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County of Monterey
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

JUAN ANTONIO JUAREZ-NARANJO,

Plaintiff,

vs.

SUR AT THE BARNYARD, INC.;
ASHLEY DUDLEY; and DOES 1 to 25,
inclusive,

Defendants.

) CASE NO.: 23CV001428

) **COMPLAINT FOR DAMAGES FOR:**

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

1) 15) FAILURE TO ACCOMMODATE
 2) PHYSICAL DISABILITY IN
 3) VIOLATION OF FEHA;
 4) 16) FAILURE TO ENGAGE IN
 5) INTERACTIVE PROCESS TO
 6) DETERMINE REASONABLE
 7) ACCOMMODATION IN
 8) VIOLATION OF FEHA;
 9) 17) RETALIATION IN VIOLATION OF
 10) FEHA;
 11) 18) FAILURE TO PREVENT
 12) DISCRIMINATION AND
 13) RETALIATION IN VIOLATION OF
 14) FEHA;
 15) 19) WRONGFUL TERMINATION IN
 16) VIOLATION OF PUBLIC POLICY;
 17) and
 18) 20) VIOLATION OF CALIFORNIA
 19) BUSINESS AND PROFESSIONS
 20) CODE SECTION 17200.
 21)
 22)
 23)
 24)
 25)
 26)
 27)
 28)

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, Juan Antonio Juarez-Naranjo (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Monterey in this judicial district because Defendants SUR AT THE BARNYARD, INC., ASHLEY DUDLEY, and DOES 1 to 25, inclusive, do business in the County of Monterey and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of MONTEREY is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the city of Seaside, in Monterey County, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant SUR AT THE BARNYARD, INC. is and was a California corporation, doing business in Monterey County, California, and which employed Plaintiff.

4. Defendants ASHLEY DUDLEY is a citizen of California based on Plaintiff's information and belief.

1 5. In relevant part, Labor Code section 558.1 states:

2 (a) Any employer or other person acting on behalf of an employer, who
3 violates, or causes to be violated, any provision regulating minimum
4 wages or hours and days of work in any order of the Industrial Welfare
5 Commission, or violates, or causes to be violated, Sections 203, 226,
6 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such
7 violation.

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

13 6. Plaintiff is informed and believes and thereon alleges that ASHLEY DUDLEY is a
14 natural person and an owner, director, officer, and/or managing agent of Defendant SUR AT
15 THE BARNYARD, INC., who directly or indirectly, or through an agent or any other person,
16 employed or exercised control over the wages, hours, or working conditions of Plaintiff.
17 Therefore, she is liable to Plaintiff for her violations of, or causing Defendants to violate, Labor
18 Code sections 203, 226, 226.7, 1193.6, 1194, 2802 and the Wage Order (no. 5) pursuant to Labor
19 Code section 558.1. SUR AT THE BARNYARD, INC., and ASHLEY DUDLEY are hereinafter
20 collectively referred to as “Defendants” or “SUR AT THE BARNYARD”.

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

25 8. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
26 associate of those Defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
27 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
28 Defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
for the conduct alleged herein. Upon discovering the true names and capacities of these
fictitiously named Defendants, Plaintiff will amend this complaint to show the true names and
capacities of these fictitiously named Defendants.

9. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
that information and belief, alleges that at all times herein mentioned, each of the remaining

codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and under the authority of their agency, employment, or representative capacity, with the consent of his/her codefendants.

GENERAL ALLEGATIONS

10. Plaintiff started to work for SUR AT THE BARNYARD on or around 4 years ago as a cook and chef. Plaintiff was classified as an hourly, non-exempt employee. Plaintiff was terminated from his employment on or around January 1, 2023. To the extent that SUR AT THE BARNYARD argues that Plaintiff was actually a salaried, exempt employee, it would not be accurate since Plaintiff did not meet any of the exemptions in that he did not have the ability to hire and fire, was not involved in any administrative duties, and would not meet the professional exemption.

11. SUR AT THE BARNYARD did not provide Plaintiff and other similarly situated aggrieved employees with the minimum wages to which they were entitled for all work performed and did not compensate him and others for all hours worked pursuant to California Labor Code sections 1194, 1197 and 1197.I. Plaintiff and others were not paid for all hours worked and consistently worked "off the clock". To the extent that Plaintiff and others worked through their meal periods and while clocked out, the latter would be a minimum wage violation since Plaintiff and others were not compensated for that time. Moreover, the company had a policy and practice of rounding down the number of hours worked, which led to time shaving and Plaintiff and others not being paid for all hours worked. Moreover, while Plaintiff generally worked from Wednesday to Sunday, the owner and management would contact Plaintiff on his off days (Monday, Tuesday) to ask him questions about certain recipes or to ask him to come in to the restaurant.

12. Due to the above "off the clock" violations above and as a matter of company policy, SUR AT THE BARNYARD violated Labor Code §510 because it failed to pay Plaintiff and other similarly situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and others' actual work hours, which included the "off the clock" work as described above, entitled them to overtime, however, it was not company policy to keep accurate track of

1 all hours worked and to pay employees the accurate amount overtime, especially since the "off
2 the clock" work was not factored into the equation. Furthermore, any incentive payments and/or
3 bonus payments were not factored into Plaintiff's and other employees' regular rate of pay for
4 purposes of deciphering the correct overtime rate of pay.

5 13. SUR AT THE BARNYARD violated Labor Code § 226.7 along with Industrial Welfare
6 Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated
7 aggrieved employees 10-minute rest periods for every four hours of work, or majority portion
8 thereof, throughout their employment. SUR AT THE BARNYARD did not completely relieve
9 Plaintiff of all duty during said rest periods. SUR AT THE BARNYARD did not pay to Plaintiff
10 one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one
11 or more statutory rest periods was not provided. Rest breaks were not authorized or enforced at
12 the restaurant. In fact, it was not part of SUR AT THE BARNYARD's culture for employees
13 such as Plaintiff and others to take at least one 10-minute rest break every day wherein they are
14 relieved of all work duties. The latter was due to understaffing of employees and employees such
15 as Plaintiff being too busy to be able to take rest breaks, especially in a fast-paced restaurant
16 environment. Additionally, Plaintiff did not have anyone to cover him for any rest break.
17 Moreover, rest breaks were not offered by the restaurant as it was not part of the company policy
18 or practice to abide by consistent, ten-minute rest periods every four hours worked wherein
19 employees were relieved of all work duties.

20 14. SUR AT THE BARNYARD also violated Labor Code §§ 512 and 226.7 along with
21 Industrial Welfare Commission Wage Order No. 5 because it failed to provide Plaintiff and other
22 similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for
23 every five (5) hours of work throughout their employment, and Plaintiff did not validly waive
24 said meal periods. SUR AT THE BARNYARD did not completely relieve Plaintiff of all duties
25 during said meal periods. SUR AT THE BARNYARD did not pay to Plaintiff one additional
26 hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory
27 meal periods was not provided. If SUR AT THE BARNYARD had Plaintiff sign a meal period
28 waiver, it would not be valid and enforceable since Plaintiff and others generally worked more
than a 6-hour shift. If SUR AT THE BARNYARD had Plaintiff sign an on-duty meal period

1 agreement wherein Plaintiff agreed to work through his meal period, it would also be invalid and
2 unenforceable because the nature of Plaintiff's job does not and did not prevent him from taking
3 a meal period. As was the case with rest periods, timely, w1interrupted meal breaks were
4 definitively not part of the SUR AT THE BARNYARD's culture as Plaintiff and others would
5 in fact miss meal periods due to work obligations or would take their meal periods late and after
6 the 5th hour worked. The meal periods were not authorized and were not enforced. To the extent
7 that SUR AT THE BARNYARD argues that employees receive meal break premium pay for
8 missed meal periods, that argument is inconsequential for PAGA penalty purposes since the
9 PAGA penalties are for the violations themselves, irrespective of whether an employee received
10 the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire*
11 *Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice
12 between providing either meal and rest breaks or an additional hour of pay." *See Kirby v. Immoos*
13 *Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour
14 of pay does not excuse the violation; the employer has still committed a violation even if the
15 remedy for the violation has been paid. *See Wert v. US Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016
16 WL 1110302 at *4). As such, the work environment and culture at SUR AT THE BARNYARD
17 was not conducive to receiving consistent, timely, statutory meal breaks under California law.
18 Moreover, any meal or rest break premiums paid were not compensated at the weighted average
19 regular rate, inclusive of bonuses and/or incentive payments.

20 15. Furthermore, during the relevant time period, and due to all of the above labor code
21 violations, SUR AT THE BARNYARD failed to pay Plaintiff and other similarly situated
22 aggrieved employees all wages due to them within any time period specified by California Labor
23 Code section 204, including the minimum wages and ove1time as described above as well as
24 meal/rest break premiums. SUR AT THE BARNYARD was also in violation of California Labor
25 Code section 226(a) by failing to include pertinent information on the wage statements, including
26 but not limited to, all hours worked, tips earned, gross wages earned, net wages earned, all
27 deductions, premium payments for meal and rest breaks, the correct legal name and address of
28 the employing entity, the beginning and end of the pay period, all applicable hourly rates, and
all identifying employee information, among other items. As such, SUR AT THE BARNYARD

1 did not provide Plaintiff and other similarly situated aggrieved employees with complete,
2 accurate itemized wage statements.

3 16. SUR AT THE BARNYARD violated Labor Code§ 203 because it willfully failed to pay
4 Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation
5 of employment, either immediately upon involuntary termination, or within 72 hours of
6 resignation. These earned but unpaid wages include compensation for all hours worked including
7 minimum wages and overtime compensation, tips, and premiums for the missed meal and rest
8 breaks.

9 17. During the relevant time period, SUR AT THE BARNYARD also failed to keep accurate
10 and complete payroll records showing the actual hours worked per day (including the time for
11 meal periods) and the wages paid to Plaintiff and other aggrieved employees pursuant to
12 California Labor Code sections 1174(d).

13 18. Additionally, SUR AT THE BARNYARD violated Labor Code Section 351 by taking
14 some of the tips meant for employees and also deducting the tips from Plaintiff's and others'
15 earned wages. SUR AT THE BARNYARD also deducted the credit card fee from Plaintiff's and
16 others' tips and did not timely provide the credit card and even cash tips to Plaintiff and other
17 similarly situated aggrieved employees.

18 19. During the relevant time period, Plaintiff and other aggrieved employees incurred
19 necessary, business-related expenses and costs that were not reimbursed by SUR AT THE
20 BARNYARD. These costs include, but are not limited to, use of personal cell phone for work
21 purposes, shoes, knives, and mileage reimbursement in that Plaintiff would be sent off to get
22 supplies for the restaurant and would use his personal vehicle. Accordingly, SUR AT THE
23 BARNYARD was in violation of California Labor Code sections 2800 and 2802.

24 20. In addition, Plaintiff would also have individual claims for disability discrimination in
25 violation of the Fair Employment and Housing Act and wrongful termination in violation of
26 public policy. On January 1, 2023, Plaintiff told ownership that he had a migraine and a twitch
27 on his eye. Plaintiff ended up still reporting to work but going in two hours late. Plaintiff was
28 then sent home and told to return the following day when he was told that his services were no
longer needed. It is important to note that Plaintiff was a model employee, never missed work,

1 and did not take days off. He worked hard for the restaurant and went beyond his duties.
2 Moreover, Plaintiff did not have any write ups and never got in trouble throughout his
3 employment tenure.

4 21. Plaintiff has exhausted his administrative remedies. Prior to the filing of this lawsuit,
5 Plaintiff filed a complaint with the Department of Fair Employment and Housing (“DFEH”),
6 alleging claims in this complaint. The DFEH immediately issued to Plaintiff a right to sue letter.

7 **FIRST CAUSE OF ACTION**

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

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

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

12 22. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
13 alleged herein.

14 23. At all times relevant herein, Defendants were required to compensate their employees for
15 all hours worked upon reporting for work at the appointed time stated by the employer pursuant
16 to Industrial Welfare Commission Order 5-2001, California Code of Regulations, Title 8, Section
17 11050.

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

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

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

26 27. Defendants’ conduct described herein violates Labor Code Section 512, 558, 1194, and
27 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled
28 to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable
attorney’s fees and costs of suit.

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

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGES**

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

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

8 29. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
9 fully alleged herein.

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

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

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

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

28 34. For all hours worked by Plaintiff for which he was paid less than the minimum wage rate
by Defendants, Plaintiff is entitled to not less than the applicable California minimum wage rate

1 and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount equal to unpaid
2 minimum wages and interests thereon. Pursuant to Labor Code Section 1194, Plaintiff is also
3 entitled to attorney's fees, costs and interests according to proof.

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

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME**

8 **(California Industrial Welfare Commission Order 5-2001, California Code of**
9 **Regulations Title 8 Section 11050; California Labor Code Section 510)**
10 **(Plaintiff against all named Defendants and all DOE Defendants)**

11 36. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
12 alleged herein.

13 37. Pursuant to Industrial Welfare Commission Order No. 5-2001, Cal. Code of Regs., Title
14 8, Section 11050, for the period of Plaintiff's employment, Defendants were required to
15 compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the
16 regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week,
17 and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a
18 day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

19 38. Plaintiff was a non-exempt employee entitled to the protections of the California
20 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations, Title 8,
21 Section 11050.

22 39. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in a
23 single workweek on numerous occasions.

24 40. Plaintiff was entitled to the above overtime premiums.

25 41. Defendants did not pay Plaintiff premium wages of at least one and one-half times
26 Plaintiff's regular rate of pay for hours worked past eight (8) in a day.

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

43. Plaintiff worked at least one pay period in which he was not properly paid overtime

1 within the three (3) years prior to the initiation of this lawsuit.

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

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

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

10 47. 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 **FOURTH CAUSE OF ACTION**

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

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

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

16 48. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
17 fully alleged herein.

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

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

27 51. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
28 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay

1 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
2 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
3 the 1-year period immediately preceding the date this lawsuit was filed.

4 52. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained
5 damages, including loss of earnings, in an amount to be established at trial. As a further direct
6 and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff is entitled to
7 recover penalties, in an amount to be established at trial, as well as costs and attorney's fees
8 pursuant to statute.

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

12 **FIFTH CAUSE OF ACTION**

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

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

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

16 54. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
17 fully alleged herein.

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

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

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

28 58. After Plaintiff's employment with Defendants ended and after Plaintiff was terminated
from his employment, Defendants willfully refused and continue to refuse to pay his unpaid

1 wages as required by Labor Code Section 203.

2 59. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
3 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.
4 Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
5 preceding the filing of this lawsuit.

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

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

12 **SIXTH CAUSE OF ACTION**

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

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

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

16 62. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
17 alleged herein.

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

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

22 65. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is informed,
23 believes, and thereon alleges, that all times relevant during the liability period, Defendants
24 maintained a policy or practice of not paying Plaintiff wages for all hours worked, including
overtime hours, the minimum wage, and premium pay for missed meal and rest breaks.

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

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

3 **SEVENTH CAUSE OF ACTION**

4 **FAILURE TO GIVE REST BREAKS**

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

6 68. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
7 fully alleged herein.

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

- 9 a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which provides
10 that every employer shall authorize and permit all employees to take rest periods,
11 which insofar as practicable shall be in the middle of each work period. The
12 authorized rest period time shall be based on the total hours worked daily at the rate
13 of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- 14 b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which provides
15 that if an employer fails to provide an employee a rest period in accordance with the
16 applicable provisions of this order, the employer shall pay the employee one (1) hour
17 of pay at employee's regular rate of compensation for each workday that the rest
18 period is not provided;
- 19 c. Title 8 of the California Code of Regulations sections 11050(20)(A), which penalizes
20 the employer \$50.00 for each initial violation, per employee, of any provision of the
21 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- 22 d. California Labor Code section 226.7, which states that (a) no employer shall require
23 any employee to work during any rest period mandated by an applicable order of the
24 Industrial Welfare Commission, and (b) if an employer fails to provide an employee
25 a rest period in accordance with an applicable order of the Industrial Welfare
26 Commission, the employer shall pay the employee one (1) additional hour of pay at
27 employee's regular rate of compensation for each work day that the rest period is not
28 provided.

70. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest

break after every four (4) hours of work or major fraction thereof, as required by California law.

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

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

73. 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.

EIGHTH CAUSE OF ACTION

FAILURE TO GIVE MEAL BREAKS

(Plaintiff against all named Defendants and all DOE Defendants)

74. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully alleged herein.

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

- a. California Labor Code section 512(a), which requires that employees be given a 30-minute uninterrupted meal break after five (5) hours of work, and a second uninterrupted meal break after ten (10) hours of work;
- b. California Labor Code section 226.7, which states that (a) no employer shall require 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 employee a meal period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- c. California Industrial Welfare Commission Order No. 5 section 11(A), as codified under Title 8 of the California Code of Regulations Section 11050, which states that

1 an employer may not employ an employee for a work period of more than five (5)
2 hours without providing the employee with a meal period of not less than 30 minutes,
3 except that when a work period of not more than six (6) hours will complete the day's
4 work the meal period may be waived by mutual consent of employer and employee.

- 5 d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as
6 codified under Title 8 of the California Code of Regulations Section 11050, which
7 requires an employer to maintain records documenting its employees' meal periods;
- 8 e. California Industrial Welfare Commission Wage Order No. 5 Section 20(A), as
9 codified under California Code of Regulations Section 11050, which penalizes the
10 employer \$50.00 for each initial violation, per employee, of any provision of the
11 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- 12 f. California Labor Code section 1171 and 1173, which have given the California Labor
13 Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5) as
14 enforceable law.

15 76. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
16 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
17 take a second relieved meal break after ten (10) hours of work, as required by California law.
18 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
19 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that
20 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that
21 the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty.
22 California Labor Code section 226.7 provides that employers may not require their employees
23 to work through their meal periods. California Labor Code section 226.7 and California Code of
24 Regulations section 11050 requires that if the employer fails to provide the employee with an
25 uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each
26 work day that the meal period is not given.

27 77. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
28 regulations, and wage orders alleged in this cause of action along with any allowable interest,
penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for

1 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

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

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

6 **NINTH CAUSE OF ACTION**

7 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

9 80. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
10 alleged herein.

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

14 82. Beginning at least 3 years prior to the filing of this complaint, in order to discharge their
15 duties for Defendants, Plaintiff incurred reasonable and necessary expenses in the course of
16 completing his job duties, which were not reimbursed by Defendants. These costs include, but
17 are not limited to, use of personal cell phone for work purposes, shoes, knives, and mileage
18 reimbursement in that Plaintiff would be sent off to get supplies for the restaurant and would use
19 his personal vehicle. Plaintiff is entitled to reimbursement for these necessary expenditures, plus
20 interest and attorney's fees and costs, under Labor Code
21 section 2802.

22 **TENTH CAUSE OF ACTION**

23 **UNLAWFUL TIP COLLECTION**

24 **(Lab. Code §§ 351 and 353)**

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

26 83. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
27 alleged herein.

28 84. During all times relevant herein, Defendants unlawfully collected tips meant for
employees and also deducting the tips from Plaintiffs' and others' earned wages. SUR AT THE

1 BARNYARD also deducted the credit card fee from Plaintiffs' and others' tips and did not timely
2 provide the credit card and even cash tips to Plaintiffs and other similarly situated aggrieved
3 employees.

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

6 86. Labor Code section 353 requires every employer to keep accurate records of all
7 gratuities received, whether received directly from the employee or indirectly by means of
8 deductions from the wages of the employee or otherwise.

9 87. By Defendants unlawfully collecting tips from Plaintiffs, Defendants violated
10 California Labor Code Section 351 and 353. Therefore, Plaintiffs demand return of all tips
11 unlawfully collected from them within three years of the filing of this complaint.

12 **ELEVENTH CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **Individual and Representative Claim for PAGA penalties under California Labor Code** 15 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 351, 353, 510, 512, 558,** 16 **558.1, 1174, 1174.5, 1194, 1197, 1198, 2802)**

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

18 88. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
19 alleged herein.

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

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

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

92. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that

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

6 93. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
7 violator and had one or more of the alleged violations committed against him, and therefore is
8 properly suited to represent the interests of other current and former hourly, non-exempt
9 employees who worked for SUR AT THE BARNYARD, INC. at any of their California
10 locations during the relevant PAGA Period.

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

14 95. Plaintiff therefore has exhausted all administrative remedies required of him under
15 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
16 cause of action and pursue penalties in a representative action for Defendants’ violations of the
17 Labor Code.

18 96. California Labor Code section 2699 et seq. imposes penalties upon culpable Defendants
19 for violating the Labor Code.

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

28 98. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not

1 seeking individual/victim specific relief or underpaid wages under this particular cause of
2 action.

3 99. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
4 law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for the
5 following:

6 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
7 226.3, 226.7, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, via 2698
8 and 2699, and any other Labor Codes and Industrial Welfare Commission Wage Orders (No.
9 5) violated based on the facts alleged in this Complaint.

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

14 **TWELFTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE PERSONNEL RECORDS**

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

17 101. Plaintiff incorporates by reference each and every paragraph of this Complaint as
18 if fully alleged herein.

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

23 103. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the
24 employer shall make the contents of those personnel records available for inspection to the
25 current or former employee, or his or her representative, at reasonable intervals and at reasonable
26 times..." On information and belief, Defendants intentionally failed to provide Plaintiff with
27 personnel records when requested by Plaintiff via letter on January 18, 2023, as required by law.
28 Plaintiff requested his personnel records in accordance with California Labor Code section
1198.5(k) on January 18, 2023 via certified U.S. mail.

1 104. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his
2 records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has
3 suffered and continues to suffer substantial losses related to Defendants' failure to provide
4 personnel records.

5 105. Plaintiff seeks all available remedies for Defendants' violations including, but not
6 limited to penalties, and costs to the extent permitted by law and according to proof at trial.
7 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the
8 amount of \$750.00, along with costs and attorney's fees.

9 **THIRTEENTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE PAY RECORDS**

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

12 106. Plaintiff incorporates by reference each and every paragraph of this Complaint as
13 if fully alleged herein.

14 107. Labor Code section 226 sub-section (b) dictates "an employer...shall afford
15 current and former employees the right to inspect or copy records pertaining to their
16 employment, upon reasonable request to the employer..."

17 108. Moreover, pursuant to sub-section (c) of Labor Code section 226, "an employer
18 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
19 pertaining to a current or former employee shall comply with the request as soon as practicable,
20 but no later than 21 calendar days from the date of the request." On information and belief,
21 Defendants intentionally failed to provide Plaintiff with pay records when requested by Plaintiff
22 via letter, on January 18, 2023, and as required by law. Plaintiff requested his pay records in
23 accordance with California Labor Code section 226 on January 18, 2023, via U.S. certified mail.
24 Defendants failed to provide Plaintiff with an opportunity to inspect or copy his pay records
25 within 21 days.

26 109. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered
27 and continues to suffer substantial losses related to Defendants' failure to provide pay records.
28 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
amount of \$750.00, along with costs and attorney's fees.

1 110. Plaintiff seeks all available remedies for Defendants' violations including, but not
2 limited to, penalties and costs to the extent permitted by law and according to proof at trial.

3 **FOURTEENTH CAUSE OF ACTION**

4 **DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY**

5 **IN VIOLATION OF FEHA**

6 **(Plaintiff against SUR AT THE BARNYARD, INC. and all DOE Defendants)**

7 111. Plaintiff incorporates by reference each and every paragraph of this Complaint as
8 if fully alleged herein.

9 112. Defendants and DOES 1 to 25, inclusive, are covered employers under
10 California's Fair Employment and Housing Act.

11 113. California Government Code section 12926(m) has established a "broad
12 definition" of physical disability: disability protections under the Fair Employment and Housing
13 Act ("FEHA") even extend to "perceived" physical disabilities. *Id.* Under the law of this state,
14 "working" is a major life activity. *See* section 12926.1(c).

15 114. Plaintiff's physical disability (migraine/eye injury) which was debilitating, and
16 which limited a major life activity, qualifies as a disability under FEHA, and Plaintiff was
17 entitled to its protection.

18 115. Defendants knew of Plaintiff's disability and violated California Government
19 Code section 12940 et. seq. by discriminating against Plaintiff on the basis of his disability.

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

25 117. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
26 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
27 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
28 their workers' right to work in an environment in which personnel decisions and company
policies are made without regard to physical disability, so as to justify the imposition of punitive

1 damages to punish and set an example of said Defendants.

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

5 **FIFTEENTH CAUSE OF ACTION**

6 **FAILURE TO ACCOMMODATE PHYSICAL DISABILITY IN VIOLATION OF**
7 **FEHA**

8 **(Plaintiff against SUR AT THE BARNYARD, INC. and all DOE Defendants)**

9 119. Plaintiff incorporates by reference each and every paragraph of this Complaint as
10 if fully alleged herein

11 120. California Government Code section 12940(p) provides that it is unlawful for an
12 employer to fail to make reasonable accommodation for the known physical disability of an
13 employee.

14 121. Defendants failed to make reasonable accommodation of Plaintiff's physical
15 disability of which Defendants were unequivocally aware.

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

21 123. The foregoing conduct engaged in by Defendants and each of their directors,
22 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
23 ratified, and carried on with a conscious and willful disregard of their workers' right to receive
24 reasonable accommodations, so as to justify the imposition of punitive damages to punish and
25 set an example of said Defendants.

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

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1 **SIXTEENTH CAUSE OF ACTION**

2 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF FEHA**

3 **(Plaintiff against SUR AT THE BARNYARD, INC. and all DOE Defendants)**

4 125. Plaintiff incorporates by reference each and every paragraph of this Complaint as
5 if fully alleged herein.

6 126. California Government Code section 12940(n) provides that it is unlawful for an
7 employer to fail to engage in a timely, good faith, interactive process with an employee to
8 determine effective accommodations for that employee's physical disability.

9 127. Defendants failed to engage in a timely, good faith, interactive process with
10 Plaintiff to determine effective reasonable accommodations for Plaintiff's known physical
11 disability.

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

17 129. The foregoing conduct engaged in by Defendants and each of their directors,
18 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
19 ratified, and carried on with a conscious and willful disregard of their workers' right to engage
20 in the interactive process and receive reasonable accommodations, so as to justify the imposition
21 of punitive damages to punish and set an example of said Defendants.

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

25 **SEVENTEENTH CAUSE OF ACTION**

26 **RETALIATION IN VIOLATION OF FEHA**

27 **(Plaintiff against SUR AT THE BARNYARD, INC. and all DOE Defendants)**

28 131. Plaintiff incorporates by reference each and every paragraph of this Complaint as
if fully alleged herein.

1 132. At all times herein mentioned, Government Code section 12940 et. seq. was in
2 full force and effect and was binding upon Defendants and each of them. Said statute imposes
3 certain duties upon Defendants concerning discrimination and retaliation against persons, such
4 as Plaintiff, on the basis of physical disability. Said statutes were intended to prevent the type of
5 injury and damage set forth herein. Plaintiff was, at all times herein mentioned, a member of the
6 class of persons intended to be protected by said statutes. As alleged above, Plaintiff reported his
7 physical disability (migraine/eye injury) to management and was retaliated against and was
8 terminated from his employment as a result of his physical disability.

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

12 134. As a further direct and proximate result of the conduct of Defendants, and each
13 of them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish and
14 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
15 such damages in an amount according to proof.

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

20 136. The acts of oppression, fraud, and/or malice, were engaged in by employees of
21 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
22 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
23 wrongful conduct for which an award of punitive damages is sought, and/or was personally
24 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
25 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part
26 of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiff
27 to punitive and exemplary damages against each of the Defendants in accordance with California
28 Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendants

 137. FEHA provides for an award of reasonable attorneys' fees and costs incurred by

1 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
2 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
3 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
4 award of attorneys' fees and costs.

5 **EIGHTEENTH CAUSE OF ACTION**

6 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION**

7 **OF FEHA**

8 **(Plaintiff against SUR AT THE BARNYARD, INC. and all DOE Defendants)**

9 138. Plaintiff incorporates by reference each and every paragraph of this Complaint as
10 if fully alleged herein.

11 139. At all times herein mentioned, FEHA, California Government Code section
12 12940(k), was in full force and effect and was binding on Defendants. This statute states that it
13 is an unlawful employment practice in California for an employer to "fail to take all reasonable
14 steps necessary to prevent discrimination and harassment from occurring."

15 140. During the course of Plaintiff's employment, Defendants failed to prevent their
16 employees, including management, from engaging in intentional actions that resulted in Plaintiff
17 being treated less favorably and eventually being terminated because of Plaintiff's protected
18 status (i.e. his disability). During the course of Plaintiff's employment, Defendants failed to
19 prevent their employees from engaging in unjustified employment practices against employees
20 in such protected classes. During the course of Plaintiff's employment, Defendants failed to
21 prevent a pattern and practice by its employees of intentional discrimination and retaliation on
22 the basis of disability, and/or other protected status and/or protected activity.

23 141. Plaintiff believes and, on that basis, alleges that his physical disability, and other
24 protected status and/or protected activity in informing his employer about his physical disability
25 was a substantial motivating factor in Defendants' employees' discriminating against him and
26 retaliating against him by terminating his employment.

27 142. As a direct and proximate result of the aforementioned acts and omissions of
28 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
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.

3 143. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
4 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
5 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
6 their workers' right to work in an environment in which personnel decisions and company
7 policies are made without regard to physical disability, so as to justify the imposition of punitive
8 damages to punish and set an example of said Defendants.

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

12 **NINETEENTH CAUSE OF ACTION**

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

14 **(Plaintiff against SUR AT THE BARNYARD, INC. and all DOE Defendants)**

15 145. Plaintiff incorporates by reference each and every paragraph of this Complaint as
16 if fully alleged herein.

17 146. At all times during his employment with Defendants, Plaintiff performed his
18 duties with the utmost diligence and competence.

19 147. Plaintiff is informed and believes and thereon alleges that Defendants' decision
20 to discriminate and retaliate against him and terminate his employment, as alleged herein, was
21 motivated by Plaintiff's disability.

22 148. Plaintiff's employment was wrongfully terminated on or around January 1, 2023
23 in violation of the fundamental public policy of the State of California with respect to
24 discriminating and retaliating against an employee on account of his physical disability.

25 149. Moreover, Plaintiff was forced to hire an attorney to assist him to end these illegal
26 activities.

27 150. Said conduct violated statutory and constitutional expressions of public policy
28 including, but not limited to, the FEHA, California Labor Code, and the California Constitution,

Article 1 section 8.

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

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

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

TWENTIETH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(California Business and Professions Code Section 17200)

(Plaintiff against SUR AT THE BARNYARD, INC. and all DOE Defendants)

154. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully alleged herein.

155. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants constitute unfair and unlawful business practices under California Business and Professions Code Section 17200, et seq.

156. Defendants' violations of the FEHA, California labor laws and the Labor Code constitutes a business practice because it was done repeatedly over a significant period of time

1 in a systematic manner that was detrimental to Plaintiff.

2 157. For the four years preceding the filing of this action, Plaintiff has suffered
3 damages and request damages and/or restitution of all monies and profits to be disgorged from
4 Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of
5 this Court.

6 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
7 follows:

- 8 1. For compensatory damages including lost past and future wages, regular wages,
9 overtime, and all other sums of money, including employment benefits, together with
10 interest on said amounts, and any other economic injury to Plaintiff, according to proof;
- 11 2. For general damages according to proof;
- 12 3. For special and consequential damages to the extent allowed by law;
- 13 4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
14 at trial;
- 15 5. For an award of punitive damages against Defendants SUR AT THE BARNYARD,
16 INC. according to proof;
- 17 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
18 subject to proof at trial;
- 19 7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
20 proof at trial;
- 21 8. For restitution and disgorgement for all unfair business practices by Defendants SUR AT
22 THE BARNYARD, INC. against Plaintiff in an amount subject to proof at trial;
- 23 9. For an order enjoining Defendants SUR AT THE BARNYARD, INC. from further unfair
24 and unlawful business practices in violation of Business and Professions Code Sections
25 17200, et seq.;
- 26 10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
27 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 28 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;
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 the FEHA, the California Labor Code and/or other applicable laws; and
18. For such other and further relief as this Court may deem proper.

DATED: May 4, 2023

MESSRELIAN LAW INC.

By Maralle Messrelian
Harout Messrelian, Esq.
Maralle Messrelian, Esq., Of Counsel
Attorneys for Plaintiff,
Juan Antonio Juarez-Naranjo

DEMAND FOR JURY TRIAL

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

DATED: May 4, 2023

MESSRELIAN LAW INC.

By Maralle Messrelian
Harout Messrelian, Esq.
Maralle Messrelian, Esq., Of Counsel
Attorneys for Plaintiff,
Juan Antonio Juarez-Naranjo