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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GERARDO ROMERO,

Plaintiff,

vs.

MARISCOS LOS PRIMOS INC;
DOREYDA GONZALEZ DAVILA;
ISMAEL ZARAGOZA CORONA; and
DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: **22STCV28770**

) **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 OWED**
) **EVERY PAY PERIOD;**
) **6) FAILURE TO GIVE REST BREAKS;**
) **7) FAILURE TO GIVE MEAL BREAKS;**
) **8) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) **9) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS**
) **10) FAILURE TO REIMBURSE**
) **BUSINESS EXPENSES**
) **11) RETALIATION IN VIOLATION OF**
) **LABOR CODE SECTION 98.6;**
) **12) RETALIATION IN VIOLATION OF**
) **LABOR CODE SECTION 1102.5;**
) **13) WRONGFUL TERMINATION IN**
) **VIOLATION OF PUBLIC POLICY;**
) **14) ASSAULT AND BATTERY;**
) **15) NEGLIGENT RETENTION AND**
) **SUPERVISION;**
) **16) INTENTIONAL INFLICTION OF**
) **EMOTIONAL DISTRESS;**
) **17) NEGLIGENT INFLICTION OF**

) **EMOTIONAL DISTRESS;**
) **18) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200.**

) **DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff, GERARDO ROMERO (hereinafter "Plaintiff"), and alleges:

PARTIES, JURISDICTION, 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 MARISCOS LOS PRIMOS INC; DOREYDA GONZALEZ DAVILA; ISMAEL ZARAGOZA CORONA; and DOES 1 to 25, inclusive, (collectively "Defendant(s)" or "MARISCOS") do business in the County of Los Angeles, and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's damages sought herein exceed \$25,000.

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

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant MARISCOS LOS PRIMOS INC was and is a California corporation and operating in the County of Los Angeles, State of California, and which employed Plaintiff. Plaintiff is also informed and believes that at all times herein mentioned, Defendant DOREYDA GONZALEZ DAVILA was and is an individual, residing in the County of Los Angeles, State of California, and the owner/managing agent of MARISCOS LOS PRIMOS INC. Plaintiff is informed and believes and thereon alleges that Defendant DOREYDA GONZALEZ DAVILA was and is involved in the day-to-day operations of the restaurant business and controls the wages, hours, and/or working conditions of Plaintiff and other hourly, non-exempt employees. Defendant DOREYDA GONZALEZ DAVILA is being included in this lawsuit pursuant to Labor Code

1 Section 558.1 as it pertains to the labor code violations. Plaintiff is also informed and believes
2 that at all times herein mentioned, Defendant ISMAEL ZARAGOZA CORONA was and is an
3 individual, residing in the County of Los Angeles, State of California, and the owner/managing
4 agent of MARISCOS LOS PRIMOS INC. Plaintiff is informed and believes and thereon
5 alleges that Defendant ISMAEL ZARAGOZA CORONA was and is involved in the day-to-
6 day operations of the restaurant business and controls the wages, hours, and/or working
7 conditions of Plaintiff and other hourly, non-exempt employees. Defendant ISMAEL
8 ZARAGOZA CORONA is being included in this lawsuit pursuant to Labor Code Section
9 558.1 as it pertains to the labor code violations.
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11 4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
12 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
13 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
14 defendants, numbers 1 to 25, reside in the State of California and are in some manner
15 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
16 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
17 and capacities of these fictitiously named defendants.
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19 5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
20 that information and belief, alleges that at all times herein mentioned, each of the remaining
21 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
22 under the authority of their agency, employment, or representative capacity, with the consent
23 of his/her codefendants.
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25 **GENERAL ALLEGATIONS**

26 6. Plaintiff started working for MARISCOS on or around 2014 with his employment
27 ending on or around end of May 2022. During his employment tenure, Plaintiff was classified
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1 as an hourly, non-exempt employee and earned \$13.00 per hour as a cook. Plaintiff was paid
2 cash and was paid weekly, however, the pay would consistently be late by a few days.

3 7. MARISCOS has committed numerous labor code violations against Plaintiff and other
4 similarly situated aggrieved employees.

5 8. MARISCOS violated Labor Code section 226.8. Pursuant to Labor Code section
6 226.8(a)(1), it is unlawful for any person or employer to willfully misclassify an individual as
7 an independent contractor. "Willful misclassification means avoiding employee status for an
8 individual by voluntarily and knowingly misclassifying that individual as an independent
9 contractor." Cal. Lab. Code Section 226.8(i)(4). If a person or employer has willfully
10 misclassified an individual as an independent contractor, the person or employer shall be
11 subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than
12 fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines
13 permitted by law. Cal. Lab. Code Section 226.8(b). If the person or employer has engaged in or
14 is engaging in a pattern or practice of willfully misclassifying individuals as independent
15 contractors, the person or employer shall be subject to a civil penalty of not less than ten
16 thousand dollars (\$10,000) and not more than twenty five thousand dollars (\$25,000) for each
17 violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code Section
18 226.8(c).

19 9. In a very important decision, *Dynamex Operations v. Superior Court* (2018) 4 Cal. 5th
20 903, the Supreme Court developed the "ABC TEST" to determine whether an independent
21 contractor is an employee. Under the ABC TEST, a worker will be deemed to have been
22 "suffered or permitted to work," and thus, an employee for wage order purposes, unless the
23 putative employer proves:

24 (A) that the worker is free from the control and direction of the hiring entity in connection
25 with the performance of the work, both under the contract for the performance of the
26 work and in fact;

27 (B) that the worker performs work that is outside the usual course of the hiring entity's
28 business; and

1 (C) that the worker is customarily engaged in an independently established trade,
2 occupation, or business of the same nature as the work performed.

3 Note that each of these requirements need to be met in order for the presumption that a worker
4 is an employee to be rebutted, and for a court to recognize that a worker has been properly
5 classified as an independent contractor.

6 Here, it is unequivocally clear that MARISCOS would not be able to get past the second part
7 of the test since Plaintiff and others, who were employed as cooks and employees of the
8 restaurant, were unequivocally doing work related to MARISCOS' core business of serving
9 food to customers. As such, MARISCOS willfully misclassified Plaintiff and other aggrieved
10 employees as independent contractors. Moreover, there was plenty of control by MARISCOS
11 as it related to Plaintiff's and other aggrieved employees' schedules and working conditions in
12 terms of scheduling and work duties.
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14 10. MARISCOS has committed the below labor code violations against Plaintiff and other
15 hourly, non-exempt employees, including those who were misclassified as 1099 employees. In
16 the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff,
17 Huff, was employed as a security guard for the Defendant Employer, Securitas Security
18 Services USA, Inc., an onsite security provider. After about a year of employment, Huff
19 resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically
20 alleged violations to the Labor Code requiring immediate payment of wages upon termination
21 of employment and weekly payment of wages to temporary employees. The trial court
22 determined Huff was not a temporary employee, and therefore, lacked standing to bring the
23 claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
24 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
25 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
26 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
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1 PAGA representative to sue for violations that the representative has personally suffered. The
2 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
3 and others. The statute also states that an “aggrieved employee” is “any person who was
4 employed by the alleged violator and against whom one or more of the alleged violations was
5 committed.” Because at least one of the violations that Huff had alleged had affected him
6 personally, the Court of Appeal denied Securitas’ motion.

7 In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
8 other employees, it allows for suits broader than the specific violations the named employee
9 experienced. Therefore, even if the employee did not personally experience the Labor Code
10 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s
11 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
12 hourly employees, including hourly non-exempt employees.

14 11. MARISCOS did not provide Plaintiff and other similarly situated aggrieved employees
15 with the minimum wages to which they were entitled for all work performed and did not
16 compensate him and others for all hours worked pursuant to California Labor Code sections
17 1194, 1197 and 1197.1. This is so because Plaintiff and others consistently worked “off the
18 clock” in that the company had a policy of rounding down hours to the detriment of employees
19 who would not be paid for all hours worked. In fact, the company would simply deduct work
20 hours and not pay Plaintiff and others for all hours worked. Plaintiff complained about this to
21 Ismael stating this his pay did not add up for the hours worked. Plaintiff pointed out that after
22 getting a 50-cent raise, the restaurant started to work him more hours but would not pay him
23 more. Consequently, Plaintiff was not being paid for all hours worked and was not being paid
24 the minimum wage for all hours worked. In addition, and to the extent that Plaintiff performed
25 work obligations during any alleged meal period, it would be akin to a minimum wage violation
26 since Plaintiff and others were not paid for all hour worked.

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1 12. Due to the above , including the “off the clock” work, MARISCOS also violated Labor
2 Code §510 because it failed to pay Plaintiff and other similarly situated aggrieved employees
3 overtime, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours
4 per week throughout their employment. This is so because MARISCOS did not factor in the “off
5 the clock” hours for purposes of overtime payment. Based on Plaintiff’s schedule of working 11
6 hours per day on Friday and 9-10 hours per day on Saturdays and Sundays, plus at least 6 hours
7 per day on Mondays through Wednesdays, Plaintiff was entitled to daily and/or weekly overtime,
8 however, he was not correctly compensated as such due to company policy.

9 13. MARISCOS violated Labor Code §§ 512 and 226.7 along with the applicable Industrial
10 Welfare Commission Wage Order (no. 5) because it failed to provide Plaintiff and other similarly
11 situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five
12 (5) hours of work throughout their employment, and Plaintiff did not validly waive said meal
13 periods. MARISCOS did not completely relieve Plaintiffs of all duties during said meal periods.
14 MARISCOS did not pay to Plaintiff one additional hour of pay at Plaintiff’s regular rate of
15 compensation for each workday that one or more statutory meal periods was not provided. It was
16 not part of the company culture for employees such as Plaintiff and others to consistently
17 receive a meal break before the 5th hour worked and for the meal break to be at least 30-minutes
18 and uninterrupted. In fact, Plaintiff never got a timely, uninterrupted 30-minute meal period
19 during his employment tenure. Plaintiff would be able to eat something small while working
20 if time permitted. There was never an actual time set aside for a meal break per California law.
21 It was the normal practice and custom of MARISCOS not to authorize, permit, and enforce
22 statutory meal periods. As such, the environment and culture at MARISCOS, especially in a fast-
23 paced restaurant, was not conducive to receiving statutory meal breaks under California law. In
24 fact, one look at Plaintiff’s handwritten timecards would show that there was NEVER a clock-
25 in and clock-out for meal periods as it didn’t exist and was never taken.
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1 14. Similarly, MARISCOS violated Labor Code § 226.7 along with the applicable Industrial
2 Welfare Commission Wage Order (no. 5) because it failed to provide Plaintiff and other similarly
3 situated aggrieved employees 10-minute rest periods for every four hours of work, or majority
4 portion thereof, throughout their employment. MARISCOS did not completely relieve Plaintiff
5 of all duty during said rest periods. MARISCOS did not pay to Plaintiff one additional hour of
6 pay at Plaintiff's regular rate of compensation for each workday that one or more statutory rest
7 periods was not provided. Like the situation involving meal breaks, it was not company policy
8 and not part of the company culture for employees such as Plaintiff and others to take timely,
9 uninterrupted rest breaks per day. In fact, Plaintiff and others did not receive a single statutory
10 rest break throughout their employment tenure. As such, the culture at MARISCOS did not lend
11 itself to the employees receiving timely and uninterrupted statutory breaks wherein they were
12 relieved of all work duties. It was the normal practice and custom of MARISCOS not to
13 authorize, permit, and enforce statutory rest periods.

14 15. Furthermore, during the relevant time period, and due to the violations as alleged above,
15 MARISCOS failed to pay Plaintiff and other similarly situated aggrieved employees all wages
16 due to them within any time period specified by California Labor Code section 204. MARISCOS
17 was also in violation of California Labor Code section 226(a) by failing to include pertinent
18 information on the wage statements, including but not limited to, all hours worked, all hourly
19 rates in effect, overtime hours worked, gross wages earned, premium pay for missed meal and
20 rest breaks, all deductions, net wages earned, gross wages earned, all deductions, the correct
21 name and address of the employing entity, the start and end of the pay period, and reimbursement
22 for business expenses, among others. In fact, and since Plaintiff and others were paid cash, they
23 did not receive a single paystub throughout their employment tenure. As such, MARISCOS did
24 not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate
25 itemized wage statements during the PAGA period.

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1 16. MARISCOS violated Labor Code § 203 because it willfully failed to pay Plaintiff and
2 other similarly situated aggrieved employees their earned and due wages upon separation of
3 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
4 These earned but unpaid wages include compensation for all hours worked, overtime
5 compensation, premium pay for missed meal and rest breaks, and business expense
6 reimbursement, among others. During the relevant time period, MARISCOS also failed to keep
7 accurate and complete payroll records showing the hours worked by Plaintiff and other similarly
8 situated aggrieved employees (including when meal breaks were taken) as well as the correct
9 wages paid to Plaintiff and other aggrieved employees pursuant to California Labor Code
10 sections 1174(d).

12 17. Moreover, Plaintiff and other aggrieved employees incurred necessary, business-related
13 expenses and costs that were not reimbursed by MARISCOS. These costs include, but are not
14 limited to, use of personal cell phone for work purposes in communicating with the owner. Mr.
15 Romero would also bring his own knives and knife sharpener to effectuate his job duties but was
16 not reimbursed for these business expenses. Accordingly, MARISCOS was in violation of
17 California Labor Code sections 2800 and 2802. Moreover, MARISCOS failed to provide sick
18 pay pursuant to Labor Code sections 233 and 246 and also failed to provide Worker's
19 Compensation coverage for Plaintiff and other aggrieved employees in violation of Labor Code
20 Section 3700.5.

22 18. Moreover, Plaintiff would also have individual claims against MARISCOS for violation
23 of Labor Code section 98.6 and 1102.5 in that Plaintiff was terminated immediately after
24 complaining to ownership about not being paid for all hours worked. In fact, once Plaintiff
25 complained about his actual work hours being deleted and unaccounted for, he was assaulted
26 and physically struck by the owner and managing agent/supervisor, Ismael, wherein Plaintiff
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1 suffered physical injuries and was taken to the hospital. Police were called to the restaurant.
2 Consequently, Plaintiff would also have civil claims for assault and battery. It is also important
3 to note that Ismael had a ninja knife on top of the refrigerator and had grabbed it before calling
4 Plaintiff into the office to discuss Plaintiff's concerns.

5 **FIRST CAUSE OF ACTION**

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

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

9 **(Plaintiff against all named defendants and all DOE defendants)**

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

12 20. At all times relevant herein, Defendants were required to compensate its employees for
13 all hours worked upon reporting for work at the appointed time stated by the employer
14 pursuant to Industrial Welfare Commission Order 5-2001, California Code of Regulations,
15 Title 8, Section 11050.

16 21. For the three (3) years preceding filing of this action, Defendants failed to compensate
17 Plaintiff for all hours worked.

18 22. Under the aforementioned wage order and regulations, Plaintiff is to recover
19 compensation for all hours worked but not paid by Defendants for the three (3) years
20 preceding the filing of this Complaint.

21 23. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
22 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
23 this Court.

24 24. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
25 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
26 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
27 reasonable attorney's fees and costs of suit.
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1 25. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
2 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
3 amount known to Plaintiff once he has obtained all of his payroll records from
4 Defendants.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**

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

8 **(Plaintiff against all named defendants and all DOE defendants)**

9 26. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 25, inclusive, of this Complaint as though fully set forth herein.

11 27. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
12 to suffer or permit a California employee to work without paying wages at the minimum wage
13 rate for all hours worked as required by the applicable Industrial Welfare Commission
14 (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations, Title
15 8, Section 11050, subdivision 4.

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

20 29. During his employment, Plaintiff was regularly required as a matter of uniform
21 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
22 was paid less than the minimum wage rate by Defendants for hours worked in violation of
23 California Labor Code Section 1197 and the applicable California Industrial Wage
24 Commission wage order(s).

25 30. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
26 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
27 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
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1 to believe that their acts or omissions were not contrary to California law.

2 31. For all hours worked by Plaintiff for which he was paid less than the minimum wage
3 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
4 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
5 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
6 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

7 32. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
8 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
9 trial.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PAY OVERTIME**

12 **(California Industrial Welfare Commission Order 5-2001, California Code of**
13 **Regulations Title 8 Section 11050)**

14 **(Plaintiff against all named defendants and all DOE defendants)**

15 33. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 32, inclusive, of this Complaint as though fully set forth herein.

17 34. Pursuant to Industrial Welfare Commission Order No. 5-2001, California Code of
18 Regulations, Title 8, Section 11050, for the period of Plaintiff's employment, Defendants were
19 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
20 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
21 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
22 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
23 week.
24

25 35. Plaintiff was a non-exempt employee entitled to the protections of the California
26 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations, Title 8,
27 Section 11050.
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1 36. Plaintiff worked more than eight (8) hours in a single workday, more than twelve (12)
2 hours in a single day, or forty (40) hours in a single workweek on numerous occasions.

3 37. Plaintiff was entitled to the above overtime premiums.

4 38. Defendants did not pay Plaintiff premium wages of at least one and one-half times
5 Plaintiff's regular rate of pay for hours worked past eight (8) in a day or two times Plaintiff's
6 regular rate of pay for hours worked past twelve (12) in a day.

7 39. Defendants did not pay Plaintiff premium wages of at least one and one-half times
8 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

9 40. Plaintiff worked at least one pay period in which he was not properly paid overtime
10 within the three (3) years prior to the initiation of this lawsuit.

11 41. Defendants know or should know the actual dates of overtime worked, the amount of
12 overtime worked, and the amount of unpaid overtime due.

13 42. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
14 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
15 Court.

16 43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
17 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the
18 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
19 reasonable attorney's fees and costs of suit.

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

23 **FOURTH CAUSE OF ACTION**

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

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

26 **(Plaintiff against all named and all DOE defendants)**

27 45. Plaintiff re-alleges and incorporates by reference each and every allegation in
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1 paragraphs 1 through 44, inclusive, of this Complaint as though fully set forth herein.

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

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

10 48. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
11 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
12 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
13 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
14 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
15 the 1-year period immediately preceding the date this lawsuit was filed.

16 49. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
17 sustained damages, including loss of earnings, in an amount to be established at trial. As a
18 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
19 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
20 and attorney's fees pursuant to statute.

21 50. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
22 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
23 trial.

24 **FIFTH CAUSE OF ACTION**

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

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

27 **(Plaintiff against all named defendants and all DOE defendants)**
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1 51. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.

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

5 53. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
6 full amount of all owed wages when due as required by California Labor Code Section 204.

7 54. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
8 informed, believes, and thereon alleges, that all times relevant during the liability period,
9 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
10 including overtime hours and the minimum wage along with premiums for missed meal breaks
11 and rest breaks.

12 55. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
13 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
14 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
15 from Defendants' records or indirectly based on information from Defendants' records.

16 56. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
17 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
18 trial.

19 **SIXTH CAUSE OF ACTION**

20 **FAILURE TO GIVE REST BREAKS**

21 **(Plaintiff against all named defendants and all DOE defendants)**

22 57. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.

24 58. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 25 a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which
26 provides that every employer shall authorize and permit all employees to take rest
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periods, which insofar as practicable shall be in the middle of each work period.

The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each workday that the rest period is not provided;

c. Title 8 of the California Code of Regulations sections 11050(20)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and

d. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at employee's regular rate of compensation for each work day that the rest period is not provided.

59. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest break after every four (4) hours of work or major fraction thereof, as required by California law.

60. Under this cause of action, Plaintiff prays for wages due to him under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest,

1 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
2 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

3 61. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
4 fees as well as interest under Labor Code section 218.6.

5 62. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
6 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
7 trial.

8 **SEVENTH CAUSE OF ACTION**

9 **FAILURE TO GIVE MEAL BREAKS**

10 **(Plaintiff against all named defendants and all DOE defendants)**

11 63. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 62, inclusive, of this Complaint as though fully set forth herein.

13 64. Plaintiff brings this cause of action under the following laws, for the following
14 reasons:
15

- 16 a. California Labor Code section 512(a), which requires that employees be given a 30-
17 minute uninterrupted meal break after five (5) hours of work, and a second
18 uninterrupted meal break after ten (10) hours of work;
19
20 b. California Labor Code section 226.7, which states that (a) no employer shall require
21 any employee to work during any meal period mandated by an applicable order of
22 the Industrial Welfare Commission, and (b) if any employer fails to provide an
23 employee a meal period in accordance with an applicable order of the Industrial
24 Welfare Commission, the employer shall pay the employee one (1) additional hour
25 of pay at the employee's regular rate of compensation for each workday that the
26 meal period is not provided;
27
28 c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified

1 under Title 8 of the California Code of Regulations Section 11050, which states that
2 if an employer fails to provide an employee a meal period in accordance with the
3 applicable provisions of the Wage Order, the employer shall pay the employee one
4 (1) hour of pay at the employee's regular rate of compensation for each workday
5 that the meal period is not provided;

6 d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as
7 codified under Title 8 of the California Code of Regulations Section 11050, which
8 requires an employer to maintain records documenting its employees' meal periods;
9

10 e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as
11 codified under California Code of Regulations Section 11050, which penalizes the
12 employer \$50.00 for each initial violation, per employee, of any provision of the
13 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
14

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

18 65. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
19 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
20 take a second relieved meal break after ten (10) hours of work, as required by California law.

21 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
22 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that
23 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and
24 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work
25 duty. California Labor Code section 226.7 provides that employers may not require their
26 employees to work through their meal periods. California Labor Code section 226.7 and
27
28

1 California Code of Regulations section 11050 requires that if the employer fails to provide the
2 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
3 of pay for each work day that the meal period is not given.

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

8 67. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
9 fees as well as interest under Labor Code section 218.6.

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

13 **EIGHTH CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT**

15 **Individual and Representative Claim for PAGA penalties under California Labor Code**
16 **sections 98.6, 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 226.8, 233, 246, 510,**
17 **512, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5)**

18 **(Plaintiff Against all Named Defendants and all DOE Defendants)**

19 69. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 68, inclusive, of this Complaint as though fully set forth herein.

21 70. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
22 Defendants of the specific violations of the California Labor Code that Defendants
23 and DOE defendants have violated and continue to violate.

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

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

1 Labor Code.

2 73. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
3 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
4 departments, divisions, commissions, boards, agencies, or employees for violation of the code
5 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
6 on behalf of himself or herself and other current or former employees pursuant to the
7 procedures specified in California Labor Code section 2699.3.
8

9 74. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
10 violator and had one or more of the alleged violations committed against him, and therefore is
11 properly suited to represent the interests of other current and former hourly, non-exempt
12 employees who worked for MARISCOS during the relevant PAGA Period.

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

16 76. Plaintiff therefore has exhausted all administrative remedies required of him 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 77. California Labor Code section 2699 et seq. imposes penalties upon culpable
21 Defendants for violating the Labor Code.

22 78. 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
24 violated, a section of this chapter or any provision regulating hours and days of work in any
25 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
26 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
27 dollars (\$50) for each underpaid employee for each pay period for which the employee was
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1 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
2 employee for each pay period for which the employee was underpaid...

3 79. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
4 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
5 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved
6 employees in this specific cause of action under the Private Attorneys General Act.

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

9 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
10 226.3, 226.7, 226.8, 233, 246, , 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802,
11 3700.5 via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission
12 Wage Order Provisions (no. 5) violated based on the facts alleged in this Complaint.

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

17 **NINTH CAUSE OF ACTION**

18 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

19 **(California Labor Code Sections 201, 202, 203)**

20 **(Plaintiff against all named defendants and all DOE defendants)**

21 82. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 81, inclusive, of this Complaint as though fully set forth herein.

23 83. Pursuant to California Labor Code Section 201(a), an employer who discharges an
24 employee must immediately pay for all compensation due and owing.
25

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

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

6 86. After Plaintiff's employment with Defendants ended, Defendants willfully
7 refused and continue to refuse to pay him unpaid wages as required by Labor Code Section
8 203.

9 87. Under this cause of action, Plaintiff prays for penalties due under the statutes
10 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
11 proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 1 year
12 immediately preceding the filing of this lawsuit.

13 88. Under this cause of action, Plaintiff also prays for attorney's fees and costs
14 under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages
15 as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

16 89. Under this cause of action, Plaintiff prays for penalties due under the statutes
17 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
18 proof at trial.

19
20 **TENTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

22 **(Plaintiff against all named Defendants and DOE Defendants, and each of them)**

23 90. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 89, inclusive, of this Complaint as thought fully set forth herein.

25 91. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
26 employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties."
28

1 92. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
2 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
3 of completing his job duties, which were not reimbursed by Defendant. These expenses
4 include, but are not limited to, use of personal cell phone for work purposes in communicating
5 with the owner. Plaintiff would also bring his own knives and knife sharpener to effectuate
6 his job duties but was not reimbursed for these business expenses.

7 93. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
8 and attorney's fees and costs, under Labor Code section 2802.

9 **ELEVENTH CAUSE OF ACTION**

10 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 98.6**

11 **(Against Mariscos Los Primos Inc and all DOE Defendants)**

12 94. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 93, inclusive, of this Complaint as though fully set forth herein.

14 95. California Labor Code section 98.6 provides, in pertinent part, as follows:

15 "A person shall not discharge an employee or in any manner discriminate, retaliate, or
16 take any adverse action against any employee or applicant for employment because the
17 employee or applicant engaged in any conduct delineated in this chapter...or because the
18 employee or applicant...made a written or oral complaint that he or she is owed unpaid
wages...

19 96. Defendants violated Labor Code Section 98.6 in that they retaliated against
20 Plaintiff by terminating his employment for complaining about wage and hour and labor code
21 violations that were being committed by Defendants in the workplace.

22 97. As a direct and proximate result of the aforementioned acts and omissions of
23 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
24 loss of income (past and future), loss of employment benefits (past and future), general and
25 compensatory damages (past and future), mental pain and anguish and emotional distress (past
26 and future), and will continue to suffer in the future, in an amount to be proved at trial.

27 98. Moreover, pursuant to Labor Code section 98.6, an employer who violates this
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1 section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee
2 for each violation of this section.

3 99. The foregoing conduct engaged in by Defendants and each of its directors,
4 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
5 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
6 an environment free of retaliation, so as to justify the imposition of punitive damages to punish
7 and set an example of said Defendants.

8 **TWELFTH CAUSE OF ACTION**

9 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

10 **(Plaintiff against All Named Defendants and DOE Defendants, and each of them)**

11 100. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 99, inclusive, of this Complaint as though fully set forth herein.

13 101. At all times material to this Complaint, California Labor Code § 1102.5 was in effect
14 and binding on Defendants. This section requires Defendants to refrain from retaliating against
15 an employee for refusing to participate in an activity that he/she reasonably believes would
16 result in a violation of state or federal statute, or a violation or noncompliance with a state or
17 federal rule or regulation. California Labor Code section 1102.5 also requires Defendants to
18 refrain from retaliating against an employee for disclosing information to a person with
19 authority over the employee if the employee has reasonable cause to believe that the
20 information discloses a violation of state or federal statute, or a violation of or noncompliance
21 with a local, state, or federal rule or regulation, regardless of whether disclosing the
22 information is part of the employee's job duties.

23 102. As discussed above, Plaintiff complained to Defendants about wage and hour
24 violations being committed against him at the workplace due to Plaintiff not getting paid for all
25 hours worked.
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1 103. Defendant MARISCOS retaliated against Plaintiff for his whistleblowing
2 conduct, as alleged above, all in violation of Labor Code § 1102.5.

3 104. As a direct and proximate result of the aforementioned acts and omissions of
4 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
5 loss of income (past and future), loss of employment benefits (past and future), general and
6 compensatory damages (past and future), mental pain and anguish and emotional distress (past
7 and future), and will continue to suffer in the future, in an amount to be proved at trial.

8 105. Plaintiff requests all available relief under Labor Code § 1102.5 including damages
9 and the imposition of civil penalties of \$10,000 for each violation as well as attorneys fees.
10

11 **THIRTEENTH CAUSE OF ACTION**

12 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

13 **(Against Mariscos Los Primos Inc and all DOE Defendants)**

14 106. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 105, inclusive, of this Complaint as though fully set forth herein.

16 107. At all times during his employment with Defendant MARISCOS, Plaintiff
17 performed his duties with the utmost diligence and competence.

18 108. Plaintiff is informed and believes and thereon alleges that Defendants' decisions and
19 actions to treat him differently and ultimately terminate him as alleged herein, was motivated
20 by Plaintiff's whistleblowing. Defendant Mariscos Los Primos Inc intentionally created the
21 aforementioned retaliation, thereby not giving Plaintiff an opportunity to work in an
22 environment free of retaliation.

23 109. The employment of Plaintiff was wrongfully terminated on or around May 28, 2022
24 in violation of the fundamental public policy of the State of California with respect to
25 retaliating against an employee on account of his whistleblowing. Moreover, Plaintiff was
26 forced to hire an attorney to assist him to end these illegal activities. Said conduct violated
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28

1 statutory and constitutional expressions of public policy including, the California Labor Code
2 section 98.6 and 1102.5 and the California Constitution, Article 1 section 8.

3 110. As set forth above, said actions by Defendants were wrongful and in violation of the
4 fundamental principles of the public policy of the State of California as reflected in its laws,
5 objectives and policies. Said statutes and constitutional expressions of public policy include,
6 but are not limited to, California Labor Code section 98.6 and 1102.5, and the California
7 Constitution, Article 1 section 8. These laws inure to the benefit of the public at large, and not
8 just the private interests of the employers and employees whom they govern or protect.

9 111. As a direct and proximate result of the aforementioned acts and omissions of
10 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
11 loss of income (past and future), loss of employment benefits (past and future), general and
12 compensatory damages (past and future), mental pain and anguish and emotional distress (past
13 and future), and will continue to suffer in the future, in an amount to be proved at trial.

14 112. The foregoing conduct engaged in by Defendants and each of their directors, officers
15 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
16 and carried on with a conscious and willful disregard of their workers' right to work in an
17 environment free of retaliation due to whistleblowing, so as to justify the imposition of
18 punitive damages to punish and set an example of said Defendants.
19

20 **FOURTEENTH CAUSE OF ACTION**

21 **ASSAULT AND BATTERY**

22 **(Plaintiff against Defendant Mariscos Los Primos Inc and Ismael Zaragoza Corona and**
23 **all DOE defendants)**

24 113. Plaintiff realleges, repeats, and incorporates by reference each and every allegation set
25 forth in paragraphs 1 through 112 of this Complaint, as though fully set forth herein.

26 114. On or around May 28, 2022, Plaintiff was assaulted and battered by supervisor and
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owner, ISMAEL ZARAGOZA CORONA. Plaintiff was forced to go to the hospital due to his physical injuries.

115. On or around May 28, 2022, Defendant Mariscos Los Primos Inc by and through its employees and DOES 1 to 50, intentionally, willfully, wantonly and maliciously threatened to strike and otherwise cause a harmful and/or offensive contact with Plaintiff's person so as to cause a reasonable apprehension by Plaintiff of an immediate harmful or offensive contact with his person, without Plaintiff's consent, causing Plaintiff physical, mental, and/or emotional injuries as alleged herein..

116. On or around May 28, 2022, Defendant Mariscos Los Primos Inc by and through its employees and DOES 1 to 25, intentionally, willfully, wantonly and maliciously caused a harmful and/or offensive contact with Plaintiff's person without Plaintiff's consent, and as a result thereof an offensive contact with Plaintiff's person directly resulted, causing Plaintiffs physical, mental, and/or emotional injuries as alleged herein.

117. Plaintiff did not consent to the use of such force or touching.

118. The actions of Defendants Mariscos Los Primos Inc through Ismael Zaragoza Corona aroused fear in Plaintiff and was against his will.

119. As a direct and proximate result of the assault and battery as described above and throughout this Complaint, Plaintiff suffered physical and mental injuries.

120. As a direct and proximate result of the acts of Defendants, Plaintiff has suffered physical injuries and mental anguish. Plaintiff requires ongoing medical treatment and has incurred costs and will incur costs for said treatments in the future in an amount unknown at this time. Plaintiff is thereby entitled to general and special damages in an amount to be determined at the time of trial. Plaintiff has and will continue to suffer severe mental anguish and emotional distress in the form of anxiety, embarrassment, humiliation, loss of sleep, loss of confidence, loss of self-esteem, and general discomfort; has and will incur medical expenses for treatment by health care professionals, and other incidental expenses; and suffer loss of present and future earnings and earnings capacity.

121. Mariscos Los Primos Inc engaged in these acts alleged herein and/or condoned,

1 permitted, authorized, and/or ratified the conduct of their employees and agents and is
2 vicariously liable for the wrongful conduct of their employees and agents for this cause of action.

3 **FIFTEENTH CAUSE OF ACTION**

4 **NEGLIGENT RETENTION, AND SUPERVISION**

5 **(Plaintiff against Defendant Mariscos Los Primos Inc and all DOE defendants)**

6 122.Plaintiff re-alleges and incorporates by reference each and every allegation in
7 paragraphs 1 through 121, inclusive, of this Complaint as though fully set forth herein.

8 123.On or around May 28, 2022, Plaintiff was assaulted and battered by Defendant Ismael
9 Zaragoza Corona. Plaintiff was forced to go to the hospital due to his physical injuries. In fact,
10 Defendant Mariscos Los Primos Inc was fully aware of Defendant Ismael Zaragoza Corona's
11 violent propensities.

12 124.Upon information and belief, Defendant Mariscos Los Primos Inc by and through its
13 agents and employees, knew or reasonably should have known through reasonable investigation,
14 of Ismael Zaragoza Corona's propensity for violent behavior.

15 125.Defendant had a duty not to hire or retain Defendant Ismael Zaragoza Corona, provide
16 proper training to Defendant Ismael Zaragoza Corona and provide reasonable supervision of
17 Defendant Ismael Zaragoza Corona.

18 126.Defendant negligently hired, retained and/or failed to adequately train and
19 supervise Defendant Ismael Zaragoza Corona in his position, wherein Defendant Ismael
20 Zaragoza Corona was able to commit the wrongful acts complained of herein against Plaintiff.
21 Defendant failed to provide reasonable supervision of Defendant Ismael Zaragoza Corona
22 despite knowing of his propensities for violent behavior.

23 127.As a result of the above-described conduct, Plaintiff has suffered and continues
24 to suffer a great amount of stress, anxiety, humiliation, embarrassment, loss of sleep, loss of
25 confidence, loss of self-esteem, and general discomfort.

26 128.Defendant engaged in these acts alleged herein and/or condoned, permitted,
27 authorized, and/or ratified the conduct of their employees and agents and are vicariously liable
28 for the wrongful conduct of their employees and agents for this cause of action.

///

1 **SIXTEENTH CAUSE OF ACTION**

2 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

3 **(Plaintiff against all named Defendants and all DOE Defendants)**

4 129.Plaintiff re-alleges and incorporates by reference each and every allegation in
5 paragraphs 1 through 128, inclusive, of this Complaint as though fully set forth herein.

6 130.Defendants' actions against Plaintiff as described above constituted severe and
7 outrageous misconduct and caused Plaintiff extreme emotional distress.

8 131.Defendants were aware that treating Plaintiff in the manner alleged above,
9 would devastate Plaintiff and cause Plaintiff extreme hardship.

10 132.As a direct and proximate result of the aforementioned acts and omissions of
11 Defendants, Plaintiff has been caused to and did in fact suffer severe and extreme mental and
12 emotional distress, including but not limited to, anguish, humiliation, embarrassment, loss of
13 confidence, fright, depression, and anxiety, the exact nature and extent of which are not now
14 known to him, but in an amount to be proved at trial.

15 133.Defendants' misconduct was done intentionally, in a malicious, fraudulent,
16 oppressive manner, entitling Plaintiff to punitive damages.

17 **SEVENTEENTH CAUSE OF ACTION**

18 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

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

20 134.Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 133, inclusive, of this Complaint as though fully set forth herein.

22 135.As an employee of Defendants, Plaintiff was owed a duty of care by Defendants,
23 and each of them, to ensure that Plaintiff was not exposed to foreseeable harms.

24 136.Defendants knew, or should have known, that Plaintiff was being subjected to
25 retaliation, and that, the failure to exercise due care to prevent a retaliatory course of conduct
26 could and would cause Plaintiff to suffer severe emotional distress.

27 137.Defendants failed to exercise their duty of care to prevent their employees,
28

1 managers, supervisors, and/or officers from retaliating against Plaintiff due to his complaints
2 about wage and hour violations at the workplace and due to Plaintiff not being paid for all hours
3 worked.

4 138.As a direct and proximate result of the aforementioned acts and omissions of
5 Defendants, Plaintiff has been caused to and did in fact suffer severe and extreme mental and
6 emotional distress, including but not limited to, anguish, humiliation, embarrassment, and
7 anxiety, the exact nature and extent of which are not now known to him, but in an amount to be
8 proved at trial.

9 139.By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff
10 has been directly and legally caused to suffer damages as alleged herein.

11 **EIGHTEENTH CAUSE OF ACTION**

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

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

14 **(Plaintiff against Defendant Mariscos Los Primos Inc and all DOE defendants)**

15 140. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 139, inclusive, of this Complaint as though fully set forth herein.

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

20 142. Defendants' violations of California labor laws and the Labor Code constitutes a
21 business practice because it was done repeatedly over a significant period of time in a
22 systematic manner that was detrimental to Plaintiff and others.

23 143. For the four years preceding the filing of this action, Plaintiff has suffered damages
24 and request damages and/or restitution of all monies and profits to be disgorged from
25 Defendant Mariscos Los Primos Inc in an amount according to proof at time of trial, but in
26 excess of the jurisdiction of this Court.

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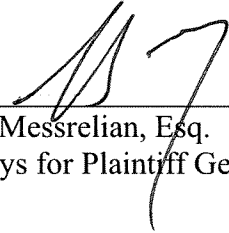
1 follows:

- 2 1. For compensatory damages including lost past and future wages, regular wages,
3 overtime, and all other sums of money, including employment benefits, together with
4 interest on said amounts, and any other economic injury to Plaintiff, according to proof;
- 5 2. For general damages according to proof;
- 6 3. For special and consequential damages to Plaintiff in an amount subject to proof at trial;
- 7 4. For punitive and exemplary damages against Defendants in an amount subject to proof;
- 8 5. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
9 at trial;
- 10 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
11 subject to proof at trial;
- 12 7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
13 proof at trial;
- 14 8. For restitution and disgorgement for all unfair business practices by Defendant Mariscos
15 Los Primos Inc against Plaintiff in an amount subject to proof at trial;
- 16 9. For an order enjoining Defendant Mariscos Los Primos Inc from further unfair and
17 unlawful business practices in violation of Business and Professions Code Sections
18 17200, et seq.;
- 19 10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
20 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 21 11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
22 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 23 12. For maximum civil penalties available under the Labor Code and applicable Wage Order
24 against Defendant as described more particularly in the Complaint and Representative
25 PAGA claim/action;
- 26 13. For all remedies available to Plaintiff under the applicable Wage Order and the
27 Labor Code including an award of attorney's fees, costs, interest, and penalties
28 according to proof to the extent permitted by law;

- 1 14. For restitution and/or damages for all amounts unlawfully withheld from the wages of
2 Plaintiff, as may be proven;
3 15. For the imposition of civil penalties and/or statutory penalties;
4 16. For all interest as allowed by law;
5 17. For all costs and disbursements incurred in this suit;
6 18. Reasonable attorney's fees where available by law, including but not limited to,
7 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
8 the California Labor Code, including Labor Code section 1102.6; and/or other
9 applicable laws; and
10 19. For such other and further relief as this Court may deem proper.

11
12
13 **DATED:** September 2, 2022

MESSRELIAN LAW INC.

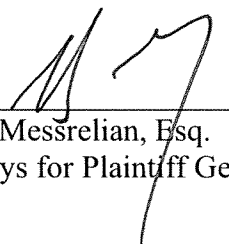
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15 By 
16 Harout Messrelian, Esq.
17 Attorneys for Plaintiff Gerardo Romero

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
20

21
22 **DATED:** September 2, 2022

MESSRELIAN LAW INC.

23
24 By 
25 Harout Messrelian, Esq.
26 Attorneys for Plaintiff Gerardo Romero
27
28