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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SANTA CLARA**

15
16 LUIS RAMOS, individually, and on behalf
of all other aggrieved employees,

17 Plaintiff,

18
19 v.

20 TAQUERIA MILAGRO, INC., a California
corporation; and DOES 1 through 50,
21 inclusive,

22 Defendants.
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Case No.: **23CV409955**

**COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004**

[California Labor Code § 2698 et seq.]

1 Plaintiff Luis Ramos ("Plaintiff") brings this representative action, individually and on behalf
2 of all other aggrieved employees, to recover civil penalties relating to systematic violations of
3 California wage and hour laws by Taqueria Milagro, Inc. ("Taqueria Milagro" or "Defendant").
4 Plaintiff makes the following allegations on information and belief, except as to allegations pertaining
5 to Plaintiff individually, which are based on his personal knowledge.

6 **INTRODUCTION**

7 1. Defendant does business as Taqueria Milagro, Inc., and owns and operates one or more
8 casual Mexican dining restaurants.

9 2. In an effort to conserve labor costs, and thereby maximize profits, Defendant has
10 implemented policies and practices that have resulted in systematic violations of California's wage and
11 hour laws.

12 3. For example, Defendant has implemented unlawful policies with respect to meal and
13 rest breaks. Defendant requires its non-exempt employees, who are informed that the needs of the
14 restaurant and its patrons take top priority, to work through meal and rest breaks, to take untimely meal
15 periods and to remain on call during such breaks. As a result, Plaintiff and other aggrieved employees
16 have been denied the ability to take meal and rest breaks that they were and are legally entitled to take.

17 4. Moreover, Defendant has uniformly failed to pay Plaintiff and other aggrieved
18 employees proper overtime wages and minimum wages due to the fact that it has willfully turned a
19 blind eye to off-the-clock work that Plaintiff and other non-exempt employees perform as a direct
20 consequence of Defendant's understaffing and imposition of an unreasonable workload.

21 5. Defendant also failed to pay timely wages to current and former employees and has
22 failed to maintain required employee records and provide accurate, itemized wage statements.

23 **JURISDICTION AND VENUE**

24 6. The Superior Court of the State of California has jurisdiction in this matter because
25 Defendant is licensed to do business under the laws of the State of California and does business in the
26 State of California. No federal question is at issue because Plaintiff's claims are based solely on
27 California law.

28 7. Venue is proper in this judicial district and the County of Santa Clara because Defendant

1 maintains its restaurant in the County of Santa Clara and Plaintiff worked for Defendant at a location
2 in the County of Santa Clara. Many other aggrieved employees also worked for Defendant at its
3 restaurant located in the County of Santa Clara.

4 **THE PARTIES**

5 8. During the statute of limitations period, Plaintiff was employed by Defendant as a line
6 cook at its location in San Jose, California.

7 9. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times
8 relevant hereto was, a corporation organized and existing under the laws of the State of California.

9 10. The true names and capacities of DOES 1 through 50, inclusive, are unknown to Plaintiff
10 at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is informed
11 and believes, and thereon alleges, that each defendant designated as a DOE is in some manner highly
12 responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees'
13 injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE
14 defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
15 capacities of such DOE defendants when ascertained.

16 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

17 11. On September 8, 2022, Plaintiff gave written notice by certified mail pursuant to
18 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
19 ("LWDA") and Taqueria Milagro, of the specific provisions of the California Labor Code and IWC
20 Wage Order alleged to have been violated, including the facts and theories to support the alleged
21 violations. Plaintiff has not received any response from the LWDA. As Plaintiff has waited more than
22 sixty-five (65) days from the September 8, 2022 postmark date of his written notice before filing this
23 action, Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3
24 to commence a representative action under the California Private Attorneys General Act of 2004
25 ("PAGA").

26 12. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this
27 action on behalf of the State of California, and all other aggrieved employees (e.g., current and former
28 non-exempt employees of Defendant who are California citizens and performed work for Defendant in

1 the State of California at any time within the period beginning one (1) year prior to the September 8,
2 2022 notice Plaintiff provided to the LWDA and Taqueria Milagro, and ending at the time this action
3 proceeds to final judgment ("statute of limitations period").

4 **FACTUAL ALLEGATIONS**

5 **Failure to Provide Required Meal Periods**

6 13. During the statute of limitations period, as part of Defendant's illegal policies and
7 practices to minimize labor costs and maximize corporate profits, Defendant has required, permitted or
8 otherwise suffered Plaintiff and aggrieved employees to perform work during their meal periods, to
9 completely skip their meal periods, to take late and short meal periods, and Defendant has otherwise
10 failed to provide the required meal periods to Plaintiff and aggrieved employees as required under
11 California Labor Code §§ 226.7, 512 and § 11 of the applicable IWC Order.

12 14. Defendant has implemented several practices that have caused Plaintiff and aggrieved
13 employees to systematically miss and otherwise take non-compliant meal periods. Defendant
14 systematically understaff its job sites such that non-exempt employees are given so much work to
15 complete that they regularly miss or otherwise take non-compliant meal periods. As a direct
16 consequence of this understaffing, Plaintiff and aggrieved employees have so much work to complete
17 within their scheduled shifts that they are forced to skip their meal periods altogether, to take them after
18 working longer than five (5) hours, to perform work during their meal periods, or return to work after
19 taking less than a thirty (30) minute meal period. Moreover, Plaintiff and other aggrieved employees
20 need to secure permission before taking a meal period, which is often denied by supervisors.

21 15. There are also frequent occasions when Plaintiff and aggrieved employees need to
22 perform other duties immediately before the time during which they are legally entitled to take a meal
23 period. Pursuant to Defendant's policies, Plaintiff and aggrieved employees cannot simply drop their
24 job duties and leave a customer, refuse an order or stop cooking in order to take a meal period.
25 Consequently, Plaintiff and aggrieved employees regularly miss meal periods, take late meal periods,
26 return early from meal periods, and even clock out for meal periods but continue working.

27 16. Plaintiff and aggrieved employees need to secure permission before taking a meal
28 period. Plaintiff and aggrieved employees often cannot simply stop taking an order from a customer or

1 stop cooking to take their meal period, and their inability to secure coverage frequently causes them to
2 miss and otherwise take non-compliant meal periods.

3 17. Despite the foregoing, Defendant has implemented a policy and practice of actively
4 discouraging the issuance of meal period premium payments, and in the process, Defendant has violated
5 California Labor Code §§ 226.7 and § 11 of the applicable IWC Wage Order, by failing to compensate
6 Plaintiff and aggrieved employees who were not authorized and permitted to take a complete, timely,
7 uninterrupted meal period, one additional hour of compensation at the proper regular rate of pay for
8 each workday that such a meal period was not authorized or permitted.

9 18. Defendant also implemented an unlawful meal period policy by compensating Plaintiff
10 and aggrieved employees for interrupted meal periods only for their actual work time, as opposed to
11 paying them the legally required premium payments for non-compliant meal periods.

12 **Failure to Provide Required Rest Breaks**

13 19. During the statute of limitations period, as part of Defendant's illegal policies and
14 practices to minimize labor costs and maximize corporate profits, Defendant has failed to authorize and
15 permit Plaintiff and other aggrieved employees to take rest breaks as required under California Labor
16 Code §§ 226.7 and 512, and § 12 of the applicable IWC Wage Order.

17 20. The same or similar policies and practices that deprive Plaintiff and other aggrieved
18 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to
19 take their first and second and third rest breaks. As alleged herein, Defendant understaffs its restaurant,
20 which creates so much work for Plaintiff and other aggrieved employees that they are frequently unable
21 to take rest breaks. Moreover, Plaintiff and aggrieved employees need to first secure permission before
22 taking a rest break. Plaintiff and aggrieved employees often cannot simply stop assisting a customer or
23 stop cooking to take a rest break, and their inability to secure coverage causes them to regularly miss
24 and otherwise take non-compliant rest breaks.

25 21. Defendant also does not provide adequate training regarding its legal obligations with
26 respect to the provision of rest breaks, does not implement a schedule regarding rest breaks for non-
27 exempt employees, and often interrupts staff who try to take rest periods. In short, Defendant essentially
28 has a non-existent rest break policy, as there is no guidance or specification as to when Plaintiff and

1 other aggrieved employees are authorized and permitted to take rest breaks during their shifts.

2 22. Defendant also violated California Labor Code § 226.7, and § 12 of the applicable IWC
3 Order, by failing to pay Plaintiff and other aggrieved employees who were not provided with a rest
4 break, in accordance with the applicable wage order, one additional hour of compensation at the proper
5 regular rate of pay for each workday that a rest break was not provided.

6 **Failure to Pay Overtime Wages**

7 23. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC Order,
8 Defendant is required to compensate Plaintiff and other aggrieved employees for all overtime, which
9 is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of
10 eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh
11 consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any
12 workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work
13 in any workweek.

14 24. During the statute of limitations period, Defendant failed to compensate Plaintiff and
15 other aggrieved employees for all overtime hours worked as required under the foregoing provisions
16 of the California Labor Code and IWC Wage Order by, among other methods: failing to pay overtime
17 at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§
18 510, 1194 and § 3 of the applicable IWC Order, requiring, permitting or suffering Plaintiff and other
19 aggrieved employees to work off-the-clock, and to work through meal and rest breaks, but not
20 compensating them for this time, unlawful rounding of time worked by Plaintiff and the other aggrieved
21 employees in favor of Defendant, improperly calculating the regular rate of pay based on bonuses,
22 commissions, and other remuneration, and other methods to be discovered.

23 25. In a short-sighted attempt to maximize profits, Defendant has understaffed its restaurant.
24 Not only has this practice resulted in widespread missed meal and rest breaks, but it has also caused
25 Plaintiff and other aggrieved employees to perform work while off-the-clock. Defendant has actual or
26 constructive knowledge of this off-the-clock work and subtly condones it. Plaintiff and other aggrieved
27 employees routinely arrive to work early to check so that they are prepared and ready to begin
28 performing their duties promptly at the start of their shifts, as they must be pursuant to the requirements

1 of Defendant. Defendant knows that Plaintiff and other aggrieved employees perform this work off-
2 the-clock.

3 26. Defendant has knowingly and willfully refused to perform its obligations to compensate
4 Plaintiff and other aggrieved employees for all wages earned and all hours worked in violation of
5 California Labor Code §§ 510, 1194 and 1198, and § 3 of the applicable IWC Order.

6 **Failure to Pay Minimum Wages**

7 27. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order,
8 payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
9 period is unlawful.

10 28. During the statute of limitations period, the hourly rates for Plaintiff and other aggrieved
11 employees were precisely at California minimum wage. Based on this common practice, Defendant
12 failed to pay Plaintiff and other aggrieved employees minimum wages for all hours worked by
13 requiring, permitting or suffering Plaintiff and other aggrieved employees to work off the clock, such
14 as requiring them to work through meal and rest breaks but not compensating them for this time,
15 unlawful rounding of time worked by Plaintiff and the other aggrieved employees in favor of
16 Defendant, and failing to include this time in all hours worked, and other methods to be discovered.

17 29. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4
18 of the applicable IWC Wage Orders. As a proximate result of the aforementioned violations, Plaintiff
19 and other aggrieved employees have been damaged in an amount according to proof at trial. Therefore,
20 pursuant to California Labor Code §§ 200, 203, 226, 1194, 1197.1, and any other applicable law,
21 Plaintiff and other aggrieved employees are entitled to recover the unpaid balance of wages owed to
22 them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

23 **Failure to Timely Pay Wages During Employment**

24 30. Pursuant to California Labor Code § 204, for all labor performed between the 1st and
25 15th days of any calendar month, Defendant is required to pay its nonexempt employees between the
26 16th and 26th day of the month during which the labor was performed. California Labor Code § 204
27 also provides that for all labor performed between the 16th and 26th days of any calendar month,
28 Defendant is required to pay its non-exempt employees between the 1st and 10th day of the following

1 calendar month. In addition, California Labor Code § 204 provides that all wages earned for labor in
2 excess of the normal work period shall be paid no later than the payday of the next regular payroll
3 period.

4 31. During the statute of limitations period, Defendant has knowingly and willfully failed
5 to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the next
6 regular payroll period as required by California Labor Code § 204, including but not limited to,
7 compensation for missed meal and rest breaks, proper overtime wages due to an unlawful calculation
8 of the regular rate of pay, and for work performed off-the-clock.

9 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

10 32. Pursuant to California Labor Code §§ 201, 202 and 203, Defendant is required to pay
11 all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates
12 that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of
13 discharge are due and payable immediately.

14 33. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay all
15 accrued wages due to an employee no later than 72 hours after the employee quits his or her
16 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
17 which case the employee is entitled to his or her wages at the time of quitting.

18 34. California Labor Code § 203 provides that if an employer willfully fails to pay, in
19 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
20 quits, the employer is liable for waiting time penalties in the form of continued compensation to the
21 employee at the same rate for up to 30 workdays.

22 35. During the statute of limitations period, Defendant has willfully failed to pay accrued
23 wages and other compensation to Plaintiff and other aggrieved employees in accordance with California
24 Labor Code §§ 201 and 202. On information and belief, Defendant does not have a sufficient policy to
25 provide Plaintiff and other aggrieved employees with their final paychecks within the timeframes
26 required under California law. Further, Plaintiff did not received his final paycheck from Employer
27 until over ten (10) days from his last day of employment. Defendant continues to fail to properly
28 compensate other aggrieved employees for all hours worked when due, overtime wages, and

1 compensation for non-compliant meal and rest breaks, Defendant also willfully failed and continue to
2 fail to pay accrued wages and other compensation to Plaintiff and other aggrieved employees in
3 accordance with California Labor Code §§ 201 and 202.

4 **Failure to Furnish Accurate Itemized Wage Statements**

5 36. During the statute of limitations period, Defendant has routinely failed to provide
6 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
7 Defendant's pay stubs have violated California Labor Code § 226. Next, Defendant was and is not
8 providing Plaintiff and other aggrieved employees with proper meal periods and rest breaks but
9 intentionally fails to include in their wage statements one (1) additional hour of compensation at their
10 regular rates of pay for each non-compliant meal period or rest break. Moreover, Defendant has failed
11 to pay proper overtime wages to Plaintiff and other aggrieved employees and its wage statements
12 therefore fail to reflect the correct hourly rates worked by Plaintiff and other aggrieved employees.

13 37. In order to conceal its wage theft, Defendant knowingly and intentionally failed to
14 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements in
15 accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

16 38. Plaintiff and other aggrieved employees suffered injury as a result of the failure of
17 Defendant to provide timely and accurate itemized wage statements because it prevented them from
18 discovering the scope and extent of Defendant's violations of California wage and hour laws, prevented
19 them from being able to accurately determine the gross wages earned, the total hours worked, all
20 deductions made, the net wages earned, all applicable hourly rates in effect during each pay period and
21 the corresponding number of hours worked at each hourly rate and the balance and available amount
22 of sick leave.

23 **Failure to Maintain Required Records**

24 39. During the statute of limitations period, as part of Defendant's illegal payroll policies
25 and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due,
26 Defendant knowingly and intentionally failed to maintain records as required under California Labor
27 Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Order, including but not limited to the
28 following records: total daily hours worked by each employee; applicable rates of pay relating to non-

1 discretionary, including but not limited to, overtime and double-time; all deductions; meal and/or rest
2 periods; time records showing when each employee begins and ends each work period; and accurate
3 itemized statements that reflect all compensation, rates of pay for all compensation paid and
4 remuneration owed and due to them. Defendant had knowledge that it was not providing its non-exempt
5 employees with proper meal and rest periods, but knowingly failed to include in the wage statements
6 one (1) extra hour of compensation for each missed meal and rest period. Defendant also illegally and
7 inaccurately recorded the time in which Plaintiff and other aggrieved employees worked. Defendant
8 has also failed to maintain accurate, itemized wage statements, as alleged above.

9 **Failure To Provide Mandatory Sick Leave**

10 40. Pursuant to California Labor Code §246, any employee who works in the State of
11 California and who works more than “30 or more days within a year ... is entitled to be paid sick days
12 ...” Labor Code §246(i) requires an employer to provide an employee with “written notice” that sets
13 for the “amount of sick leave available” on the employee’s wage statement pursuant to Labor Code
14 §226 or “..., in a separate writing provided on the designated pay date with the employee’s payment of
15 wages.”

16 41. Defendant failed to comply with Labor Code Section §246 by not providing Plaintiff
17 and the other aggrieved employees with sick pay. Defendant also failed to comply with Labor Code
18 §246(i) by not providing Plaintiff and the other aggrieved employees with their available sick leave
19 and balance of sick leave. As such, Defendant has violated California Labor Code § 246.

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

22 **[Cal. Lab. Code § 2698 *et seq.*]**

23 **(On Behalf of Plaintiff and the Aggrieved Employees Against Defendants)**

24 42. Plaintiff incorporates herein by specific reference, as though fully set forth, the
25 allegations in paragraphs 1 through 41 above.

26 43. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
27 2699(c), and a proper representative to bring a civil action on behalf of himself and other aggrieved
28 employees pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff

1 was employed by Defendant and one or more of the alleged California Labor Code violations was
2 committed against Plaintiff during the statute of limitations period.

3 44. Plaintiff seeks to recover civil penalties through a representative action permitted by
4 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class
5 certification is not required.

6 45. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
7 penalties from Defendant in a representative action for the violations set forth above, including but not
8 limited to, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558,
9 1174, 1194 and for the violations of the applicable IWC Wage Order alleged above.

10 46. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties
11 against Defendant for violations of California Labor Code provisions for which a civil penalty is
12 specifically provided, including but not limited to, the following:

13 a. Pursuant to California Labor Code § 210, for violations of California Labor
14 Code § 204, Defendant is subject to a civil penalty in the amount of one
15 hundred dollars (\$100) for the initial violation for each failure to pay each
16 employee, and two hundred dollars (\$200) per employee for violations in
17 subsequent pay periods.

18 b. Pursuant to California Labor Code § 226.3, for violations of California Labor
19 Code § 226(a), Defendant is subject to a civil penalty in the amount of two
20 hundred and fifty dollars (\$250) per aggrieved employee for the initial pay
21 period where a violation occurs and one thousand dollars (\$1,000) per
22 aggrieved employee for violations in subsequent pay periods.

23 c. Pursuant to California Labor Code § 1174.5, for violations of California Labor
24 Code § 1174(d), Defendant is subject to a civil penalty of five hundred dollars
25 (\$500).

26 47. California Labor Code § 2699(f) provides that for all California Labor Code violations
27 for which a civil penalty is not specifically provided, the following civil penalties are established: one
28 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two

1 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

2 48. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f) for
3 Defendant's violations of California Labor Code provisions for which a civil penalty is not specifically
4 provided, including but not limited to, California Labor Code §§ 201, 202, 203, 204, 226.7, and 1197,
5 and for the violations of the applicable IWC Wage Order alleged above.

6 49. All civil penalties sought and recovered under this action will be allocated as follows:
7 seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and
8 aggrieved employees.

9 50. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California
10 Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees and the
13 State of California, prays for relief against Defendant, as follows:

- 14 1. For civil penalties according to proof;
15 2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g),
16 California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for
17 attorneys' fees and costs; and
18 3. For such further relief that the Court may deem just and proper.

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20 DATED: January 12, 2023

THE LAW OFFICE OF SCOTT ERNEST WHEELER

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