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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SANTA CLARA**

13 **22CV406089**

14 SAHID MAGANA,

15 Plaintiff,

16 vs.

17 ZEVGOLATIO CORPORATION;
18 FRANCISCO TSABOUKOS; and DOES 1
19 to 25, inclusive,

20 Defendants.

) CASE NO.:
)
) **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 PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**
) **7) FAILURE TO GIVE REST BREAKS;**
) **8) FAILURE TO GIVE MEAL BREAKS;**
) **9) FAILURE TO REIMBURSE**
) **BUSINESS EXPENSES;**
) **10) UNLAWFUL TIP COLLECTION;**
) **11) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) **12) SEXUAL HARASSMENT IN**
) **VIOLATION OF THE FAIR**
) **EMPLOYMENT AND HOUSING**
) **ACT ("FEHA");**
) **13) RETALIATION IN VIOLATION OF**
) **THE FEHA;**
) **14) FAILURE TO PREVENT**
) **HARASSMENT AND RETALIATION**
) **IN VIOLATION OF THE FEHA;**

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Clerk of Court
Superior Court of CA,
County of Santa Clara
22CV406089
Reviewed By: R. Cachux

1) 15) NEGLIGENT RETENTION AND
2) SUPERVISION;
3) 16) RETALIATION IN VIOLATION OF
4) LABOR CODE SECTION 98.6;
5) 17) RETALIATION IN VIOLATION OF
6) LABOR CODE SECTION 1102.5;
7) 18) WRONGFUL TERMINATION IN
8) VIOLATION OF PUBLIC POLICY;
9) 19) VIOLATION OF CALIFORNIA
10) BUSINESS AND PROFESSIONS
11) CODE SECTION 17200.

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DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, SAHID MAGANA (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 Santa Clara in this judicial district because Defendants ZEYGOLATIO CORPORATION; FRANCISCO TSABOUKOS and DOES 1 to 25, inclusive, (collectively "Defendant(s)" or "ZEYGOLATIO") do business in the County of Santa Clara, 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 Santa Clara, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant ZEYGOLATIO CORPORATION was and is a domestic limited liability company, operating in the County of Santa Clara, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that all times herein mentioned, Defendant FRANCISCO TSABOUKOS is and was a resident of the County of Santa Clara, State of California and was the owner, director, and/or managing agent of ZEYGOLATIO CORPORATION, who was personally involved in the day-to-day activities of the business and hence controlled the wages, hours, and working conditions of Plaintiff and other aggrieved employees.

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or

1 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
2 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
3 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
4 for the conduct alleged herein. Upon discovering the true names and capacities of these
5 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
6 capacities of these fictitiously named defendants. Unless otherwise alleged in this complaint,
7 Plaintiff is informed, and on the basis of that information and belief, alleges that at all times
8 herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged,
9 were acting within the course, scope, and under the authority of their agency, employment, or
10 representative capacity, with the consent of his/her codefendants.

11 **GENERAL ALLEGATIONS**

12 6. Plaintiff started working for ZEVGOLATIO at the Metro City Restaurant and Bar,
13 located at 919 E. Duane, Ave. Sunnyvale, CA 94085, on or around April 27, 2022 as cook.
14 Plaintiff would also prepare dishes and do dishwashing. Plaintiff was wrongfully terminated
15 from his employment on or around July 13, 2022. Plaintiff was classified as an hourly, non-
16 exempt employee and his latest rate of pay was \$23.00 per hour. Plaintiff and others were
17 compensated every two weeks.

18 7. It is Plaintiff's position that ZEVGOLATIO has committed numerous labor code
19 violations against Plaintiff and other hourly, non-exempt employees who worked for
20 ZEVGOLATIO at any of their California locations during the relevant PAGA period.

21 8. ZEVGOLATIO did not provide Plaintiff and other similarly situated aggrieved
22 employees with the minimum wages to which they were entitled for all work performed and did
23 not compensate him and others for all hours worked pursuant to California Labor Code sections
24 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and consistently
25 worked "off the clock". This is so because ZEVGOLATIO had a policy and practice of rounding
26 down hours worked and "time shaving", which led to Plaintiff and others not being paid for all
27 hours worked, which would include the minimum wage. Moreover, to the extent employees such
28 as Plaintiff and others worked through their meal periods and those meal periods were
interrupted, they were not compensated for that time, which would be akin to a minimum wage

1 violation. Plaintiff would anywhere between 100-120 hours every two weeks, but was only paid
2 for 80 hours of work. Note that Plaintiff did in fact complain to his manager/supervisor Yogi
3 (Jose) as well as to upper management (Alex) that he was not getting paid for all hours worked,
4 not being paid for overtime, and that the company would deduct 30 minutes for a meal period,
5 even though Plaintiff did not in fact take a meal break.

6 9. Additionally, ZEVGOLATIO violated Labor Code Section 351 and 353 by taking some
7 of the tips meant for employees and also deducting the tips from Plaintiff's and others' earned
8 wages. ZEVGOLATIO also deducted the credit card fee from Plaintiff's and others' tips and did
9 not timely provide the credit card and even cash tips to Plaintiff and other similarly situated
10 aggrieved employees. As such, Plaintiff and the other similarly situated employees were not
11 given accurate tips to which they were entitled.

12 10. Due to the above "off the clock" violations and as a matter of company policy,
13 ZEVGOLATIO violated Labor Code §510 because it failed to pay Plaintiff and other similarly
14 situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12
15 hours per day, and/or 40 hours per week throughout their employment. On Saturdays and
16 Sundays, Plaintiff would work over 12.5 hours per work shift. Plaintiff's and others' actual work
17 hours, which included the "off the clock" work as described above, entitled them to overtime
18 and doubletime, however, it was not company policy to keep accurate track of all hours worked
19 and to pay employees all due overtime and doubletime. In addition, ZEVGOLATIO did not
20 include bonuses and/or incentive payments in calculating employees' true regular rate of pay for
21 purposes of deciphering their correct overtime rate of pay.

22 11. ZEVGOLATIO violated Labor Code § 226.7 along with Industrial Welfare Commission
23 Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated aggrieved
24 employees 10-minute rest periods for every four hours of work, or majority portion thereof,
25 throughout their employment. ZEVGOLATIO did not completely relieve Plaintiff of all duty
26 during said rest periods. ZEVGOLATIO did not pay to Plaintiff one additional hour of pay at
27 Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods
28 was not provided. Rest breaks were not authorized or enforced at the restaurant. In fact, it was
not part of ZEVGOLATIO's culture for employees such as Plaintiff and others to take at least

1 one 10-minute rest break every day wherein they are relieved of all work duties. The latter was
2 due to understaffing of employees. As such, Plaintiff and others were too busy to be able to take
3 rest breaks. As such, rest breaks were not enforced and not a policy or practice of the restaurant.

4 12. ZEVGOLATIO also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
5 Commission Wage Order No. 5 because it failed to provide Plaintiff and other similarly situated
6 aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours
7 of work throughout their employment, and Plaintiff did not validly waive said meal periods.
8 ZEVGOLATIO did not completely relieve Plaintiff of all duties during said meal periods.
9 ZEVGOLATIO did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of
10 compensation for each workday that one or more statutory meal periods was not provided. If
11 ZEVGOLATIO had Plaintiff sign a meal period waiver, it would not be valid and enforceable
12 since Plaintiff and others generally worked more than a 6-hour shift. If ZEVGOLATIO had
13 Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through his
14 meal period, it would also be invalid and unenforceable because the nature of Plaintiff's job as a
15 cook does not prevent him from taking a meal period. As such, Plaintiff and others never received
16 statutory, timely meal periods during their employment. In other words, there was rarely an
17 uninterrupted 30-minute meal period for any employees, including Plaintiff, that was taken
18 before the 5th hour worked. As was the case with rest periods, meal breaks were definitively not
19 part of the ZEVGOLATIO's culture, especially in a fast-paced restaurant environment. The meal
20 periods were not authorized and were not enforced. Furthermore, even if ZEVGOLATIO did in
21 fact provide meal period penalties to Plaintiff and others for late, short, interrupted, or no meal
22 periods, that does not absolve ZEVGOLATIO of PAGA penalties. In *Kirby v. Immoos Fire*
23 *Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, the Court stated that "section 226.7 does not give
24 employers a lawful choice between providing either meal and rest breaks or an additional hour
25 of pay" (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the
26 employer has still committed a violation even if the remedy for the violation has been paid. See
27 also *Wert v. U.S. Bancorp* (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4).

28 13. Furthermore, during the relevant time period and due to the above-mentioned labor code
violations, ZEVGOLATIO failed to pay Plaintiff and other similarly situated aggrieved

1 employees all wages due to them within any time period specified by California Labor Code
2 section 204, including the minimum wages and overtime as described above as well as meal/rest
3 break premiums. ZEVGOLATIO was also in violation of California Labor Code section 226(a)
4 by not providing access to paystubs and failing to include pertinent information on the wage
5 statements, including but not limited to, all hours worked, tips earned, gross wages earned, net
6 wages earned, all deductions, premium payments for meal and rest breaks, the correct legal name
7 and address of the employer, the correct beginning and end of the pay period, all applicable
8 hourly rates, and all identifying employee information, among other items. As such,
9 ZEVGOLATIO did not provide Plaintiff and other similarly situated aggrieved employees with
10 complete, accurate itemized wage statements.

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

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

20 16. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
21 business-related expenses and costs that were not reimbursed by ZEVGOLATIO. These costs
22 include, but are not limited to, vegetables (tomatoes, broccoli, among others) and other supplies
23 that restaurant needed but would not provide, as well as personal cell phone for work purposes.
24 Accordingly, ZEVGOLATIO was in violation of California Labor Code sections 2800 and 2802.

25 17. During his employment tenure, Plaintiff was sexually harassed by his supervisor Yogi
26 (Jose). Yogi would often grab Plaintiff's butt and his front private area and make comments such
27 as "shove them up your butt." Plaintiff complained to upper management, Alex, who brushed
28 off Plaintiff's complaints and laughed at Plaintiff, making comments such as "you sound like a
little girl".

1 18. Moreover, Plaintiff has been retaliated against in violation of Labor Code sections 1102.5
2 and 98.6 for complaining to management about not being paid for all hours worked, not being
3 paid overtime and doubletime wages, not receiving his statutory breaks, and the sexual
4 harassment/hostile work environment he was experiencing at the workplace. Plaintiff was
5 wrongfully terminated from his employment on or around July 13, 2022 in retaliation for his
6 complaints about the sexual harassment and numerous labor code violations taking place, in
7 violation of Labor Code sections 1102.5 and 98.6 and the FEHA.

8 19. Pursuant to California Government Code section 12960, Plaintiff has exhausted his
9 administrative remedies. Plaintiff filed a complaint with the Department of Fair Employment
10 and Housing (“DFEH”), alleging claims in this complaint. The DFEH immediately issued to
11 Plaintiff a right to sue letter.

12 **FIRST CAUSE OF ACTION**

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

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

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

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

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

23 22. For the three (3) years preceding filing of this action, Defendants failed to compensate
24 Plaintiff for all hours worked.

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

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

1 Court.

2 25. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
3 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled
4 to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable
5 attorney's fees and costs of suit.

6 26. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
7 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
8 amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

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

12 **(Plaintiff against all named Defendants and all DOE defendants)**

13 27. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
14 1 through 26, inclusive, of this Complaint as though fully set forth herein.

15 28. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
16 to suffer or permit a California employee to work without paying wages at the minimum wage
17 rate for all hours worked as required by the applicable Industrial Welfare Commission
18 (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations, Title
19 8, Section 11050, subdivision 4.

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

24 30. During his employment, Plaintiff was regularly required as a matter of uniform policy
25 and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid
26 less than the minimum wage rate by Defendants for hours worked in violation of California
27 Labor Code Section 1197 and the applicable California IWC wage order(s).

28 31. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
permitted to work by Defendants. Defendants' acts or omissions in failing to adequately

1 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
2 to believe that their acts or omissions were not contrary to California law.

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

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

11 **THIRD CAUSE OF ACTION**

12 **FAILURE TO PAY OVERTIME**

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

15 **(Plaintiff against all named Defendants and all DOE defendants)**

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

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

25 36. 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.

28 37. Plaintiff worked more than eight (8) hours in a single workday, more than twelve (12)
hours in a single day, or forty (40) hours in a single workweek on numerous occasions.

38. Plaintiff was entitled to the above overtime premiums.

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

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(California Labor Code Section 226)

(Plaintiff against all named Defendants and all DOE defendants)

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

47. 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.

48. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that accurately reflected all information required by Labor Code Section 226, including but not

1 limited to, gross wages earned, including overtime, net wages earned, total hours worked by the
2 employee, all deductions, and premium pay for missed meal breaks and rest breaks. Therefore,
3 Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in
4 accordance with California Labor Code Section 226(a).

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

11 50. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained
12 damages, including loss of earnings, in an amount to be established at trial. As a further direct
13 and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff is entitled to
14 recover penalties, in an amount to be established at trial, as well as costs and attorney's fees
15 pursuant to statute.

16 51. 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 trial.

18 **FIFTH CAUSE OF ACTION**

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

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

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

22 52. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
23 1 through 51, inclusive, of this Complaint as though fully set forth herein.

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

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

28 55. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
informed, believes, and thereon alleges, that all times relevant during the liability period,

1 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
2 including overtime hours and the minimum wage along with premiums for missed meal breaks
3 and rest breaks.

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

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

10 **SIXTH CAUSE OF ACTION**

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

12 **(California Labor Code Sections 201, 203)**

13 **(Plaintiff against all named Defendants and all DOE defendants)**

14 58. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
15 1 through 57, inclusive, of this Complaint as though fully set forth herein.

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

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

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

26 62. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
27 continue to refuse to pay their unpaid wages as required by Labor Code Section 203.

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

Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately preceding the filing of this lawsuit.

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

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

SEVENTH CAUSE OF ACTION

FAILURE TO GIVE REST BREAKS

(Plaintiff against all named Defendants and all DOE defendants)

66. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 65, inclusive, of this Complaint as though fully set forth herein.

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

- a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which provides that every employer shall authorize and permit all employees to take rest 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

1 a rest period in accordance with an applicable order of the Industrial Welfare
2 Commission, the employer shall pay the employee one (1) additional hour of pay at
3 employee's regular rate of compensation for each work day that the rest period is not
4 provided.

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

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

12 70. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
13 fees as well as interest under Labor Code section 218.6.

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

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO GIVE MEAL BREAKS**

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

20 72. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
21 1 through 71, inclusive, of this Complaint as though fully set forth herein.

22 73. Plaintiff brings this cause of action under the following laws, for the following
23 reasons:

- 24 a. California Labor Code section 512(a), which requires that employees be given a 30-
25 minute uninterrupted meal break after five (5) hours of work, and a second
26 uninterrupted meal break after ten (10) hours of work;
- 27 b. California Labor Code section 226.7, which states that (a) no employer shall require
28 any employee to work during any meal period mandated by an applicable order of
the Industrial Welfare Commission, and (b) if any employer fails to provide an

1 employee a meal period in accordance with an applicable order of the Industrial
2 Welfare Commission, the employer shall pay the employee one (1) additional hour
3 of pay at the employee's regular rate of compensation for each workday that the meal
4 period is not provided;

- 5 c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified
6 under Title 8 of the California Code of Regulations Section 11050, which states that
7 if an employer fails to provide an employee a meal period in accordance with the
8 applicable provisions of the Wage Order, the employer shall pay the employee one
9 (1) hour of pay at the employee's regular rate of compensation for each workday that
10 the meal period is not provided;
- 11 d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as
12 codified under Title 8 of the California Code of Regulations Section 11050, which
13 requires an employer to maintain records documenting its employees' meal periods;
- 14 e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as
15 codified under California Code of Regulations Section 11050, which penalizes the
16 employer \$50.00 for each initial violation, per employee, of any provision of the
17 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- 18 f. California Labor Code section 1171 and 1173, which have given the California
19 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5)
20 as enforceable law.

21 74. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
22 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
23 take a second relieved meal break after ten (10) hours of work, as required by California law.
24 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
25 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that
26 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that
27 the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty.
28 California Labor Code section 226.7 provides that employers may not require their employees
to work through their meal periods. California Labor Code section 226.7 and California Code of

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

4 75. 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 the
7 foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

8 76. 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 77. 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 trial.

12 **NINTH CAUSE OF ACTION**

13 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

15 78. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
16 1 through 77, inclusive, of this Complaint as though fully set forth herein.

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

20 80. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
21 his duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of
22 completing his job duties, which were not reimbursed by Defendants. These costs include, but
23 are not limited to, vegetables (tomatoes, broccoli, among others) and other supplies that the
24 restaurant needed but would not provide, as well as personal cell phone for work purposes.
25 Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest and
26 attorney's fees and costs, under Labor Code section 2802.

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1 **TENTH CAUSE OF ACTION**

2 **UNLAWFUL TIP COLLECTION**

3 **(Lab. Code §§ 351 and 353)**

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

5 81. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
6 1 through 80, inclusive, of this Complaint as though fully set forth herein.

7 82. During all times relevant herein, Defendants unlawfully collected tips meant for
8 employees and also deducting the tips from Plaintiff's and others' earned wages. ZEVGOLATIO
9 also deducted the credit card fee from Plaintiff's and others' tips and did not timely provide the
10 credit card and even cash tips to Plaintiff and other similarly situated aggrieved employees.

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

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

16 85. By Defendants unlawfully collecting tips from Plaintiff, Defendants violated California
17 Labor Code Section 351 and 353. Therefore, Plaintiff demands return of all tips unlawfully
18 collected from them within three years of the filing of this complaint.

19 **ELEVENTH CAUSE OF ACTION**

20 **PRIVATE ATTORNEYS GENERAL ACT**

21 **Individual and Representative Claim for PAGA penalties under California Labor Code**

22 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 351, 353, 510, 512, 558,**

23 **558.1, 1174, 1174.5, 1194, 1197, 1198, 2802)**

24 **(Plaintiff against all named Defendants and all DOE defendants)**

25 86. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
26 1 through 85, inclusive, of this Complaint as though fully set forth herein.

27 87. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
28 Defendants of the specific violations of the California Labor Code that Defendants and DOE
defendants have violated and continue to violate.

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

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

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

13 91. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
14 violator and had one or more of the alleged violations committed against him, and therefore is
15 properly suited to represent the interests of other current and former hourly, non-exempt
16 employees who worked for ZEYGOLATIO at any of their California locations during the
17 relevant PAGA Period.

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

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

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

27 95. California Labor Code section 558 establishes a civil penalty as follows: Any employer
28 or other person action on behalf of an employer who violates, or causes to be violated, a section
of this chapter or any provision regulating hours and days of work in any order of the Industrial

1 Welfare Commission (including the “Hours and Days of Work” section of the Wage Order) shall
2 be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each underpaid
3 employee for each pay period for which the employee was underpaid... (2) for each subsequent
4 violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which
5 the employee was underpaid...

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

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

12 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
13 226.3, 226.7, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, via
14 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage Order
15 Provisions (no. 5) violated based on the facts alleged in this Complaint.

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

20 **TWELFTH CAUSE OF ACTION**

21 **SEXUAL HARASSMENT IN VIOLATION OF FEHA**

22 **(Plaintiff against Defendant ZEYGOLATIO CORPORATION and all DOE defendants)**

23 99. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
24 1 through 98, inclusive, of this Complaint as though fully set forth herein.

25 100. At all times herein mentioned, FEHA, Government Code section 12900, et seq.,
26 was in full force and effect and was binding on Defendants. Specifically, Government Code
27 section 12940(j) prohibits an employer from sexually harassing an employee on the basis of his
28 sex.

101. Yogi (Jose) was and is at all times relevant hereto an employee of

1 ZEVGOLATIO and a “supervisor” as that term is fined in the Fair Employment and Housing
2 Act (FEHA, Government Code section 12926(t). The actions of manager Yogi (Jose) towards
3 Plaintiff, while in the course and scope of his employment with ZEVGOLATIO as described
4 herein, created a hostile sexual environment which materially altered Plaintiff’s working
5 conditions and which constitutes sexual harassment in violation of California Government Code
6 section 12940(j)(1).

7 102. In engaging in the aforementioned conduct, Defendants and DOES 1 to 25,
8 inclusive, and each of them, aided, abetted, incited, compelled, and/or coerced unlawful
9 employment practices in violation of the announced policy of this State against such practices.
10 Furthermore, they failed to take immediate and appropriate corrective action to prevent this
11 harassment.

12 103. As a proximate result of the conduct of the Defendants, Plaintiff has suffered and
13 will continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other
14 pecuniary loss according to proof. Plaintiff has also suffered and will continue to suffer physical
15 and emotional injuries, including nervousness, humiliation, depression, anguish, embarrassment,
16 fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff’s damages will be
17 ascertained at trial.

18 104. In committing the foregoing acts, Defendants have been guilty of oppression,
19 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
20 punitive damages in a sum appropriate to punish and make an example out of the foregoing
21 Defendants.

22 105. The acts of oppression, fraud, and/or malice, were engaged in by employees of
23 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
24 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
25 wrongful conduct for which an award of punitive damages is sought, and/or was personally
26 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
27 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part
28 of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiff

1 to punitive and exemplary damages against each of the Defendants in accordance with California
2 Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendant.

3 106. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
4 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
5 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
6 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
7 award of attorneys' fees and costs.

8 **THIRTEENTH CAUSE OF ACTION**

9 **RETALIATION IN VIOLATION OF FEHA**

10 **(Plaintiff against Defendant ZEYGOLATIO CORPORATION and all DOE defendants)**

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

13 108. At all times herein mentioned, Government Code section 12940 et. seq. was in
14 full force and effect and was binding upon Defendants and each of them. Said statute imposes
15 certain duties upon Defendants concerning harassment and retaliation against persons, such as
16 Plaintiff, on the basis of sex/gender or due to complaints of sexual harassment. Said statutes were
17 intended to prevent the type of injury and damage set forth herein. Plaintiff was, at all times
18 herein mentioned, a member of the class of persons intended to be protected by said statutes. As
19 alleged above, Plaintiff was retaliated against and was eventually terminated after reporting and
20 complaining about Yogi (Jose)'s consistent sexually harassing behavior at the workplace.

21 109. As a direct and proximate result of Defendants' conduct, Plaintiff has been
22 harmed in that Plaintiff has suffered the loss of wages, salary, and benefits, among other things.
23 As a result, Plaintiff has suffered such damages in an amount according to proof.

24 110. As a further direct and proximate result of the conduct of Defendants, and each
25 of them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish and
26 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
27 such damages in an amount according to proof.

28 111. In committing the foregoing acts, Defendants have been guilty of oppression,
fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to

1 punitive damages in a sum appropriate to punish and make an example out of the foregoing
2 Defendants.

3 112. The acts of oppression, fraud, and/or malice, were engaged in by employees of
4 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
5 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
6 wrongful conduct for which an award of punitive damages is sought, and/or was personally
7 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
8 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part
9 of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiff
10 to punitive and exemplary damages against each of the Defendants in accordance with California
11 Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendant

12 113. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
13 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
14 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
15 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
16 award of attorneys' fees and costs.

17 **FOURTEENTH CAUSE OF ACTION**

18 **FAILURE TO PREVENT HARASSMENT AND RETALIATION**

19 **IN VIOLATION OF FEHA**

20 **(Plaintiff against Defendant ZEYGOLATIO CORPORATION and all DOE defendants)**

21 114. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 113, inclusive, of this Complaint as though fully set forth herein.

23 115. At all times herein mentioned, FEHA, California Government Code section
24 12940(k), was in full force and effect and was binding on Defendants. This statute states that it
25 is an unlawful employment practice in California for an employer to "fail to take all reasonable
26 steps necessary to prevent discrimination and harassment from occurring."

27 116. As alleged above, Plaintiff was subjected to harassment and retaliation.

28 117. Defendants failed to take all reasonable steps necessary to prevent harassment
and retaliation. In addition, ZEYGOLATIO failed to remedy such harassment and retaliation

1 when it realized and was informed that it was occurring. ZEVGOLATIO further failed to train,
2 supervise, and monitor its employees and agents.

3 118. The failure of Defendants to prevent harassment and retaliation created and
4 encouraged an environment where such harassment and retaliation was condoned, encouraged,
5 tolerated, sanctioned, and/or ratified.

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

11 120. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
12 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
13 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
14 their workers' right to work in an environment free of harassment and retaliation, so as to justify
15 the imposition of punitive damages to punish and set an example of said Defendants.

16 121. As a proximate result of the foregoing conduct, which violated the provisions of
17 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
18 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

19 **FIFTEENTH CAUSE OF ACTION**

20 **NEGLIGENT RETENTION AND SUPERVISION**

21 **(Plaintiff against Defendant ZEVGOLATIO CORPORATION and all DOE defendants)**

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

24 123. Upon information and belief, ZEVGOLATIO, by and through its agents and
25 employees, knew or reasonably should have known through reasonable investigation, of
26 manager Yogi (Jose)'s propensity for sexually harassing behavior.

27 124. Defendants had a duty not to hire or retain Yogi (Jose), provide proper training
28 to Yogi (Jose) and provide reasonable supervision of Yogi (Jose).

125. Defendants negligently hired, retained and/or failed to adequately train and

1 supervise Yogi (Jose) in his management position, wherein Yogi (Jose) was able to commit the
2 wrongful acts complained of herein against Plaintiff. Defendants failed to provide
3 reasonable supervision of Yogi (Jose) despite knowing of his propensities for sexually harassing
4 behavior.

5 126. As a result of the above-described conduct, Plaintiff has suffered and continues
6 to suffer a great amount of stress, anxiety, humiliation, embarrassment, loss of sleep, loss of
7 confidence, loss of self-esteem, and general discomfort.

8 127. Defendants engaged in these acts alleged herein and/or condoned, permitted,
9 authorized, and/or ratified the conduct of their employees and agents and are vicariously liable
10 for the wrongful conduct of their employees and agents for this cause of action.

11 **SIXTEENTH CAUSE OF ACTION**

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

13 **(California Labor Code section 98.6)**

14 **(Plaintiff against ZEYGOLATIO CORPORATION and all DOE defendants)**

15 128. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 127, inclusive, of this Complaint as though fully set forth herein.

17 129. California Labor Code section 98.6 provides, in pertinent part, as follows:

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

23 130. In doing the things herein alleged, corporate Defendant ZEYGOLATIO violated
24 Labor Code section 98.6 in that they retaliated against Plaintiff for complaining about labor
25 code violations that were being committed by Defendants against him.

26 131. As a direct and proximate result of the aforementioned acts and omissions of
27 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
28 loss of income (past and future), loss of employment benefits (past and future), general and

1 compensatory damages (past and future), mental pain and anguish and emotional distress (past
2 and future), and will continue to suffer in the future, in an amount to be proved at trial. Moreover,
3 pursuant to Labor Code section 98.6, an employer who violates this section is liable for a civil
4 penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this
5 section.

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

11 **SEVENTEENTH CAUSE OF ACTION**

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

13 **(Plaintiff against Defendant ZEVGOLATIO CORPORATION and all DOE Defendants)**

14 133. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 132, inclusive, of this Complaint as though fully set forth herein.

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

27 135. As discussed fully above, Plaintiff complained to Defendants about the
28 company's illegal conduct and the labor code violations being committed against Plaintiff,
including not being paid for all hours worked, not being paid overtime and doubletime wages,

1 not receiving his statutory breaks, and the sexual harassment/hostile work environment he was
2 experiencing at the workplace.

3 136. Corporate Defendant ZEYGOLATIO CORPORATION retaliated against
4 Plaintiff for his whistleblowing and protected activity in complaining about illegal conduct, as
5 alleged above, all in violation of Labor Code § 1102.5.

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

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

15 **EIGHTEENTH CAUSE OF ACTION**

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

17 **(Plaintiff against Defendant ZEYGOLATIO CORPORATION and all DOE defendants)**

18 139. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 138, inclusive, of this Complaint as though fully set forth herein.

20 140. At all times during his employment with Defendant ZEYGOLATIO
21 CORPORATION, Plaintiff performed his duties with the utmost diligence and competence.

22 141. Plaintiff is informed and believes and thereon alleges that Defendants' decisions
23 and actions to treat him differently and ultimately terminate his employment as alleged herein,
24 was motivated by Plaintiff's whistleblowing and complaints about sexual harassment/hostile
25 work environment at the workplace as well as wage and hour violations being committed against
26 Plaintiff. Defendant ZEYGOLATIO CORPORATION intentionally created the aforementioned
27 retaliation, thereby not giving Plaintiff an opportunity to work in an environment free of
28 harassment and retaliation.

142. The employment of Plaintiff wrongfully terminated on or around July 13, 2022

1 in violation of the fundamental public policy of the State of California with respect to retaliating
2 against an employee on account of his complaints to management about the illegal conduct
3 taking place at the workplace. Moreover, Plaintiff was forced to hire an attorney to assist him
4 to end these illegal activities. Said conduct violated statutory and constitutional expressions of
5 public policy including, FEHA, the California Labor Code and the California Constitution,
6 Article 1 section 8.

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

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

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

23 **NINETEENTH CAUSE OF ACTION**

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

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

26 **(Plaintiff against ZEYGOLATIO CORPORATION and all DOE defendants)**

27 146. Plaintiff re-alleges and incorporates by reference each and every allegation in
28 paragraphs 1 through 145, inclusive, of this Complaint as though fully set forth herein.

147. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants

1 constitutes unfair and unlawful business practices under California Business and Professions
2 Code Section 17200, et seq.

3 148. Defendant's violations of the FEHA, California labor laws and the Labor Code
4 constitutes a business practice because it was done repeatedly over a significant period of time
5 in a systematic manner that was detrimental to Plaintiff and others.

6 149. For the four years preceding the filing of this action, Plaintiff has suffered
7 damages and request damages and/or restitution of all monies and profits to be disgorged from
8 corporate defendant ZEYGOLATIO CORPORATION in an amount according to proof at
9 time of trial, but in excess of the jurisdiction of this Court.

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

- 12 1. For compensatory damages including lost past and future wages, regular wages,
13 overtime, and all other sums of money, including employment benefits, together with
14 interest on said amounts, and any other economic injury to Plaintiff, according to proof;
- 15 2. For general damages according to proof;
- 16 3. For special and consequential damages to the extent allowed by law;
- 17 4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
18 at trial;
- 19 5. For an award of punitive damages against Defendant ZEYGOLATIO CORPORATION
20 according to proof;
- 21 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
22 subject to proof at trial;
- 23 7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
24 proof at trial;
- 25 8. For restitution and disgorgement for all unfair business practices by Defendant
26 ZEYGOLATIO CORPORATION against Plaintiff in an amount subject to proof at trial;
- 27 9. For an order enjoining Defendant ZEYGOLATIO CORPORATION from further unfair
28 and unlawful business practices in violation of Business and Professions Code Sections
17200, et seq.;

10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
12. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and representative PAGA claim;
13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law via PAGA;
14. For the imposition of civil penalties and/or statutory penalties;
15. For all interest as allowed by law;
16. For all costs and disbursements incurred in this suit;
17. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, Labor Code section 1102.5, the Labor Code, FEHA; and/or other applicable laws; and
18. For such other and further relief as this Court may deem proper.

DATED: October 21, 2022

MESSRELIAN LAW INC.

By Maralle Messrelian
Harout Messrelian, Esq.
Maralle Messrelian, Esq., Of Counsel
Attorneys for Plaintiff Sahid Magana

DEMAND FOR JURY TRIAL

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

DATED: October 21, 2022

MESSRELIAN LAW INC.

By Maralle Messrelian
Harout Messrelian, Esq.
Maralle Messrelian, Esq., Of Counsel
Attorneys for Plaintiff Sahid Magana