

MESSRELIAN LAW INC.

Harout Messrelian, Esq. (SB# 272020)

hm@messrelianlaw.com

Maralle Messrelian, Esq. Of Counsel (SB#316974)

maralle@messrelianlaw.com

500 N. Central Ave., Suite 840

Glendale, California 91203

Telephone: (818) 484-6531

Facsimile: (818) 956-1983

Attorneys for Plaintiffs Marin Navarrete and Maria Alvarez

E-FILED

8/26/2022 12:53 PM

Clerk of Court

Superior Court of CA,

County of Santa Clara

22CV404377

Reviewed By: M. Bui

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

MARIN NAVARRETE and MARIA
ALVAREZ,

Plaintiffs,

vs.

EL MAESTRO INC.; JOHN DIEP;
SANDRA DIEP; and DOES 1 to 25,
inclusive,

Defendants.

CASE NO.: 22CV404377

COMPLAINT FOR DAMAGES FOR:

- 1) FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- 2) FAILURE TO PAY MINIMUM WAGES;**
- 3) FAILURE TO PAY OVERTIME;**
- 4) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 5) FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
- 6) FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;**
- 7) FAILURE TO GIVE REST BREAKS;**
- 8) FAILURE TO GIVE MEAL BREAKS**
- 9) PRIVATE ATTORNEYS GENERAL ACT ("PAGA");**
- 10) FAILURE TO REIMBURSE FOR BUSINESS EXPENSES;**
- 11) UNLAWFUL TIP COLLECTION;**
- 12) FAILURE TO PROVIDE PERSONNEL RECORDS;**
- 13) FAILURE TO PROVIDE PAY RECORDS;**
- 14) VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200.**

1)
2) **DEMAND FOR JURY TRIAL**
3)
4)
5)

6 COME NOW Plaintiffs, MARIN NAVARRETE and MARIA ALVAREZ (hereinafter
7 “Plaintiffs”), and allege as follows:

8 **PARTIES, JURISDICTION, VENUE**

9 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
10 County of Santa Clara in this judicial district because Defendants EL MAESTRO INC., JOHN
11 DIEP, SANDRA DIEP, and DOES 1 to 25, inclusive, do business in the County of Santa Clara
12 and because Defendants’ obligations and liabilities arise therein, and because the work that was
13 performed by Plaintiffs in the County of Santa Clara is the subject of this action. Moreover,
14 Plaintiffs’ damages sought herein exceed \$25,000.

15 2. Plaintiff MARIN NAVARRETE (“NAVARRETE”) is a male resident of the County of
16 Santa Clara, State of California.

17 3. Plaintiff MARIA ALVAREZ (“ALVAREZ”) is a female resident of the County of Santa
18 Clara, State of California.

19 4. Plaintiffs are informed and believe that at all times herein mentioned, Defendant
20 EL MAESTRO INC. is and was a California corporation, doing business in Santa Clara County,
21 California, and which employed Plaintiff.

22 5. Defendant JOHN DIEP is a citizen of California based on Plaintiffs’ information and
23 belief.

24 6. Defendant SANDRA DIEP is a citizen of California based on Plaintiffs’ information
25 and belief.

26 7. In relevant part, Labor Code section 558.1 states:

27 (a) Any employer or other person acting on behalf of an employer, who
28 violates, or causes to be violated, any provision regulating minimum
wages or hours and days of work in any order of the Industrial Welfare
Commission, or violates, or causes to be violated, Sections 203, 226,
226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such

violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

8. Plaintiffs are informed and believe and thereon allege that JOHN DIEP is a natural person and an owner, director, officer, and/or managing agent of Defendant EL MAESTRO INC., who directly or indirectly, or through an agent or any other person, employed or exercised control over the wages, hours, or working conditions of Plaintiffs and the aggrieved employees (as defined below). Therefore, he is liable to Plaintiffs and the aggrieved employees for his violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, 1193.6, 1194, 2802, and the Wage Order (no. 5) pursuant to Labor Code section 558.1.

9. Plaintiffs are informed and believe and thereon allege that SANDRA DIEP is a natural person and an owner, director, officer, and/or managing agent of Defendant EL MAESTRO INC., who directly or indirectly, or through an agent or any other person, employed or exercised control over the wages, hours, or working conditions of Plaintiffs and the aggrieved employees (as defined below). Therefore, she is liable to Plaintiffs and the aggrieved employees for her violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, 1193.6, 1194, 2802, and the Wage Order (no. 5) pursuant to Labor Code section 558.1. EL MAESTRO INC., JOHN DIEP, and SANDRA DIEP are hereinafter collectively referred to as “Defendants” or “EL MAESTRO”.

10. The “aggrieved employees” are all current and former non-exempt or hourly paid employees who worked for EL MAESTRO at any and all of their California locations during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

11. Plaintiffs are 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 Plaintiffs sue them by these fictitious names. Plaintiffs are informed and believe 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

1 fictitiously named defendants, Plaintiffs will amend this complaint to show the true names and
2 capacities of these fictitiously named defendants.

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

8 **GENERAL ALLEGATIONS**

9 13. Plaintiff NAVARRETE started working for EL MAESTRO Restaurant on or around
10 2015 as a cook. During the latter part of his employment, Plaintiff NAVARRETE was classified
11 as a salaried, exempt employee. Plaintiff NAVARRETE's employment at EL MAESTRO ended
12 on or around May 22, 2022.

13 14. Plaintiff ALVAREZ started working for EL MAESTRO Restaurant on or around
14 December 2021 as a dishwasher, but did other duties as needed for the full-service restaurant.
15 During her employment tenure, ALVAREZ was classified as an hourly, non-exempt employee.
16 Plaintiff ALVAREZ's employment at EL MAESTRO ended on or around May 20, 2022.

17 15. Plaintiff NAVARRETE was misclassified as a salaried employee since he does not meet
18 any of the exemptions. Plaintiff NAVARRETE did not fall under the Executive exemption
19 because he did not have the ability to hire and fire. The professional exemption did not apply
20 since Plaintiff NAVARRETE did not have a culinary degree. As for the Administrative
21 exemption, Plaintiff NAVARRETE was a cook and did not engage in job duties that met the test
22 of exemption more than 50% of the time. Moreover, Plaintiff NAVARRETE did not have
23 independent discretion and judgment. Plaintiff NAVARRETE was supposed to be classified as
24 an hourly, non-exempt employee but was misclassified as a salaried employee.

25 16. It is Plaintiffs' position that EL MAESTRO has committed numerous labor code
26 violations against Plaintiffs and other hourly, non-exempt employees who worked for EL
27 MAESTRO at any of their California locations during the relevant PAGA period.

28 17. EL MAESTRO did not provide Plaintiffs and other similarly situated aggrieved
employees with the minimum wages to which they were entitled for all work performed and did

1 not compensate them and others for all hours worked pursuant to California Labor Code sections
2 1194, 1197 and 1197.1. Plaintiff NAVARRETE was not paid by the hour and did not receive
3 payment for all hours worked since he was misclassified as a salaried, exempt employee. For
4 Plaintiff ALVAREZ and other employees who were classified as hourly, non-exempt employees,
5 EL MAESTRO had a policy and practice of rounding down hours worked and “time shaving”,
6 which led to the employees not being paid for all hours worked, which would include the
7 minimum wage. Moreover, to the extent employees worked through their meal periods and those
8 meal periods were interrupted, they were not compensated for that time, which would be akin to
9 a minimum wage violation.

10 18. Additionally, EL MAESTRO violated Labor Code Section 351 by taking some of the
11 tips meant for employees and also deducting the tips from Plaintiffs’ and others’ earned wages.
12 EL MAESTRO also deducted the credit card fee from Plaintiffs’ and others’ tips and did not
13 timely provide the credit card and even cash tips to Plaintiffs and other similarly situated
14 aggrieved employees.

15 19. Due to the above “off the clock” violations and as a matter of company policy, EL
16 MAESTRO violated Labor Code §510 because it failed to pay Plaintiffs and other similarly
17 situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12
18 hours per day, and/or 40 hours per week throughout their employment. Plaintiffs’ and others’
19 actual work hours, which included the “off the clock” work as described above, entitled them to
20 overtime, however, it was not company policy to keep accurate track of all hours worked and to
21 pay employees all due overtime. Moreover, Plaintiff NAVARRETE was not paid overtime
22 because he was misclassified as a salaried, exempt employee. In addition, EL MAESTRO did
23 not include bonuses and/or incentive payments in calculating employees’ true regular rate of pay
24 for purposes of deciphering their correct overtime rate of pay.

25 20. EL MAESTRO violated Labor Code § 226.7 along with Industrial Welfare Commission
26 Wage Order no. 5 because it failed to provide Plaintiffs and other similarly situated aggrieved
27 employees 10-minute rest periods for every four hours of work, or majority portion thereof,
28 throughout their employment. EL MAESTRO did not completely relieve Plaintiffs of all duty
during said rest periods. EL MAESTRO did not pay to Plaintiffs one additional hour of pay at

1 Plaintiffs' regular rate of compensation for each workday that one or more statutory rest periods
2 was not provided. Rest breaks were not authorized or enforced at the restaurant. In fact, it was
3 not part of EL MAESTRO's culture for employees such as Plaintiffs and others to take at least
4 one 10-minute rest break every day wherein they are relieved of all work duties. The latter was
5 due to understaffing of employees. As such, Plaintiffs and others were too busy to be able to take
6 rest breaks. As such, rest breaks were not enforced and not a policy or practice of the restaurant.

7 21. EL MAESTRO also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
8 Commission Wage Order No. 5 because it failed to provide Plaintiffs and other similarly situated
9 aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours
10 of work throughout their employment, and Plaintiffs did not validly waive said meal periods. EL
11 MAESTRO did not completely relieve Plaintiffs of all duties during said meal periods. EL
12 MAESTRO did not pay to Plaintiffs one additional hour of pay at Plaintiffs' regular rate of
13 compensation for each workday that one or more statutory meal periods was not provided. If EL
14 MAESTRO had Plaintiffs sign a meal period waiver, it would not be valid and enforceable since
15 Plaintiffs and others generally worked more than a 6-hour shift. If EL MAESTRO had Plaintiffs
16 sign an on-duty meal period agreement wherein Plaintiffs agreed to work through their meal
17 period, it would also be invalid and unenforceable because the nature of Plaintiff
18 NAVARRETE's job as a cook and Plaintiff ALVAREZ's job as a dishwasher does not prevent
19 them from taking a meal period. As such, Plaintiffs and others never received statutory, timely
20 meal periods during their employment. In other words, there was rarely an uninterrupted 30-
21 minute meal period for any employees, including Plaintiffs, that was taken before the 5th hour
22 worked. As was the case with rest periods, meal breaks were definitively not part of the EL
23 MAESTRO's culture, especially in a fast-paced restaurant environment. The meal periods were
24 not authorized and were not enforced. There may have been one day during the entire week
25 where Plaintiff NAVARRETE was able to take some kind of meal period, but the large majority
26 of the time, meal breaks simply were not taken at all, especially during the shifts on Mondays
27 through Thursdays wherein the employees worked from 2pm to 9:30pm or longer. In addition,
28 even if Plaintiffs and others were able to get a meal break on Fridays, Saturdays, or Sundays,
they would certainly not get a second meal period as their work hours were over 12 hours for

1 those days (10am to 11pm). Furthermore, even if EL MAESTRO did in fact provide meal period
2 penalties to Plaintiffs and others for late, short, interrupted, or no meal periods, that does not
3 absolve EL MAESTRO of PAGA penalties. In *Kirby v. Immoos Fire Protection, Inc.* (2012) 53
4 Cal.4th 1244, 1256, the Court stated that “section 226.7 does not give employers a lawful choice
5 between providing either meal and rest breaks or an additional hour of pay” (emphasis in
6 original). Thus, the extra hour of pay does not excuse the violation; the employer has still
7 committed a violation even if the remedy for the violation has been paid. *See also Wert v. U.S.*
8 *Bancorp* (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4).

9 22. Furthermore, during the relevant time period and due to the above-mentioned labor code
10 violations, EL MAESTRO failed to pay Plaintiffs and other similarly situated aggrieved
11 employees all wages due to them within any time period specified by California Labor Code
12 section 204, including the minimum wages and overtime as described above as well as meal/rest
13 break premiums. EL MAESTRO was also in violation of California Labor Code section 226(a)
14 by not providing access to paystubs and failing to include pertinent information on the wage
15 statements, including but not limited to, all hours worked, tips earned, gross wages earned, net
16 wages earned, all deductions, premium payments for meal and rest breaks, the correct legal name
17 and address of the employer, the correct beginning and end of the pay period, all applicable
18 hourly rates, and all identifying employee information, among other items. As such, EL
19 MAESTRO did not provide Plaintiffs and other similarly situated aggrieved employees with
20 complete, accurate itemized wage statements.

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

26 24. During the relevant time period, EL MAESTRO also failed to keep accurate and
27 complete payroll records showing the actual hours worked per day (including the time for meal
28 periods) and the wages paid to Plaintiffs and other aggrieved employees pursuant to California
Labor Code sections 1174(d).

1 25. Additionally, during the relevant time period, Plaintiffs and others incurred necessary,
2 business-related expenses and costs that were not reimbursed by EL MAESTRO. These costs
3 include, but are not limited to, the purchase of supplies to effectuate job duties as Plaintiff
4 NAVARRETE had to purchase soaps, screws, and other items for the workplace and Plaintiff
5 ALVAREZ had to purchase kitchen tools like spatulas and brushes. In addition, Plaintiff
6 NAVARRETE had to utilize his vehicle for company purchases but was not compensated for
7 mileage. Accordingly, EL MAESTRO was in violation of California Labor Code sections 2800
8 and 2802.

9 26. Moreover, EL MAESTRO failed to provide Worker's Compensation coverage for
10 Plaintiffs and other aggrieved employees in violation of Labor Code Section 3700.5 and also
11 failed to provide sick pay in violation of Labor Code Sections 233 and 246.

12 27. Since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other
13 employees (*See Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745 (2018)) it allows
14 for suits broader than the specific violations the named employee experienced. Therefore, even
15 if the employee did not personally experience the Labor Code violations, the employer may still
16 be liable to under PAGA. Consequently, Plaintiffs can equivocally bring all of the above-
17 mentioned labor code violations on behalf of all other employees, including ALL hourly, non-
18 exempt employees.

19 **FIRST CAUSE OF ACTION**

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

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

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

24 28. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs
25 1 through 27, inclusive, of this Complaint as though fully set forth herein.

26 29. At all times relevant herein, Defendants were required to compensate their employees for
27 all hours worked upon reporting for work at the appointed time stated by the employer pursuant
28 to Industrial Welfare Commission Order 5-2001, California Code of Regulations, Title 8, Section
11050.

1 30. For the three (3) years preceding filing of this action, Defendants failed to compensate
2 Plaintiffs for all hours worked.

3 31. Under the aforementioned wage order and regulations, Plaintiffs are to recover
4 compensation for all hours worked but not paid by Defendants for the three (3) years preceding
5 the filing of this Complaint.

6 32. As a proximate result of the aforementioned violations, Plaintiffs have been damaged in
7 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
8 this Court.

9 33. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
10 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiffs are
11 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
12 reasonable attorney's fees and costs of suit.

13 34. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
14 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
15 amount known to Plaintiffs once they have obtained all of their payroll records from Defendants.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY MINIMUM WAGES**

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

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

20 35. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs
21 1 through 34, inclusive, of this Complaint as though fully set forth herein.

22 36. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
23 to suffer or permit a California employee to work without paying wages at the minimum wage
24 rate for all hours worked as required by the applicable Industrial Welfare Commission
25 (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations, Title
26 8, Section 11050, subdivision 4.

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

1 to do so...”

2 38. During their employment, Plaintiffs were regularly required as a matter of uniform policy
3 and practice to work, and in fact worked, as an employee of Defendants and Plaintiffs were paid
4 less than the minimum wage rate by Defendants for hours worked in violation of California
5 Labor Code Section 1197 and the applicable California Industrial Wage Commission wage
6 order(s).

7 39. Plaintiffs were, at all relevant times, under the control of Defendants and suffered or
8 permitted to work by Defendants. Defendants’ acts or omissions in failing to adequately
9 compensate Plaintiffs were not in good faith nor were there reasonable grounds for Defendants
10 to believe that their acts or omissions were not contrary to California law.

11 40. For all hours worked by Plaintiffs for which they were paid less than the minimum wage
12 rate by Defendants, Plaintiffs are entitled to not less than the applicable California minimum
13 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount equal
14 to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194, Plaintiffs
15 are also entitled to attorney’s fees, costs and interests according to proof.

16 41. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
17 along with any allowable interest, penalties, attorney’s fees, and costs according to proof at trial.

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME**

20 **(California Industrial Welfare Commission Order 9-2001, California Code of**

21 **Regulations Title 8 Section 11050; California Labor Code Section 510)**

22 **(Plaintiffs against all named defendants and all DOE defendants)**

23 42. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs
24 1 through 41, inclusive, of this Complaint as though fully set forth herein.

25 43. Pursuant to Industrial Welfare Commission Order No. 5-2001, Cal. Code of Regs., Title
26 8, Section 11050, for the period of Plaintiffs’ employment, Defendants were required to
27 compensate Plaintiffs for all overtime, which is calculated at one and one-half (1.5) times the
28 regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week,
and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a

1 day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

2 44. Plaintiffs were non-exempt employees entitled to the protections of the California
3 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations, Title 8,
4 Section 11050.

5 45. Plaintiffs worked more than eight (8) hours in a single workday or forty (40) hours in a
6 single workweek on numerous occasions.

7 46. Plaintiffs were entitled to the above overtime premiums.

8 47. Defendants did not pay Plaintiffs premium wages of at least one and one-half times
9 Plaintiffs' regular rate of pay for hours worked past eight (8) in a day.

10 48. Defendants did not pay Plaintiffs premium wages of at least one and one-half times
11 Plaintiffs' regular rate of pay for hours worked past forty (40) in a week.

12 49. Plaintiffs worked at least one pay period in which they were not properly paid overtime
13 within the three (3) years prior to the initiation of this lawsuit.

14 50. Defendants know or should know the actual dates of overtime worked, the amount of
15 overtime worked, and the amount of unpaid overtime due.

16 51. As a proximate result of Defendants' violations, Plaintiffs have been damaged in an
17 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
18 Court.

19 52. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
20 Regulations, Title 8, Sections 11050, Plaintiffs are entitled to recover damages for the
21 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
22 reasonable attorney's fees and costs of suit.

23 53. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
24 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

25 **FOURTH CAUSE OF ACTION**

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

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

28 **(Plaintiffs against all named defendants and all DOE defendants)**

54. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs

1 through 53, inclusive, of this Complaint as though fully set forth herein.

55. Pursuant to California Labor Code Section 226, every employer must furnish each employee an itemized statement of wages and deductions at the time of payment of wages.

56. Defendants knowingly and intentionally did not furnish Plaintiffs with any pay stubs that accurately reflected all information required by Labor Code Section 226, including but not limited to, all hours worked, gross wages earned, including overtime, minimum wages, and premium pay for missed meal and rest breaks, net wages earned, total hours worked by the employee, all deductions, and business expense reimbursement. Therefore, Defendants failed to maintain and provide accurate itemized wage statements to Plaintiffs in accordance with California Labor Code Section 226(a).

57. Pursuant to California Labor Code Section 226(e), Plaintiffs are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and reasonable attorney's fees. Plaintiffs only claim damages under this cause of action pursuant to the 3-year period immediately preceding the date this lawsuit was filed.

58. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs have sustained damages, including loss of earnings, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiffs are entitled to recover penalties, in an amount to be established at trial, as well as costs and attorney's fees pursuant to statute.

59. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201, 203)

(Plaintiffs against all named defendants and all DOE defendants)

60. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 59, inclusive, of this Complaint as though fully set forth herein.

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

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

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

11 64. After Plaintiffs' employment with Defendants ended, Defendants willfully refused and
12 continue to refuse to pay their unpaid wages as required by Labor Code Section 203.

13 65. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
14 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.
15 Moreover, Plaintiffs pray for the above-mentioned money from 3 years immediately preceding
16 the filing of this lawsuit.

17 66. Under this cause of action, Plaintiffs also pray for attorney's fees and costs under
18 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
19 forth herein. Plaintiffs also pray for interest under California Labor Code Section 218.6.

20 67. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
21 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

22 **SIXTH CAUSE OF ACTION**

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

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

25 **(Plaintiffs against all named defendants and all DOE defendants)**

26 68. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs
27 1 through 67, inclusive, of this Complaint as though fully set forth herein.

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

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

3 71. Defendants failed to pay Plaintiffs all wages earned each pay period. Plaintiffs are
4 informed, believe, and thereon allege, that all times relevant during the liability period,
5 Defendants maintained a policy or practice of not paying Plaintiffs wages for all hours worked,
6 including overtime hours, the minimum wage, and premium pay for missed meal and rest breaks.

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

11 73. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
12 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

13 **SEVENTH CAUSE OF ACTION**

14 **FAILURE TO GIVE REST BREAKS**

15 **(Plaintiffs against all named defendants and all DOE defendants)**

16 74. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs
17 1 through 73, inclusive, of this Complaint as though fully set forth herein.

18 75. Plaintiffs bring this cause of action under the following laws, for the following reasons:

- 19 a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which provides
20 that every employer shall authorize and permit all employees to take rest periods,
21 which insofar as practicable shall be in the middle of each work period. The
22 authorized rest period time shall be based on the total hours worked daily at the rate
23 of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- 24 b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which provides
25 that if an employer fails to provide an employee a rest period in accordance with the
26 applicable provisions of this order, the employer shall pay the employee one (1) hour
27 of pay at employee's regular rate of compensation for each workday that the rest
28 period is not provided;
- c. Title 8 of the California Code of Regulations sections 11050(20)(A), which penalizes

1 the employer \$50.00 for each initial violation, per employee, of any provision of the
2 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
3 d. California Labor Code section 226.7, which states that (a) no employer shall require
4 any employee to work during any rest period mandated by an applicable order of the
5 Industrial Welfare Commission, and (b) if an employer fails to provide an employee
6 a rest period in accordance with an applicable order of the Industrial Welfare
7 Commission, the employer shall pay the employee one (1) additional hour of pay at
8 employee's regular rate of compensation for each work day that the rest period is not
9 provided.

10 76. Plaintiffs allege that they were not authorized and permitted to take a ten (10) minute rest
11 break after every four (4) hours of work or major fraction thereof, as required by California law.

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

16 78. Plaintiffs also pray for Labor Code section 218.5 recovery of costs and attorney's fees as
17 well as interest under Labor Code section 218.6.

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

20 **EIGHTH CAUSE OF ACTION**

21 **FAILURE TO GIVE MEAL BREAKS**

22 **(Plaintiffs against all named defendants and all DOE defendants)**

23 80. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs
24 1 through 79, inclusive, of this Complaint as though fully set forth herein.

25 81. Plaintiffs bring this cause of action under the following laws, for the following reasons:

- 26 a. California Labor Code section 512(a), which requires that employees be given a 30-
27 minute uninterrupted meal break after five (5) hours of work, and a second
28 uninterrupted meal break after ten (10) hours of work;
- b. California Labor Code section 226.7, which states that (a) no employer shall require

1 any employee to work during any meal period mandated by an applicable order of
2 the Industrial Welfare Commission, and (b) if any employer fails to provide an
3 employee a meal period in accordance with an applicable order of the Industrial
4 Welfare Commission, the employer shall pay the employee one (1) additional hour
5 of pay at the employee's regular rate of compensation for each workday that the meal
6 period is not provided;

7 c. California Industrial Welfare Commission Order No. 5 sections 11(B) and 11(D), as
8 codified under Title 8 of the California Code of Regulations Section 11050, which
9 states that if an employer fails to provide an employee a meal period in accordance
10 with the applicable provisions of the Wage Order, the employer shall pay the
11 employee one (1) hour of pay at the employee's regular rate of compensation for each
12 workday that the meal period is not provided;

13 d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as
14 codified under Title 8 of the California Code of Regulations Section 11050, which
15 requires an employer to maintain records documenting its employees' meal periods;

16 e. California Industrial Welfare Commission Wage Order No. 5 Section 20(A), as
17 codified under California Code of Regulations Section 11050, which penalizes the
18 employer \$50.00 for each initial violation, per employee, of any provision of the
19 Wage Order, and \$100.00 for each additional violation thereafter per employee; and

20 f. California Labor Code section 1171 and 1173, which have given the California Labor
21 Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5) as
22 enforceable law.

23 82. Plaintiffs allege that they were not authorized and permitted to take relieved meal breaks
24 after five (5) hours of work. Plaintiffs further allege that they were not authorized and permitted
25 to take a second relieved meal break after ten (10) hours of work, as required by California law.
26 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
27 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that
28 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that
the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty.

1 California Labor Code section 226.7 provides that employers may not require their employees
2 to work through their meal periods. California Labor Code section 226.7 and California Code of
3 Regulations section 11050 requires that if the employer fails to provide the employee with an
4 uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each
5 work day that the meal period is not given.

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

10 84. Plaintiffs also pray for Labor Code section 218.5 recovery of costs and attorney's fees as
11 well as interest under Labor Code section 218.6.

12 85. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
13 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

14 **NINTH CAUSE OF ACTION**

15 **PRIVATE ATTORNEYS GENERAL ACT**

16 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
17 **202, 203, 204 and/or 204b, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 558.1, 1174,**
18 **1174.5, 1194, 1197, 1198, 2802, 3700.5)**

19 **(Plaintiffs against all named Defendants and all DOE Defendants)**

20 86. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs
21 1 through 85, inclusive, of this Complaint as though fully set forth herein.

22 87. Pursuant to law, Plaintiffs provide the required written notice to the LWDA and
23 Defendants of the specific violations of the California Labor Code that Defendants and DOE
24 defendants have violated and continue to violate.

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

27 89. Plaintiffs therefore have exhausted all administrative remedies required of them under
28 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

1 Labor Code.

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

8 91. Plaintiffs are “aggrieved employees” because Plaintiffs were employed by the alleged
9 violator and had one or more of the alleged violations committed against them, and therefore are
10 properly suited to represent the interests of other current and former employees, including all
11 hourly, non-exempt employees who worked for EL MAESTRO at any of their California
12 locations during the applicable PAGA period.

13 92. Based on the acts alleged above, Plaintiffs, on behalf of themselves and others, seek
14 penalties under California Labor Code sections 2698 and 2699 because of Defendants’ violations
15 of numerous provisions of the California Labor Code as alleged in this Complaint.

16 93. Plaintiffs therefore have exhausted all administrative remedies required of them under
17 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
18 cause of action and pursue penalties in a representative action for Defendants’ violations of the
19 Labor Code.

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

22 95. California Labor Code section 558 establishes a civil penalty as follows: Any
23 employer or other person action on behalf of an employer who violates, or causes to be violated,
24 a section of this chapter or any provision regulating hours and days of work in any order of the
25 Industrial Welfare Commission (including the “Hours and Days of Work” section of the Wage
26 Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for
27 each underpaid employee for each pay period for which the employee was underpaid ...; (2) for
28 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
period for which the employee was underpaid ...;

1 96. Plaintiffs seek penalties for Defendants' misconduct as alleged herein as permitted
2 by law, but only those penalties that are required to be shared with the LWDA as Plaintiffs are
3 not seeking individual/victim specific relief or underpaid wages under this particular cause of
4 action.

5 97. Plaintiffs seek penalties for Defendants' misconduct as alleged herein as permitted
6 by law. Specifically, Plaintiffs seek penalties under California Labor Code section 2699, for
7 the following:

8 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
9 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802
10 and 3700.5 via 2698 and 2699, and any other Labor Codes and Industrial Welfare
11 Commission Wage Orders (no. 5) violated based on the facts alleged in this Complaint.

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

16 **TENTH CAUSE OF ACTION**

17 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

18 **(Plaintiffs against all named Defendants and DOE Defendants)**

19 99. Plaintiffs re-allege and incorporate by reference each and every allegation in
20 paragraphs 1 through 98, inclusive, of this Complaint as though fully set forth herein.

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

24 101. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
25 their duties for Defendant, Plaintiffs incurred reasonable and necessary expenses in the course
26 of completing their job duties, which were not reimbursed by Defendants. These costs include,
27 but are not limited to, the purchase of supplies to effectuate job duties as Plaintiffs had to
28 purchase soaps, screws, kitchen spatulas and brushes and other items for the workplace. In
addition, Plaintiff NAVARRETE had to utilize his vehicle for company purchases but was not

1 compensated for mileage. Plaintiffs are entitled to reimbursement for these necessary
2 expenditures, plus interest and attorney's fees and costs, under Labor Code section 2802.

3 **ELEVENTH CAUSE OF ACTION**

4 **UNLAWFUL TIP COLLECTION**

5 **(Lab. Code §§ 351 and 353)**

6 **(Plaintiffs against all named Defendants and DOE Defendants)**

7 102. Plaintiffs re-allege and incorporate by reference each and every allegation in
8 paragraphs 1 through 101, inclusive, of this Complaint as though fully set forth herein.

9 103. During all times relevant herein, Defendants unlawfully collected tips meant for
10 employees and also deducting the tips from Plaintiffs' and others' earned wages. EL MAESTRO
11 also deducted the credit card fee from Plaintiffs' and others' tips and did not timely provide the
12 credit card and even cash tips to Plaintiffs and other similarly situated aggrieved employees.

13 104. Labor Code section 351 makes it illegal for an employer to collect tips paid or
14 left for the employee and mandates that such tips are the employees' property.

15 105. Labor Code section 353 requires every employer to keep accurate records of all
16 gratuities received, whether received directly from the employee or indirectly by means of
17 deductions from the wages of the employee or otherwise.

18 106. By Defendants unlawfully collecting tips from Plaintiffs, Defendants violated
19 California Labor Code Section 351 and 353. Therefore, Plaintiffs demand return of all tips
20 unlawfully collected from them within three years of the filing of this complaint

21 **TWELFTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE PERSONNEL RECORDS**

23 **(Plaintiffs against all named Defendants and all DOE Defendants)**

24 107. Plaintiffs re-allege and incorporate by reference each and every allegation in
25 paragraphs 1 through 106, inclusive, of this Complaint as though fully set forth herein.

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

1 109. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the
2 employer shall make the contents of those personnel records available for inspection to the
3 current or former employee, or his or her representative, at reasonable intervals and at reasonable
4 times...” On information and belief, Defendants intentionally failed to provide Plaintiffs with
5 personnel records when requested by Plaintiffs via letters on June 13, 2022, as required by law.
6 Plaintiffs requested their personnel records in accordance with California Labor Code section
7 1198.5(k) on June 13, 2022, via U.S. certified mail, return receipt requested.

8 110. Defendants failed to provide Plaintiffs with an opportunity to inspect or copy their
9 records within 30 days. As a direct result of Defendants’ violations alleged herein, Plaintiffs have
10 suffered and continue to suffer substantial losses related to Defendants' failure to provide
11 personnel records.

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

16 **THIRTEENTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE PAY RECORDS**

18 **(Plaintiffs against all named Defendants and all DOE Defendants)**

19 112. Plaintiffs re-allege and incorporate by reference each and every allegation in
20 paragraphs 1 through 111, inclusive, of this Complaint as though fully set forth herein.

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

24 114. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer
25 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
26 pertaining to a current or former employee shall comply with the request as soon as practicable,
27 but no later than 21 calendar days from the date of the request.” On information and belief,
28 Defendants intentionally failed to provide Plaintiffs with pay records when requested by
Plaintiffs via certified letter, return receipt requested, on June 13, 2022, and as required by law.

1 Plaintiffs requested their pay records in accordance with California Labor Code section 226 on
2 June 13, 2022, via certified mail. Defendants failed to provide Plaintiffs with an opportunity to
3 inspect or copy their pay records within 21 days.

4 115. As a direct result of Defendants' violations alleged herein, Plaintiffs have suffered
5 and continue to suffer substantial losses related to Defendants' failure to provide pay records.
6 Pursuant to Labor Code section 226, Plaintiffs pray for judgment against Defendants in the
7 amount of \$750.00, along with costs and attorney's fees.

8 116. Plaintiffs seek all available remedies for Defendants' violations including, but
9 not limited penalties, and costs to the extent permitted by law and according to proof at trial.

10 **FOURTEENTH CAUSE OF ACTION**

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

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

13 **(Plaintiffs against all named Defendants and all DOE Defendants)**

14 117. Plaintiffs re-allege and incorporate by reference each and every allegation in
15 paragraphs 1 through 116, inclusive, of this Complaint as though fully set forth herein.

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

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

22 120. For the four years preceding the filing of this action, Plaintiffs have suffered
23 damages and request damages and/or restitution of all monies and profits to be disgorged from
24 Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of
25 this Court.

26 WHEREFORE, Plaintiffs pray for Judgment against Defendants and each of them, as
27 follows:

- 28 1. For special and consequential damages to the extent allowed by law;
2. For damages for wages and overtime not paid to Plaintiffs in an amount subject to proof

1 at trial;

2 3. For damages and penalties under Labor Code Section 226 for Plaintiffs in an amount
3 subject to proof at trial;

4 4. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
5 proof at trial;

6 5. For restitution and disgorgement for all unfair business practices by Defendants
7 against Plaintiffs in an amount subject to proof at trial;

8 6. For an order enjoining Defendants from further unfair and unlawful business
9 practices in violation of Business and Professions Code Sections 17200, et seq.;

10 7. For one hour of wages due to Plaintiffs for each work period of more than five (5)
11 hours when Plaintiffs did not receive an uninterrupted thirty (30) minute meal period;

12 8. For one hour of wages due to Plaintiffs for each work period of four (4) hours or major
13 fraction thereof when Plaintiffs did not receive a ten (10) minute rest break;

14 9. For maximum civil penalties available under the Labor Code and applicable Wage
15 Order against Defendants as described more particularly in the Complaint and
16 representative PAGA claim;

17 10. For all remedies available to Plaintiffs under the applicable Wage Order and the Labor
18 Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated
19 damages, damages, penalties, and waiting time penalties according to proof to the
20 extent permitted by law;

21 11. For the imposition of civil penalties and/or statutory penalties;

22 12. For all interest as allowed by law;

23 13. For all costs and disbursements incurred in this suit;

24 14. Reasonable attorney's fees where available by law, including but not limited to,
25 pursuant to the California Labor Code and/or other applicable laws; and

26 ///

27 ///

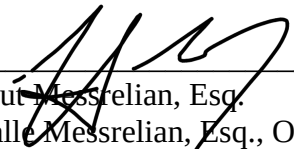
28 ///

///

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

2 DATED: August 26, 2022

MESSRELIAN LAW INC.

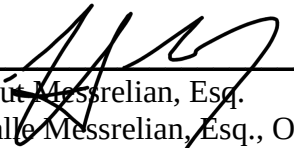
3
4 By 
5 Harout Messrelian, Esq.
6 Maralle Messrelian, Esq., Of Counsel
7 Attorneys for Plaintiffs,
8 Marin Navarrete and Maria Alvarez

9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs hereby demand, as a matter of right, a trial by jury in this case.

11 DATED: August 26, 2022

MESSRELIAN LAW INC.

12
13 By 
14 Harout Messrelian, Esq.
15 Maralle Messrelian, Esq., Of Counsel
16 Attorneys for Plaintiffs,
17 Marin Navarrete and Maria Alvarez
18
19
20
21
22
23
24
25
26
27
28