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ISRAEL CORTES

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
7/7/2023 3:46 PM
By: Preston Frye , Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA**

ISRAEL CORTES, on behalf of himself, all
others similarly situated, and current and
former aggrieved employees,

Plaintiff,

vs.

MC HOSPITALITY, LLC, a California
limited liability company; and DOES 1–50,
inclusive,

Defendants.

Case No. 23CV02909

**CLASS AND REPRESENTATIVE
PRIVATE ATTORNEY GENERAL
ACTION**

COMPLAINT FOR:

1. Unfair Competition
(Bus. & Prof. Code § 17200 *et seq.*);
2. Non-Provision of Meal and Rest Periods
(Lab. Code § 226.7);
3. Unpaid Overtime Wages
(Lab. Code § 1194);
4. Wage Statement Penalties
(Lab. Code § 226);
5. Waiting Time Penalties
(Lab. Code § 203); and
6. Civil Penalties
(Lab. Code § 2698 *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff Israel Cortes (hereafter, "Plaintiff"), on behalf of himself, all others similarly
2 situated, and current and former aggrieved employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is a class and representative private attorney general action against
5 Defendants MC Hospitality, LLC and Does 1–50, inclusive (collectively, "Defendants") for
6 violations of the Labor Code, Industrial Welfare Commission Order 5-2001 (hereafter, the "Wage
7 Order"), and the Business and Professions Code arising out of Defendants' alleged wage and hour
8 violations. As set forth below, Defendants have, as matters of policy and/or practice, failed to
9 provide meal and rest periods to their hourly workers, failed to pay them premium wages, failed
10 to pay them at legal overtime rates for all recorded overtime hours, failed to provide them with
11 accurate written wage statements, and failed to timely pay them all of their earned and unpaid
12 wages upon separation of employment. Consequently, Plaintiff now seeks restitution of unpaid
13 wages and related relief on behalf of himself and all other similarly situated current and former
14 employees of Defendants, as well as corresponding civil penalties on behalf of himself and other
15 current and former aggrieved employees.

16 **JURISDICTION AND VENUE**

17 2. This Court has subject matter jurisdiction to hear this case in that the amount in
18 controversy in this case, exclusive of costs and attorneys' fees, exceeds \$25,000.

19 3. Venue is proper in the Santa Barbara County under Code of Civil Procedure
20 §§ 395(a) and 395.5 because the events giving rise to liability in this action arose in Santa Barbara
21 County in that at least some of the transactions that are the subject matter of this Complaint occurred
22 therein and/or because each defendant either is found, maintains offices, transacts business, and/or
23 has an agent therein.

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THE PARTIES

4. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

5. Plaintiff Israel Cortes is an individual who, at relevant times, was employed by Defendants in Santa Barbara County, California on an hourly basis during the period from approximately April 2022 to approximately September 13, 2022.

6. Defendant MC Hospitality, LLC is a limited liability company organized under California law that employs persons and does business in Santa Barbara County, California.

7. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the defendants sued as Does 1–50, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.

8. Plaintiff will amend this Complaint to allege the true names and capacities of the Doe defendants when ascertained.

9. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each of the Defendants has been a “person” within the meaning of Labor Code § 18.

10. Plaintiff is informed and believes that each of the Defendants is either an “employer” or a “person acting on behalf of an employer” within the meaning of Labor Code §§ 558 and 558.1 so as to render each of the Defendants liable for violations of Labor Code §§ 203, 226, 226.7, and 1194.

11. Plaintiff is informed and believes and thereon alleges that each of the Defendants has acted as an employer and/or joint employer of Plaintiff and class members within the meaning of Section 2(H) of the Wage Order.

12. Plaintiff is informed and believes and thereon alleges that each of the Defendants has acted in all respects pertinent to this action as the agent or employee of the other Defendants, carried out a joint scheme, business plan, or policy in all respects hereto, and therefore the acts of each of the Defendants are legally attributable to the other Defendants.

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1 13. Plaintiff is informed and believes and thereon alleges that, at all relevant times
2 herein, except as otherwise indicated, Defendants have been the agents, employees and/or
3 servants, masters or employers of the remaining Defendants, and in doing the things hereinafter
4 alleged, have been acting within the course and scope of such agency or employment, and with
5 the approval and ratification of each of the other Defendants.

6 14. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
7 and except as otherwise indicated, each and every one of the acts and omissions alleged herein
8 were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees,
9 and/or under the direction and control of each of the other Defendants, and that said acts and
10 failures to act have been within the course and scope of said agency, employment, and/or direction
11 and control.

12 15. Plaintiff is informed and believes and thereon alleges that, at all relevant times, in
13 perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant
14 to and in furtherance of policies and practices that constitute unfair competition in violation of
15 the Business and Professions Code and violate the requirements of the Labor Code and the Wage
16 Order.

17 **CLASS ACTION ALLEGATIONS**

18 16. Plaintiff incorporates each of the preceding paragraphs of this Complaint by
19 reference as if fully set forth herein.

20 17. Plaintiff brings this action on behalf of himself and the following class and
21 subclasses pursuant to Code of Civil Procedure § 382:

22 A. **Plaintiff Class:** All hourly or non-exempt employees of Defendants in
23 California during the period beginning four years before the filing of this
24 action and ending when final judgment is entered.

25 B. **Former Employee Subclass:** All **Plaintiff Class** members who
26 voluntarily or involuntarily separated from their employment with
27 Defendants during the period beginning three years before the filing of this
28 action and ending when final judgment is entered.

C. **Penalties Subclass:** All **Plaintiff Class** members who have been employed by Defendants during the period beginning one year before the filing of this action and ending when final judgment is entered.

18. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into subclasses, and/or by limitation to particular issues. In addition, Plaintiff reserves the right to pursue the cause of action for civil penalties under the Labor Code Private Attorneys General Act of 2004 in a representative capacity without complying with Code of Civil Procedure § 382.

19. **Numerosity:** Class members are so numerous that the individual joinder of each class member is impractical. While Plaintiff does not currently know the exact number of class members, he is informed and believes and thereon alleges that the actual number exceeds the minimum number required for numerosity purposes under Code of Civil Procedure § 382.

20. **Predominant Common Questions:** Common questions of law and fact exist as to all class members and predominate over any questions that only affect individual class members. These questions include, but are not limited to:

- A. Whether Defendants, as matters of policy and/or practice, have failed to authorize and permit net rest periods for **Plaintiff Class** members of ten minutes for each four-hour work period, or major fraction thereof?
- B. Whether Defendants, as matters of policy and/or practice, have failed to provide first duty-free meal periods for **Plaintiff Class** members of thirty minutes after no more than five hours of work?
- C. Whether Defendants, as matters of policy and/or practice, have failed to provide second duty-free meal periods for **Plaintiff Class** members of thirty minutes after no more than ten hours of work?
- D. Whether Defendants, as matters of policy and/or practice, have failed to establish a mechanism for the payment of premium wages to **Plaintiff Class** members when a timely meal or rest period is not provided?

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- 1 E. Whether Defendants are liable to **Plaintiff Class** members for premium
2 wages under Labor Code § 226.7?
- 3 F. Whether Defendants, as matters of policy and/or practice, have paid
4 **Plaintiff Class** members less than legally applicable overtime wage rates
5 for some or all of their recorded working time?
- 6 G. Whether Defendants have systematically failed to pay earned and unpaid
7 wages to **Former Employee Subclass** members within the times set forth
8 in Labor Code §§ 201-202 as a result of failing to pay them overtime and/or
9 premium wages?
- 10 H. Whether Defendants failures to pay overtime and/or premium wages to
11 **Former Employee Subclass** members have been willful so as to render
12 them liable for waiting time penalties under Labor Code § 203?
- 13 I. Whether Defendants are liable to **Penalties Subclass** members for
14 statutory penalties under Labor Code § 226(e)?

15 21. **Typicality:** Plaintiff's claims are typical of class members' claims in that
16 Defendants have policies and practices that violate the Labor Code, Wage Order, and Business
17 and Professions Code as alleged herein that enable him to seek the same relief as they could seek
18 under the same theories of recovery and to which Defendants may attempt to assert the same
19 affirmative defenses.

20 22. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and
21 protect the interests of class members in that he has no interests that are adverse to theirs and is
22 represented by counsel experienced in employment and wage and hour class action litigation.

23 23. **Superiority:** A class action is superior to other available means for fair and
24 efficient adjudication of class members' claims and offers significant benefits to the parties and
25 the court. A class action will allow a number of similarly situated persons to simultaneously and
26 efficiently prosecute their common claims in a single forum without the unnecessary duplication
27 of effort and expense that numerous individual actions would entail. The monetary amounts due
28 to many class members are likely to be relatively small, thus making it difficult, if not impossible,

1 for individual class members to seek and obtain relief. Moreover, a class action will serve
2 important public interests by enabling the non-waivable statutory rights of class members to be
3 effectively asserted, and fundamental public policies to be vindicated, in one proceeding. A class
4 action will also provide a means for vindicating the rights of current employees who are less likely
5 to come forward to assert those rights based on fears of employer reprisal. Finally, a class action
6 will prevent the potential for inconsistent or contradictory judgments inherent in individual
7 litigation and address the problems inherent in random and fragmentary enforcement.

8 **FIRST CAUSE OF ACTION**

9 **UNFAIR COMPETITION**

10 **(Bus. & Prof. Code § 17200 *et seq.*)**

11 **(By Plaintiff and the Plaintiff Class)**

12 24. Plaintiff incorporates each of the preceding paragraphs of this Complaint by
13 reference as if fully set forth herein.

14 25. Business and Professions Code § 17200 defines “unfair competition” to include
15 any unlawful, unfair, and/or fraudulent business act or practice.

16 26. Business and Professions Code §§ 17203-17204 allow a person who has lost
17 money or property as a result of unfair competition to bring a class action in accordance with
18 Code of Civil Procedure § 382 to recover money or property that may have been acquired from
19 similarly situated persons by means of unfair competition.

20 27. At all relevant times, Defendants have employed Plaintiff and **Plaintiff Class**
21 members as non-exempt employees in the public housekeeping industry, thus entitling them to
22 the full benefits and protections of the Labor Code and the Wage Order.

23 28. Collectively, Labor Code §§ 226.7, 512, and 1198, and Sections 7 and 11 of the
24 Wage Order require employers to provide a first meal period of at least thirty minutes to non-
25 exempt employees who work shifts of at least five hours after no more than five hours of work,
26 and to pay premium wages when required meal periods are not provided. As relevant here, absent
27 valid on-duty meal period agreements, employers must maintain records of meal period start and
28 stop times, completely relieve their non-exempt employees of duty, relinquish control over them,

1 and permit them to come and go as they please during the meal period to discharge the duty to
2 provide meal periods.

3 29. Collectively, Labor Code §§ 226.7 and 1198, and Section 12 of the Wage Order
4 require employers to authorize and permit net rest periods of at least ten minutes for each four-
5 hour work period, or major fraction thereof, to make good faith efforts to provide said rest periods
6 during the middle of each work period, and to pay premium wages when required rest periods are
7 not provided.

8 30. Collectively, Labor Code §§ 226(a), 510, 1174, 1194, 1197, and 1198, and
9 Sections 3, 4, and 7 of the Wage Order require an employer to pay a non-exempt employee no
10 less than minimum wage for each hour worked (see *Armenta v. Osmose, Inc.* (2005) 135
11 Cal.App.4th 314), no less than one and one-half times the employee's regular rate of pay for all
12 hours worked in excess of 8 hours in one workday, in excess of 40 hours in one workweek, and
13 for the first 8 hours worked on a seventh consecutive workday, and at no less than twice the
14 employee's regular rate of pay for all hours worked in excess of 12 hours in a workday and/or in
15 excess of 8 hours on a seventh consecutive workday, and to maintain accurate records of all hours
16 worked by the employee.

17 31. Plaintiff is informed and believes and thereon alleges that, all relevant times,
18 Defendants have violated the above-referenced laws as matters of policy and/or practice by,
19 among other things:

20 A. Failing to provide Plaintiff and **Plaintiff Class** members with timely first
21 meal periods of at least thirty minutes when they worked shifts of five or
22 more hours by not maintaining any policy providing for first meal periods
23 after no more than five hours of work, not scheduling first meal periods
24 after no more than five hours of work, not providing complete relief from
25 duty for at least thirty minutes after no more than five hours of work,
26 requiring employees to remain clocked in without being relieved from duty
27 and not keeping accurate records of breaks, and by maintaining staffing
28 levels that do not reasonably permit for timely off-duty first meal periods;

- 1 B. Not paying Plaintiff and **Plaintiff Class** members premium wages on
2 workdays of five or more hours when they have not been provided with a
3 required meal periods;
- 4 C. Failing to provide Plaintiff and **Plaintiff Class** members with paid rest
5 periods when they worked shifts of 3.5 or more hours by not maintaining
6 any policy providing for rest periods in the manner and number required
7 under the Wage Order, not scheduling rest periods, not providing relief
8 from duty for rest periods, not making good faith efforts to provide rest
9 periods in the middle of each four-hour work period, and by maintaining
10 staffing levels that prevent or otherwise impede timely rest periods;
- 11 D. Not paying Plaintiff and **Plaintiff Class** members premium wages on
12 workdays of three and one-half or more hours when they have not been
13 provided with one or more rest periods; and
- 14 E. Failing to pay Plaintiff and **Plaintiff Class** members at legal overtime rates
15 for all amounts of recorded overtime working time.

16 32. As a result of Defendants' violations of the Labor Code and the Wage Order set
17 forth above, Plaintiff has lost money or property by means of unfair competition and Defendants
18 have, or may have, acquired money or property from **Plaintiff Class** members by means of unfair
19 competition.

20 33. Pursuant to Business and Professions Code §§ 17203-17204, Plaintiff, on behalf
21 of himself and the **Plaintiff Class**, seeks an order awarding restitution of all earned and unpaid
22 wages and gratuities that Defendants acquired, or may have acquired, by means of unfair
23 competition in amounts subject to proof.

24 34. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine,
25 and/or the common fund doctrine, Plaintiff, on behalf of himself and the **Plaintiff Class**, seeks
26 reasonable costs and attorneys' fees in amounts subject to proof.

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SECOND CAUSE OF ACTION

NON-PROVISION OF MEAL AND REST PERIODS

(Lab. Code § 226.7)

(By Plaintiff and the Plaintiff Class)

35. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

36. Pursuant to Labor Code § 226.7, Plaintiff seeks to recover premium wages on behalf of himself and **Plaintiff Class** members in amounts subject to proof.

37. Pursuant to Code of Civil Procedure § 1021.5 and Labor Code §§ 218.5 and 218.6, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the **Plaintiff Class**, seeks awards of reasonable attorneys' fees and costs in amounts subject to proof.

THIRD CAUSE OF ACTION

FAILURES TO PAY OVERTIME WAGES

(Lab. Code § 1194)

(By Plaintiff and the Plaintiff Class)

38. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

39. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and **Plaintiff Class** members, seeks unpaid overtime wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject to proof.

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of the Labor Code and the Wage Order.

48. Pursuant to Labor Code § 203, Plaintiff, on behalf of himself and the **Former Employee Subclass**, seeks up to a maximum of thirty days of waiting time penalties for each subclass member in amounts subject to proof.

FIFTH CAUSE OF ACTION

WAGE STATEMENT PENALTIES

(Lab. Code § 226)

(By Plaintiff and the Penalties Subclass)

49. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

50. Pursuant to Labor Code § 226(a), Defendants have been obliged to provide Plaintiff and **Penalties Subclass** members, either semimonthly or at the time of each payment of wages, accurate itemized written wage statements showing, among other things, each applicable wage rate, the number of hours worked at each applicable wage rate, and amounts of gross and net wages earned.

51. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants have failed to provide him and **Penalties Subclass** members with accurate written wage statements by providing them with wage statements that fail to accurately reflect, among other things, their number of hours worked at each applicable wage rate (by not paying them overtime wages) and/or amounts of gross and net wages earned (by not paying them overtime wages and/or meal and rest period premiums).

52. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants' failures to provide him and **Penalties Subclass** members with accurate wage statements have been knowing and intentional, in that Defendants have, at all relevant times, had the ability to provide them with accurate wage statements but, instead, have deliberately maintained unlawful wage and hour policies with respect to timekeeping, overtime, and meal and rest periods so as to result in inaccurate wage statements.

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1 53. Plaintiff is informed and believes and thereon alleges that, at all relevant times, he
2 and **Penalties Subclass** members have suffered injuries due to Defendants' failures to provide
3 them with accurate written wage statements in that, among other things, their legal rights to
4 receive accurate wage statements have been violated, they have been misled about the amounts
5 of wages they have earned, they have been prevented from immediately challenging allegedly
6 unlawful pay practices, have needed to reconstruct time and pay records and perform
7 mathematical computations to determine the amounts of wages they have earned, have been
8 unable to verify if they have been properly paid based on the information provided on their written
9 wage statements, and/or have had inaccurate information about their wages and deductions
10 submitted to government agencies,.

11 54. Pursuant to Labor Code § 226(e), Plaintiff, on behalf of himself and the **Penalties**
12 **Subclass**, seeks to recover the greater of actual damages or \$50 for the initial pay period in which
13 a § 226(a) violation occurred, the greater of actual damages or \$100 for each violation of § 226(a)
14 in a subsequent pay period, up to the greater of actual damages or an aggregate \$4,000 penalty
15 per subclass member, as well as awards of reasonable attorneys' fees and costs, all in amounts
16 subject to proof.

17 **SIXTH CAUSE OF ACTION**

18 **CIVIL PENALTIES**

19 **(Lab. Code § 2698 *et seq.*)**

20 **(By Plaintiff, Against All Defendants)**

21 55. Plaintiff incorporates each of the preceding paragraphs of this Complaint by
22 reference as if fully set forth herein.

23 56. Plaintiff has complied with the procedures for bringing suit specified in California
24 Labor Code § 2699.3. By letter dated January 25, 2023, Plaintiff filed written notice online with
25 the Labor and Workforce Development Agency ("LWDA") and gave written notice by certified
26 mail to Defendants of the specific provisions of the Labor Code alleged to have been violated,
27 including the facts and theories to support the alleged violations. Plaintiff accompanied his
28 LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response

1 within 65 calendar days of the date of Plaintiff's notice, but Plaintiff anticipates that the LWDA
2 will provide written notice to him that it does not intend to investigate these allegations. A true
3 and correct copy of Plaintiff's letter to the LWDA and certified mail delivery confirmation are
4 collectively attached hereto as Exhibit A.

5 57. The "Aggrieved Employees" are all current and former employees of Defendants
6 against whom one or more of the Labor Code violations set forth herein has been committed
7 within the applicable statute of limitations, including the period between the filing of this lawsuit
8 and the entry of final judgment.

9 58. Labor Code § 204 states,

10 (a) All wages, other than those mentioned in Section 201, 201.3, 202,
11 204.1, or 204.2, earned by any person in any employment are due
12 and payable twice during each calendar month, on days designated
13 in advance by the employer as the regular paydays. Labor
14 performed between the 1st and 15th days, inclusive, of any calendar
15 month shall be paid for between the 16th and the 26th day of the
16 month during which the labor was performed, and labor performed
17 between the 16th and the last day, inclusive, of any calendar month,
18 shall be paid for between the 1st and 10th day of the following
19 month. ...

17 (b) (1) Notwithstanding any other provision of this section, all
18 wages earned for labor in excess of the normal work period shall
19 be paid no later than the payday for the next regular payroll period.

20 (2) An employer is in compliance with the requirements of
21 subdivision (a) of Section 226 relating to total hours worked by the
22 employee, if hours worked in excess of the normal work period
23 during the current pay period are itemized as corrections on the
24 paystub for the next regular pay period. Any corrections set out in
25 a subsequently issued paystub shall state the inclusive dates of the
26 pay period for which the employer is correcting its initial report of
27 hours worked.

25 (c) However, when employees are covered by a collective bargaining
26 agreement that provides different pay arrangements, those
27 arrangements shall apply to the covered employees.

27 (d) The requirements of this section shall be deemed satisfied by the
28 payment of wages for weekly, biweekly, or semimonthly payroll if
the wages are paid not more than seven calendar days following the
close of the payroll period.

1 59. Defendants paid wages to Plaintiff and Aggrieved Employees on regular intervals.

2 60. Defendants failed to pay Plaintiff on such intervals for all wages earned and all
3 hours worked as a result of not timely paying him overtime and premium wages within the times
4 set forth in Labor Code § 204.

5 61. Plaintiff is informed and believes and thereon alleges that Defendants failed to pay
6 Aggrieved Employees on such intervals for all wages earned and all hours worked as a result of
7 not timely paying them overtime and/or premium wages within the times set forth in Labor Code
8 § 204.

9 62. During the applicable time period, Defendants violated Labor Code §§ 201, 202,
10 203, 204, 226, 226.7, 510, 512, 1194, and 1198.

11 63. Labor Code §§ 2699(a) and (g) authorize an Aggrieved Employee, on behalf of
12 themselves and other current or former employees, to bring a civil action to recover civil penalties
13 pursuant to the procedures specified in Labor Code § 2699.3.

14 64. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiff and Aggrieved Employees
15 are entitled to recover civil penalties for each of the Defendants' violations of Labor Code §§ 201,
16 202, 203, 204, 226, 226.7, 510, 512, 1194, and 1198 during the applicable limitations period in
17 the following amounts:

18 A. For violations of Labor Code § 204, one hundred dollars (\$100.00) for each
19 Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each
20 Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts
21 established by Labor Code § 210).

22 B. For violations of Labor Code § 226(a), two hundred fifty dollars (\$250.00)
23 for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each
24 Aggrieved Employee for each subsequent violation (penalty amounts established by Labor Code
25 § 226.3).

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1 C. For violations of Labor Code §§ 510 and 512, fifty dollars (\$50.00) for
2 each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each
3 Aggrieved Employee for each subsequent violation, per pay period in addition to an amount
4 sufficient to recover underpaid wages (penalty amounts established by Labor Code § 558).

5 D. For violations of Labor Code §§ 201, 202, 203, 226.7, 1194 and 1198 one
6 hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial violation
7 and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each
8 subsequent violation (penalty amounts established by Labor Code § 2699(f)(2)).

9 65. Pursuant to Labor Code § 2699(g), Plaintiff and Aggrieved Employees are entitled
10 to an award of civil penalties, reasonable attorney's fees and costs in connection with their claims
11 for civil penalties.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and current
14 and former aggrieved employees, prays for relief and judgment against Defendants as follows:

- 15 A. An order that the action be certified as a class action;
16 B. An order that Plaintiff be appointed class representative;
17 C. An order that counsel for Plaintiff be appointed class counsel;
18 D. Damages;
19 E. Restitution;
20 F. Declaratory relief;
21 G. Statutory penalties;
22 H. Civil penalties;
23 I. Pre-judgment interest;
24 J. Post-judgment interest;
25 K. Costs of suit;
26 L. Reasonable attorney's fees; and
27 M. Such other relief as the Court deems just and proper.

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Respectfully submitted,

Louis Bernart

BY John J. Murphy

LOUIS BENOWITZ
Attorneys for Plaintiff
ISRAEL CORTES

EXHIBIT A



Sender's direct number & email:
(818) 839-9610, Louis@BenowitzLaw.com

January 25, 2023

SENT VIA CERTIFIED U.S. MAIL/ONLINE SUBMISSION

MC Hospitality, LLC
1187 Coast Village Road
Suite 9
Santa Barbara, CA 93108

RE: *Israel Cortes / MC Hospitality, LLC*

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 *et seq.*), Israel Cortes ("Cortes") provides notice on behalf of himself and all other persons currently or formerly employed by MC Hospitality, LLC ("MCH") in California in hourly and/or otherwise non-exempt positions during the applicable statutory limitations period (the "Aggrieved Employees"). As set forth herein, MCH violated the rights of Cortes and the Aggrieved Employees under Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1194, and 1198.

Cortes is a former hourly employee of MCH who worked as a cook at its location in Santa Barbara, California. He worked for MCH from approximately April 2022 to approximately September 13, 2022. At all relevant times, MCH has been a "person" within the meaning of Labor Code § 18. At all relevant times, MCH has been an employer of Cortes and the Aggrieved Employees within the meaning of Section 2(H) of Industrial Welfare Commission Order No. 5-2001 (the "Wage Order") and in that it has exercised control over the wages, hours, and/or working conditions of Cortes and the Aggrieved Employees and caused the alleged violations of the Labor Code and the Wage Order set forth herein to be committed. At all relevant times, Cortes and the Aggrieved Employees have been "employees" of MCH within the meaning of Section 2(F) of the Wage Order and "aggrieved employees" within the meaning of Labor Code § 2699(c).

Failures to Provide Meal and Rest Periods

Under Labor Code § 1198, "The employment of any employee for longer hours than those fixed by the [Wage Order] or under conditions of labor prohibited by the [Wage Order] is unlawful."

Under Section 12 of the Wage Order, an employer must authorize and permit net rest periods of at least ten minutes for each four-hour work period, or major fraction thereof, except for employees whose shifts do not exceed 3.5 hours. Said rest periods must be paid and must be counted as hours worked. Said rest periods also have to be completely duty-free. To comply with these requirements, employers must authorize and permit paid rest periods as follows based on shift length: (1) 3.50 to 6.00 hours – one rest period; (2) 6.01 to 10.00 hours – two rest periods; (3) 10.01 to 14.00 hours – three rest periods; and (4) 14.01 hours to 18.00 hours – four rest periods. In addition, an employee may not waive a rest period unless the employer has

already authorized the rest period. Further, the employer must make good faith efforts to provide each rest period in the middle of each four-hour work period insofar as is practicable.

Under Labor Code § 512 and Section 11 of the Wage Order, an employer has a duty to provide its non-exempt employees with first meal periods of no less than thirty minutes after no more than five hours of work when they work shifts of at least five hours, and to provide its non-exempt employees with second meal periods of no less than thirty minutes after no more than ten hours of work when they work shifts of more than ten hours. In the absence of a valid on-duty meal period agreement, or a valid waiver, this duty requires an employer to affirmatively authorize said meal periods, completely relieve its employees of duty, allow them to come and go as they please, and to relinquish control over their activities. In addition, an employee may not waive a meal period unless the employer has already authorized the meal period. Further, Section 7 of the Wage Order requires the employer to keep accurate records of meal period start and stop times.

Under Labor Code § 226.7, and Section 12 of the Wage Order, an employer cannot require an employee to work during a meal or rest period mandated under the Wage Order and must pay premium wages on each workday when the meal or rest period is not provided.

At all relevant times, MCH violated these requirements by, among other things: (1) not scheduling duty-free meal or rest periods; (2) not structuring the work performed in a manner that consistently allows for duty-free meal and rest periods; (3) not providing reasonable opportunities to take duty-free meal and rest periods; and (4) not paying premium wages when a required meal or rest period is not provided. As a result of these policies and practices, Cortes and the Aggrieved Employees routinely worked without required meal and rest periods and were denied premium wages in lieu thereof.

Failures to Pay Overtime Wages

Under Labor Code § 1194, any purported agreement to pay an employee less than the overtime wages required by law is unlawful and invalid.

Under Labor Code § 1198, “The employment of any employee for longer hours than those fixed by the [Wage Order] or under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code § 510(a) states,

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

These same requirements are set forth in Section 3 of the Wage Order.

In conjunction, these provisions of the Labor Code and the Wage Order require employers to pay their non-exempt employees no less than minimum, overtime, or agreed wage rates for each hour worked, and, unlike federal law, prohibit the use of an averaging method to determine whether these obligations have been met. (See *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 321-324.) This standard applies to all time that the employee is either subject to the control of the employer and/or suffered or permitted to work.

At all relevant times, MCH violated these requirements by not compensating Cortes at legal overtime rates for all recorded time worked in excess of eight hours in one workday and/or in excess of forty hours in one workweek. Cortes is informed and believes and thereon alleges that MCH violated the rights of other Aggrieved Employees under the overtime laws pursuant to a policy or practice of not paying legally required overtime.

Failures to Provide Accurate Wage Statements

Labor Code § 226(a) states in pertinent part,

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.

At all relevant times, MCH has violated the rights of Cortes and the Aggrieved Employees by providing them with written wage statements that do not accurately reflect their amounts gross and net wages earned, and hours worked at each applicable wage rate, as a result of not paying them overtime wages and/or not paying them meal and/or rest period premium wages.

Failures to Timely Pay Wages

In relevant part, Labor Code § 201(a) states,

If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

In relevant part, Labor Code § 202(a) states,

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

In relevant part, Labor Code § 203(a) states,

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

In relevant part, Labor Code § 204 states,

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. However, salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads or may be amended to read at any time hereafter, may be paid once a month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time.

(b)(1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period

By failing to pay earned overtime and/or premium wages, MCH failed to timely pay earned wages to Cortes and the Aggrieved Employees during employment in violation of Labor Code § 204. In addition, by failing to pay said wages, and by failing to do so willfully to Cortes and other Aggrieved Employees who are now former employees, MCH violated Labor Code §§ 201-203.

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LWDA /Israel Cortes & MCH Hospitality, LLC

January 25, 2023

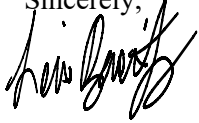
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Conclusion

As indicated above, this letter constitutes the notice required under Labor Code § 2699.3. Insofar as it is directed toward MCH, please be advised that Cortes intends to seek attorneys' fees and costs, in addition to the maximum civil penalties allowed by the Labor Code, in a civil action should the LWDA decline to investigate this matter.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis Benowitz", written in a cursive style.

Louis Benowitz

cc: Labor and Workforce Development Agency
(via online submission)
Israel Cortes



Receipt

Print Date: Jul 07, 2023

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Benowitz Law Corpora
8605 Santa Monica Blvd Pmb 79138
West Hollywood, CA 90069

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1187 Coast Village Rd Ste 9
Santa Barbara, CA 93108 US
louis@benowitzlaw.com

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Cost Code: <None>
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