENNY QIU is a resident of the State of California, and the owner, managing agent, and/or director of DUMPLING CAPITAL LLC; DUMPLING DEPOT LLC; DUMPLING CITY LLC; EPIC DUMPLING LLC; and DUMPLING GARDEN LLC. Individual KENNY QIU and is being included in this lawsuit pursuant to Labor Code Section 558.1 as he was involved in the day-to-day operations of the business, including the wage and hour policies and practices, controlled the hours, wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees. Defendants DUMPLING CAPITAL LLC; DUMPLING DEPOT LLC; DUMPLING CITY LLC; EPIC DUMPLING LLC; DUMPLING GARDEN LLC; and

KENNY QIU are collectively referred to herein as "Defendant(s)" (unless otherwise noted) or "DUMPLING CAPITAL".

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

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

GENERAL ALLEGATIONS

7. Plaintiff started working at DUMPLING CAPITAL in 2024 as a prep/washer. Plaintiff was classified as an hourly, non-exempt employee. Plaintiff's latest rate of pay was $18.75 per hour. Plaintiff generally worked 6 days per week from 10am to 9-930pm.

8. It is Plaintiff's position that due to personally suffering the below violations, Plaintiff can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees who worked for DUMPLING CAPITAL anywhere in the state of California (at all different restaurant locations) during the relevant PAGA period.

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9. DUMPLING CAPITAL LLC; DUMPLING DEPOT LLC; DUMPLING CITY LLC; EPIC DUMPLING LLC; DUMPLING GARDEN LLC; KENNY QIU are all considered "joint employers" in that they each controlled the wages, hours, and/or working conditions of Plaintiff and others. Furthermore, the aforementioned entities are an "integrated enterprise" under the law. The integrated enterprise test sets forth four factors for assessing whether two entities are considered a single entity for purposes of liability: (1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership or financial control. Even though one does not have to show proof of all factors to prevail on an integrated enterprise claim, here all four factors are unequivocally met as all companies and entities have the same ownership and management, including Kenny Qiu. Furthermore, there is centralized control of labor relations and there is interrelation of operations considering the fact that employees from one restaurant location also worked for the other restaurant locations, including Plaintiff, who worked at several of the aforementioned locations.

10. It is Plaintiff's position that due to personally suffering the below violations, Plaintiff can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees who worked for DUMPLING CAPITAL anywhere in the state of California (at all different restaurant locations) during the relevant PAGA period.

11. It is Plaintiff's position that DUMPLING CAPITAL has violated the following Labor Code Sections against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for DUMPLING CAPITAL at their various locations/restaurants in the State of California during the relevant PAGA period.

12. DUMPLING CAPITAL violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for "off the clock" work. This is so because DUMPLING CAPITAL had a company policy wherein they would disproportionately round down the number of hours worked, resulting in "time shaving" and further resulting in aggrieved employees not being paid for all hours worked. In fact, for Plaintiff specifically, there was no formal timekeeping system in that the company did not keep formal and accurate track of Plaintiff's work hours. Moreover, to the extent that Plaintiff and others would work through their meal breaks, the latter would also amount to a minimum wage violation because they were not paid for all hours worked. Moreover, DUMPLING CAPITAL failed to provide its employees with proper and accurate reporting time pay as well as the proper split shift premiums in that Plaintiff and others would have 2-2.5-hour gaps in work scheduling and would have to wait around to resume their work schedule. Plaintiff had a gap in scheduling from 230pm to 430pm/5pm and did not get the proper split shift premiums.

13. Due to the above "off the clock" violations, DUMPLING CAPITAL also violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and other aggrieved employees' actual work hours entitled them to overtime compensation, however, DUMPLING CAPITAL did not compensate its hourly, non-exempt employees with the correct amount of overtime due to the time shaving/rounding as described above and the lack of a formal timekeeping system. Furthermore, DUMPLING CAPITAL failed to include bonuses/incentive payments/shift differentials in calculating employees' regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive, shift differential, and bonus payments were

also not factored into employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

14. DUMPLING CAPITAL also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. DUMPLING CAPITAL did not completely relieve Plaintiff and others of all duty during said rest periods. DUMPLING CAPITAL did not pay to Plaintiff and others one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods was not provided. Rest breaks were non-existent, not enforced and never taken by Plaintiff and others, especially due to the fast-paced nature of the work and the restaurant environment. As such, the culture as well as the policies and procedures of DUMPLING CAPITAL did not lend itself to the employees receiving consistent statutory rest breaks wherein they were relieved of all work duties. The environment at DUMPLING CAPITAL was not conducive to receiving statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

15. DUMPLING CAPITAL violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. DUMPLING CAPITAL did not completely relieve Plaintiff and other employees of all duty during said meal periods. DUMPLING CAPITAL did not pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. As part of their policy, management would

specifically instruct Plaintiff to finish all of his tasks in order to be able to take any meal break. Otherwise, Plaintiff was not allowed to and could not take a meal break. The latter meant that Plaintiff would either not be able to take a meal break or his meal break would be late and after the 5th hour worked. Moreover, even if Plaintiff and others were able to take a meal period, they would be interrupted by work obligations due to the fast-paced nature of the restaurant industry. Consequently, it was the normal practice and custom of DUMPLING CAPITAL not to authorize, permit, and enforce timely statutory meal periods. If DUMPLING CAPITAL had Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff and others generally worked more than a 5-hour shift. Furthermore, under California law, however, employees must make an affirmative decision every day regarding whether to waive their meal periods. August 13, 2003 DLSE Opinion Letter ("The decision to forego a meal period may not, therefore, be based on a specific requirement of the employer or on a policy or practice which could reasonably be perceived to be a condition of employment. Therefore, blanket "waivers" of meal periods …whether written or oral, will not be considered valid."). If DUMPLING CAPITAL had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it would be invalid and unenforceable because the nature of Plaintiff's job does not and did not prevent him from taking a meal period and the company could have hired "breakers" to relieve Plaintiff of his job duties so that he can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow for Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff and others did not always receive statutory, timely meal periods during their employment. To the extent that DUMPLING CAPITAL argues that employees receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of

whether an employee received the premium payment for a missed, short, or interrupted meal period. In Kirby v. Immoos Fire Protection, Inc., the Court stated, "section 226.7 does not give employers a lawful choice between providing either meal and rest breaks or an additional hour of pay." See Kirby v. Immoos Fire Protection, Inc., (2012) 53 Cal.4th 1244, 1256 (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 Wert v. U.S. Bancorp, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at DUMPLING CAPITAL was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

16. Furthermore, during the relevant time period, and due to the above labor code violations, DUMPLING CAPITAL 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. Since Plaintiff was not compensated for his "off the clock" work and since Plaintiff did not receive proper and complete meal and rest break premiums, Plaintiff would still be owed wages pursuant to Labor Code Section 204. DUMPLING CAPITAL was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, the correct hourly rate, all hours worked, overtime hours worked, tips, correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period, all employee identifying information, tips, the correct and complete name and address of the legal employer, and reimbursement for business expenses, among

others. As such, DUMPLING CAPITAL did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

17. During the relevant time period, DUMPLING CAPITAL also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff and others pursuant to California Labor Code sections 1174(d).

18. DUMPLING CAPITAL also 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, overtime compensation, and premium pay for missed meal and rest breaks.

19. During the relevant time period, Plaintiff and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by DUMPLING CAPITAL. These costs include, but are not limited to uniforms and equipment for work purposes. Accordingly, DUMPLING CAPITAL was in violation of California Labor Code sections 2800 and 2802.

20. Additionally, DUMPLING CAPITAL violated Labor Code Section 351 and 353 by taking some of the tips meant for employees and also deducting the tips from employees' earned wages. DUMPLING CAPITAL also deducted the credit card fee from employees' tips and did not timely provide the credit card and even cash tips to aggrieved employees. As such, aggrieved employees were not given accurate tips to which they were entitled.

21. Furthermore, DUMPLING CAPITAL did not provide proper and correct/accurate sick pay (inclusive of all bonuses/shift differentials/incentive payments) that was also delineated on employee pay stubs and also failed to provide proper sick leave in violation of Labor Code

sections 233 and 246. Moreover, there were no suitable seating/rest break facilities for the employees pursuant to Wage Order no. 5-2001 as employees did not have a designated break area.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT
Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and IWC Wage Order 5-2001)

(Plaintiff against All Named Defendants and all DOE defendants)

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

23. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated January 17, 2025, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

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

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

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

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

violator and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of other current and former employees, including all current and former hourly, non-exempt employees who worked for DUMPLING CAPITAL in the State of California during the applicable PAGA Period.

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

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

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

31. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by law, but only those penalties that are required to be shared with the LWDA and Plaintiff is not seeking individual penalties/victim specific relief or underpaid wages for himself or other employees under this specific PAGA cause of action.

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

Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, via 2698 and 2699 and any other Labor Codes/Industrial Welfare Commission Order (No. 5) violated based on the facts alleged in this Complaint.

33. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees, costs, and civil penalties on behalf of 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.

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PRAYER FOR RELIEF

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 Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other applicable laws; and
5. For such other and further relief as this Court may deem proper.

DATED: April 2, 2025 MESSRELIAN LAW INC.

By Harout Messrelian
Harout Messrelian, Esq.
Attorneys for Plaintiff