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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Irma Ledesma, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO-NORTH DIVISION

(UNLIMITED JURISDICTION)

SERGIO CASTILLO MENDEZ,

Plaintiff,

vs.

ALFREDOS MEX. INC., a California
corporation; MAURO ORTIZ SALAS, an
individual; SOLMADAIN GAYTAN, an
individual; and DOES 1 to 50, inclusive,

Defendant(s).

Case No.: 37-2023-00020603-CU-OE-NC

COMPLAINT FOR DAMAGES FOR:

- 1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Unlawful Tip Collection (Lab. Code §§ 351, 353)
- 6) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 7) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203);
- 8) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 9) Failure to Provide Personnel Records;
- 10) Failure to Provide Pay Records;
- 11) Civil Penalties (Lab. Code §§ 2698, *et seq.*);
- 12) Retaliation Under Labor Code Section 1102.5;
- 13) Wrongful Constructive Discharge in Violation of Public Policy; and

14) Unfair Competition (Bus. & Prof.
Code, § 17200 *et seq.*)

JURY TRIAL DEMANDED

COMES NOW Plaintiff, SERGIO CASTILLO (hereafter “Plaintiff”), and complains
and alleges as follows:

INTRODUCTION

1. Plaintiff brings this action based on alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), the Business and Professions Code, and public policy against ALFREDOS MEX. INC., a California corporation; MAURO ORTIZ SALAS, an individual, SOLMADAIN GAYTAN, an individual, and DOES 1-50, inclusive (collectively “ALFREDOS” or “Defendants”).

JURISDICTION AND VENUE

2. Jurisdiction and venue are proper in this Court and this action is properly filed in the North County of San Diego because Defendants ALFREDOS MEX. INC., MAURO ORTIZ SALAS, SOLMADAIN GAYTAN, and DOES 1-50, inclusive, do business in the North County of San Diego and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the North County of San Diego is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

THE PARTIES

3. Plaintiff Sergio Castillo Mendez is a resident of the city of Oceanside in San Diego County. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11050 and an “Aggrieved Employee” within the meaning of Labor Code Section 2699(c).

4. Defendant ALFREDOS MEX. INC. is a corporation organized and existing under the laws of California and a citizen of California based on Plaintiff’s information and belief.

5. Defendant MAURO ORTIZ SALAS (“SALAS”) is a citizen of California based

1 on Plaintiff's information and belief.

2 6. Defendant SOLMADAIN GAYTAN ("GAYTAN") is a citizen of California
3 based on Plaintiff's information and belief.

4 7. In relevant part, Labor Code section 558.1 states:

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

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

14 8. Based on Plaintiff's information and belief, Defendant MAURO ORTIZ SALAS
15 is a natural person, and an owner, director, officer, and/or managing agent of ALFREDOS
16 MEX. INC., who directly or indirectly, or through his agent, employed or exercised control
17 over the wages, hours, or working conditions of Plaintiff and the Aggrieved Employees
18 (defined below). Therefore, he is liable to Plaintiff and the Aggrieved Employees for his
19 violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, 1194, and
20 2802 pursuant to Labor Code section 558.1.

21 9. Based on Plaintiff's information and belief, Defendant SOLMADAIN
22 GAYTAN is a natural person, and an owner, director, officer, and/or managing agent of
23 ALFREDOS MEX. INC., who directly or indirectly, or through an agent or any other person,
24 employed or exercised control over the wages, hours, or working conditions of Plaintiff and the
25 Aggrieved Employees (defined below). Therefore, she is liable to Plaintiff and the Aggrieved
26 Employees for her violations of, or causing Defendants to violate, Labor Code sections 203,
27 226, 226.7, 1194, and 2802 pursuant to Labor Code section 558.1.

28 10. The "Aggrieved Employees" are all current and former non-exempt or hourly
paid employees who worked for Defendants in California during the relevant time period
pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys
General Act of 2004 ("PAGA").

11. Plaintiff is ignorant of the true names, capacities, relationships, and extents 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. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE defendants when ascertained.

12. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining Defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

13. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or are attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

14. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the Aggrieved Employees in accordance with applicable California labor laws as alleged herein.

GENERAL ALLEGATIONS

15. On or about August 5, 2022, ALFREDOS first began to employ Plaintiff as a cook at its Alfredo's Mexican Food restaurant located at 602 N. Coast Hwy, in Oceanside, California. ALFREDOS continuously employed Plaintiff in this capacity until on or about February 11, 2023 when Plaintiff's employment ended.

16. At all relevant times, ALFREDOS issued wages to Plaintiff and all of the other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times, ALFREDOS classified Plaintiff and all of the other Aggrieved Employees as non-exempt

1 employees entitled to the protections of the Labor Code and the Wage Order. ALFREDOS
2 employed Plaintiff and all of the Aggrieved Employees more than six, eight, ten, and twelve
3 hours per day. During his tenure, Plaintiff generally worked six days a week from 10:00 a.m. to
4 6:00 p.m. and worked approximately 14 hours on Mondays. Plaintiff's latest rate of pay was
5 approximately \$18.00 per hour.

6 17. ALFREDOS failed to pay Plaintiff and other Aggrieved Employees for all time
7 worked or subject to its control. Plaintiff and the other Aggrieved Employees were not paid for
8 all hours worked and consistently worked "off the clock" in that the company had a policy and
9 practice of rounding down work hours and "time shaving" which led to Plaintiff and others not
10 being paid for all hours worked, which would include the minimum wage. In fact, Plaintiff's
11 pay stubs would consistently show only 80.00 hours worked every pay period. In addition,
12 Plaintiff would clock out but continue working until the other cook arrived for the next shift.
13 Moreover, to the extent employees such as Plaintiff and others worked through their meal
14 periods and those meal periods were interrupted, they were not compensated for that time,
15 which would be akin to a minimum wage violation. In addition, ALFREDOS collected and
16 retained tips that ALFREDOS' patrons paid to Plaintiff and the other Aggrieved Employees.
17 On information and belief, owner SALAS controlled the cash register and took all of the tips
18 meant for employees. As such, Plaintiff and the other similarly situated employees were not
19 given tips to which they were entitled. Furthermore, ALFREDOS ownership and management
20 would often speak to or text/call Plaintiff and others about their schedules and work-related
21 matters after they had clocked out at the end of their shifts. Plaintiff would often receive text
22 messages after midnight letting him know whether he was working the following day.

23 18. Due to the above "off the clock" violations, ALFREDOS failed to pay Plaintiff
24 and the Aggrieved Employees properly-calculated overtime wages. The Aggrieved Employees'
25 actual work hours, which included the "off the clock" work as described above, entitled them to
26 overtime, however, it was not company policy to keep accurate track of all hours worked and to
27 pay employees the accurate amount of overtime, especially since the "off the clock" work was
28 not factored into the equation. Furthermore, any incentive payments and/or bonus payments

1 were not factored into employees' regular rate of pay for purposes of deciphering the correct
2 overtime rate of pay. In addition, any bonus and/or incentive payments were not factored into
3 the correct meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021)
4 11 Cal. 5th 858, 863.

5 19. ALFREDOS failed to provide all compliant meal periods and authorize and
6 permit all compliant rest periods to which Plaintiff and the other Aggrieved Employees were
7 entitled. Plaintiff and other Aggrieved Employees were entitled to take off-duty, uninterrupted
8 30-minute meal periods before the fifth and tenth hours of work and to take uninterrupted 10-
9 minute rest periods for every four hours or major fraction thereof worked. However, Plaintiff
10 and the Aggrieved Employees did not receive their meal periods before the 5th hour worked
11 and often were not able to take their meal periods at all due to the press of business. During his
12 employment tenure, Plaintiff rarely took a meal break as he was the only cook on duty during
13 his shift and it was impossible for him to clock out and take an uninterrupted, 30 minute meal
14 period. Similarly, Plaintiff and the other Aggrieved Employees were not able to take their 10
15 minute rest breaks. Plaintiff could not comfortably use the restroom as owner Salas would
16 knock on his door after two-three minutes and tell him to hurry up. Even when Plaintiff and
17 other Aggrieved Employees would be clocked out for a meal period or would be on their rest
18 breaks, ALFREDOS management/staff, including Salas, would frequently interrupt them with
19 questions about work related matters. On information and belief, ALFREDOS did not provide
20 premium wages for these meal and rest break violations; if ALFREDOS did provide premium
21 wages, they were not paid at the correct rate, as explained above.

22 20. ALFREDOS failed to reimburse Plaintiff and the other Aggrieved Employees
23 for business expenses they incurred in direct consequence of the discharge of their duties.
24 ALFREDOS required Plaintiff and the Aggrieved Employees to use their own personal cell
25 phones to communicate with ownership/management concerning work matters. ALFREDOS
26 ownership/management texted Plaintiff and the others on a regular basis regarding their work
27 schedules. However, ALFREDOS did not provide Plaintiff and the others with mobile phones
28 and did not reimburse Plaintiff and the other Aggrieved Employees for these mobile phone

1 expenses. Accordingly, ALFREDOS was in violation of California Labor Code sections 2800
2 and 2802.

3 21. ALFREDOS failed to pay its employees all wages due to them within any time
4 period specified by California Labor Code section 204, including the minimum wages and
5 overtime as described above as well as meal/rest break premiums.

6 22. ALFREDOS did not provide Plaintiff and other Aggrieved Employees accurate,
7 itemized wage statements. Wage statements must include, among other things, total hours
8 worked by the employee. Labor Code § 226(a)(2). ALFREDOS issued wage statements that
9 inaccurately reflected total hours worked, gross and net wages earned, and the number of hours
10 worked at each hourly rate because of ALFREDOS's failure to properly pay wages as
11 explained herein. Labor Code §§ 226(a)(1), (2), (5), (9). ALFREDOS' failure to maintain
12 accurate records as to the hours worked daily by employees also constitutes a violation of
13 Labor Code section 1174(d).

14 23. Finally, because ALFREDOS did not properly pay all wages earned as
15 explained herein, ALFREDOS also failed to pay final wages owed to Plaintiff and other
16 Aggrieved Employees in violation of Labor Code section 203. These earned but unpaid wages
17 include minimum wages and compensation for all hours worked, overtime compensation,
18 premium pay for missed meal and rest breaks, and business expense reimbursement, among
19 others.

20 24. Moreover, Plaintiff would also have individual claims against ALFREDOS for
21 retaliation in violation of Labor Code section 1102.5 and constructive wrongful discharge.
22 During his employment tenure, owner SALAS, would consistently harass Plaintiff and call him
23 names, including but not limited to: "dumbo", "orejas de cazuela" (your ears look like pot
24 handles), "inutil" (you're useless), "te voy a correr" (I'm going to fire you). Plaintiff complained
25 about Salas' bullying and harassing behavior to Salas' wife, GAYTAN (owner as well). In
26 retaliation for his complaints, ALFREDOS reduced Plaintiff's work hours from six days a week
27 to three days a week. Plaintiff's work environment became intolerable, especially since his
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1 hours were significantly reduced and his pay was not enough to support his family.
2 Consequently, Plaintiff was forced to quit his employment on or around February 11, 2023.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

5 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

6 **(By Plaintiff against all Defendants)**

7 25. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

8 26. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
9 entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198,
10 and the Wage Order.

11 27. Section 2(K) of the Wage Order defines “hours worked” as “the time during
12 which an employee is subject to the control of an employer, and includes all the time the
13 employee is suffered or permitted to work, whether or not required to do so.”

14 28. Section 3 of the Wage Order states:

15 **(A) Daily Overtime - General Provisions**

16 (1) The following overtime provisions are applicable to
17 employees 18 years of age or over and to employees 16 or
18 17 years of age who are not required by law to attend
19 school and are not otherwise prohibited by law from
20 engaging in the subject work. Such employees shall not
21 be employed more than eight (8) hours in any workday or
22 more than 40 hours in any workweek unless the employee
23 receives one and one-half (1 ½) times such employee’s
24 regular rate of pay for all hours worked over 40 hours in
25 the workweek. Eight (8) hours of labor constitutes a day’s
26 work. Employment beyond eight (8) hours in any
27 workday or more than six (6) days in any workweek is
28 permissible provided the employee is compensated for
such overtime at not less than:

(a) One and one-half (1 ½) times the employee’s
regular rate of pay for all hours worked in excess
of eight (8) hours up to and including 12 hours in
any workday, and for the first eight (8) hours
worked on the seventh (7th) consecutive day of
work in a workweek.

1 (b) Double the employee's regular rate of pay for
2 all hours worked in excess of 12 hours in any
3 workday and for all hours worked in excess of
4 eight (8) hours on the seventh (7th) consecutive
5 day of work in a workweek.

6 (c) The overtime rate of compensation required to
7 be paid to a nonexempt full-time salaried
8 employee shall be computed by using the
9 employee's regular hourly salary as one-fortieth
10 (1/40) of the employee's weekly salary.

11 29. Section 4 of the Wage Order requires an employer to pay non-exempt employees
12 at least the minimum wage set forth therein for all hours worked, which consist of all hours that
13 an employer has actual or constructive knowledge that employees are working.

14 30. Labor Code section 510 states:

15 Eight hours of labor constitutes a day's work. Any work in excess
16 of eight hours in one workday and any work in excess of 40
17 hours in any one workweek and the first eight hours worked on
18 the seventh day of work in any one workweek shall be
19 compensated at the rate of no less than one and one-half times the
20 regular rate of pay for an employee. Any work in excess of 12
21 hours in one day shall be compensated at the rate of no less than
22 twice the regular rate of pay for an employee. In addition, any
23 work in excess of eight hours on any seventh day of a workweek
24 shall be compensated at the rate of no less than twice the regular
25 rate of pay of an employee. Nothing in this section requires an
26 employer to combine more than one rate of overtime
27 compensation in order to calculate the amount to be paid to an
28 employee for any hour of overtime work.

29 31. California Labor Code § 1194 invalidates any agreement between an employer
30 and an employee to work for less than the minimum wage required under the applicable Wage
31 Order.

32 32. California Labor Code § 1197 makes it unlawful for an employer to pay an
33 employee less than the minimum wage required under the applicable Wage Order for all hours
34 worked during a payroll period.

35 33. California Labor Code § 1198 makes it unlawful for an employer to employ an

1 employee under conditions that violate the Wage Order.

2 34. In conjunction, these provisions of the California Labor Code require employers
3 to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates
4 for all hours worked, including unrecorded hours when the employer knew or reasonably should
5 have known that employees were working during those hours. (*See Morillion v. Royal Packing*
6 *Co.* (2000) 22 Cal.4th 575, 585.)

7 35. Defendants required Plaintiff to work in excess of eight (8) hours in one workday
8 and forty (40) hours in one workweek without compensating him for such time worked at the
9 premium rates required by California law.

10 36. As described more fully above, Defendants failed to pay all minimum, regular,
11 overtime, and double time wages to Plaintiff because Defendants paid wages based on rounded
12 times, did not pay for off-the-clock work, and failed to pay overtime and double time wages
13 based on correct regular rates of pay.

14 37. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
15 amount, subject to proof, to the extent that he was not paid the full amount of wages earned
16 during each pay period during the applicable limitations period, including minimum, overtime,
17 and double-time wages.

18 38. As a result of Defendants' conduct, Plaintiff seeks damages and/or restitution for
19 unpaid wages which Defendants failed to pay him at the rates set forth herein, interest thereon,
20 and costs of suit and reasonable attorney's fees pursuant to California Labor Code §§ 1194.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PROVIDE REST BREAKS**

23 **(Lab. Code §§ 226.7 and 1198)**

24 **(By Plaintiff against all Defendants)**

25 39. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

26 40. At all relevant times during the applicable limitations period, Plaintiff was a
27 non-exempt employee of Defendants and entitled to the benefits and protections of California
28 Labor Code §§ 226.7, 1198, and the Wage Order.

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41. Labor Code § 1198 states,
“The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

42. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.

43. In addition, Labor Code Section 226.7 states

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

44. Pursuant to the Wage Order, Plaintiff was entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

45. Defendants failed to authorize and permit Plaintiff to take compliant rest periods and failed to pay one hour of correctly-calculated premium pay for each day such a rest period was not provided.

46. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount subject to proof to the extent he was not paid additional wages owed for all rest breaks not provided to him.

47. By reason of the above, Plaintiff is entitled to premium wages for workdays in which one or more rest breaks were not provided to him pursuant to California Labor Code § 226.7, plus interest and costs.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff against all Defendants)

48. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

49. At all relevant times during the applicable limitations period, Plaintiff was a non-exempt employee of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

50. Labor Code § 1198 states,

“The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

51. In relevant part, Labor Code Section 512 states

“An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by

mutual consent of the employer and the employee only if the first meal period was not waived.”

52. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee...

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

53. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff was entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day he worked five or more hours. Pursuant to California Labor Code § 512, Plaintiff was also entitled to a second 30-minute meal period when he worked more than ten (10) hours in a workday.

54. During the relevant time period, Defendants failed to provide Plaintiff with compliant meal periods before the fifth hour of work and failed to pay one hour of correctly-calculated premium pay for each day such a meal period was not provided.

55. As a result of Defendants’ unlawful conduct, Plaintiff has suffered damages in an amount subject to proof to the extent he was not paid additional wages owed for all meal periods not provided to him.

56. By reason of the above, Plaintiff is entitled to premium wages for workdays in which one or more meal periods were not provided to him pursuant to California Labor Code § 226.7, plus interest and costs.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO INDEMNIFY**

3 **(Lab. Code §§ 1198 & 2802)**

4 **(By Plaintiff against all Defendants)**

5 57. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 58. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
7 entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802, and the
8 Wage Order.

9 59. In pertinent part, California Labor Code § 2802(a) states:

10 An employer shall indemnify his or her employee[s] for all necessary
11 expenditures incurred by the employee in direct consequence of the
12 discharge of his or her duties.

13 60. California Labor Code § 1198 prohibits employers from employing their
14 employees under conditions prohibited by the Wage Order.

15 61. At all relevant times during the applicable limitations period, Defendants
16 required Plaintiff to use his own personal cell phone to communicate with management
17 concerning work matters. However, Defendants did not provide these items and did not
18 reimburse Plaintiff for these expenses.

19 62. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
20 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
21 Defendants' failure to indemnify Plaintiff for the reasonable expenses he incurred in the course
22 of performing his duties.

23 63. By reason of the above, Plaintiff is entitled to reimbursement for all necessary
24 expenditures and losses and interest due and owing to within three years (3) of the date of the
25 filing of the Complaint until the date of entry of judgment pursuant to California Labor Code §
26 2802(b). Further, Plaintiff seeks reasonable attorney's fees pursuant to Labor Code § 2802(c).

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1 **FIFTH CAUSE OF ACTION**

2 **UNLAWFUL TIP COLLECTION**

3 **(Lab. Code §§ 351 and 353)**

4 **(By Plaintiff against all Defendants)**

5 64. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 65. During all times relevant herein, Defendants unlawfully collected tips meant for
7 its employees, such as Plaintiff. Owner SALAS controlled the cash register and took all of the
8 tips meant for employees.

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

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

14 68. By Defendants unlawfully collecting tips from Plaintiff and not maintaining
15 records showing tips received and paid to Plaintiff, Defendants violated California Labor Code
16 Section 351 and 353. Therefore, Plaintiff demands return of all tips unlawfully collected from
17 them within three years of the filing of this complaint.

18 **SIXTH CAUSE OF ACTION**

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

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

21 **(By Plaintiff against all Defendants)**

22 69. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

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

25 71. Defendants knowingly and intentionally did not furnish Plaintiff with pay stubs
26 that accurately reflected all information required by Labor Code Section 226, including but not
27 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and
28 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the

1 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed
2 to maintain and provide accurate itemized wage statements to Plaintiff in accordance with
3 California Labor Code Section 226(a).

4 72. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover
5 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
6 violation occurs and one hundred dollars (\$100) per employee for each violation in a
7 subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000),
8 plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of
9 action pursuant to the 3-year period immediately preceding the date this lawsuit was filed.

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

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

18 **SEVENTH CAUSE OF ACTION**

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

20 **(California Labor Code Sections 201-203)**

21 **(By Plaintiff against all Defendants)**

22 75. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

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

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

28 78. Pursuant to California Labor Code Section 203, if an employer willfully fails to

1 pay, without abatement or reduction, any wages of an employee whose employment ends, the
2 wages of the employee shall continue as a penalty from the due date at the same rate until paid
3 or until an action is commenced; however, the wages shall not continue for more than 30 days
4 for failure to pay an employee owed wages.

5 79. After Plaintiff's employment with Defendants ended, Defendants willfully
6 refused and continue to refuse to pay his unpaid wages as required by Labor Code Section 203.

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

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

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

17 **EIGHTH CAUSE OF ACTION**

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

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

20 **(By Plaintiff against all Defendants)**

21 83. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

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

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

1 period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours
2 worked, including the minimum wage, overtime hours, double time hours, and premium pay
3 for missed meal and rest breaks.

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

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

11 **NINTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE PERSONNEL RECORDS**

13 **(By Plaintiff against all Defendants)**

14 89. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 90. Labor Code section 1198.5 dictates "every current and former employee, or his
16 or her representative, has the right to inspect and receive a copy of the personnel records that
17 the employer maintains relating to the employee's performance or to any grievance concerning
18 the employee."

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

26 92. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his
27 records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has
28 suffered and continues to suffer substantial losses related to Defendants' failure to provide

1 personnel records.

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

6 **TENTH CAUSE OF ACTION**
7 **FAILURE TO PROVIDE PAY RECORDS**
8 **(By Plaintiff against all Defendants)**

9 94. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

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

13 96. Moreover, pursuant to sub-section (c) of Labor Code section 226, "an employer
14 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
15 pertaining to a current or former employee shall comply with the request as soon as practicable,
16 but no later than 21 calendar days from the date of the request." On information and belief,
17 Defendants intentionally failed to provide Plaintiff with pay records when requested by
18 Plaintiff via letter, on February 28, 2023, and as required by law. Plaintiff requested his pay
19 records in accordance with California Labor Code section 226 on February 28, 2023, via U.S.
20 certified mail. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his
21 pay records within 21 days.

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

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

28 ///

1 **ELEVENTH CAUSE OF ACTION**

2 **CIVIL PENALTIES**

3 **(Lab. Code §§ 2698, *et seq.*)**

4 **(By Plaintiff against all Defendants)**

5 99. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 100. Plaintiff is an Aggrieved Employee under the Private Attorneys General Act of
7 2004 (“PAGA”) because he was employed by Defendants during the applicable statutory
8 period and suffered one or more of the violations of the Labor Code set forth in this Complaint.
9 Plaintiff seeks to recover on his own behalf, on behalf of the State of California, and on behalf
10 of all current and former Aggrieved Employees of Defendants, the civil penalties provided by
11 PAGA, plus reasonable attorney’s fees and costs.

12 101. During the applicable time period, Defendants violated California Labor Code
13 §§ 201, 202, 203, 204, 226, 226.7, 351, 353, 510, 512, 558, 558.1, 1102.5, 1174, 1194, 1197,
14 1198, and 2802.

15 102. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
16 behalf of themselves and other current or former employees, to bring a civil action to recover
17 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

18 103. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the
19 Aggrieved Employees are entitled to recover civil penalties for each of the Defendants’
20 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 351, 353, 510, 512, 558,
21 558.1, 1102.5, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the
22 following amounts:

23 A. For violations of California Labor Code § 204, one hundred dollars
24 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
25 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
26 established by California Labor Code § 210).

27 B. For violations of California Labor Code § 226(a), two hundred fifty
28 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars

1 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
2 established by California Labor Code § 226.3).

3 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
4 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
5 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
6 California Labor Code § 558).

7 D. For violations of California Labor Code § 1174, five hundred dollars
8 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
9 California Labor Code § 1174.5).

10 E. For violations of California Labor Code § 1197, one hundred dollars
11 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
12 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation,
13 per pay period (regardless of whether the initial violations were intentionally committed)
14 (penalty amounts established by California Labor Code § 1197.1).

15 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 351,
16 353, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per
17 pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved
18 Employee per pay period for each subsequent violation (penalty amounts established by
19 California Labor Code § 2699(f)(2)).

20 G. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff individually
21 is entitled to recover civil penalties for each of the Defendants' violations of California Labor
22 Code §1102.5 during the applicable limitations period in the following amounts: For violations
23 of California Labor Code § 1102.5, an amount not to exceed \$10,000 for each violation by
24 Defendants of California Labor Code § 1102.5(b)(c), as well as attorney's fees and costs under
25 Labor Code § 2699(g) (penalty amounts established by California Labor Code § 1102.5(f)).

26 104. Plaintiff has complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letter dated February 28, 2023, Plaintiff filed written
28 notices online with the Labor and Workforce Development Agency ("LWDA") and gave

1 written notice by certified mail to Defendants of the specific provisions of the California Labor
2 Code alleged to have been violated, including the facts and theories to support the alleged
3 violations. Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. A true
4 and correct copy of Plaintiff's letter to the LWDA dated February 28, 2023 is attached hereto
5 as **Exhibit A**. The LWDA has failed to take action in response within 65 calendar days of the
6 date of Plaintiff's notice, but Plaintiff anticipates that the LWDA will provide written notice to
7 Plaintiff informing him that it does not intend to investigate these allegations.

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

11 **TWELFTH CAUSE OF ACTION**

12 **RETALIATION**

13 **(Lab. Code § 1102.5)**

14 **(By Plaintiff against all Defendants)**

15 106. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

16 107. According to Labor Code section 1102.5, subdivision (b),

17 An employer, or any person acting on behalf of the employer, shall not retaliate
18 against an employee for disclosing information, or because the employer
19 believes that the employee disclosed or may disclose information, ... to a
20 person with authority over the employee or another employee who has the
21 authority to investigate, discover, or correct the violation or noncompliance,...
22 if the employee has reasonable cause to believe that the information discloses a
23 violation of state or federal statute, or a violation of or noncompliance with a
24 local, state, or federal rule or regulation, regardless of whether disclosing the
25 information is part of the employee's job duties.

26 108. According to Labor Code section 1102.5, subdivision (c), an employer may not
27 retaliate against an employee for refusing to participate in an activity that would result in a
28 violation of state or federal statute, or a violation or noncompliance with a state or federal rule
or regulation.

109. This statute reflects the broad public policy interest in encouraging workplace

1 whistleblowers to report unlawful acts without fearing retaliation.

2 110. Defendants were employers for purposes of California law.

3 111. Plaintiff was an employee of Defendants, performing work on behalf of
4 Defendants.

5 112. During his employment tenure, Plaintiff complained about owner SALAS'
6 bullying and harassing behavior with the expectation that Defendants would investigate and
7 correct the violations.

8 113. Defendants retaliated against Plaintiff for his complaints by reducing his hours
9 (from six days a week to three days a week) and turning his work environment into a hostile
10 one. Plaintiff's work environment became intolerable, especially since his hours were
11 significantly reduced and his pay was not enough to support his family. Consequently,
12 Plaintiff was forced to quit his employment on or around February 11, 2023.

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

18 115. Plaintiff requests all available relief under Labor Code § 1102.5 including
19 damages and the imposition of civil penalties of \$10,000 for each violation as well as
20 attorney's fees.

21 116. 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 work
24 in an environment free of retaliation and labor code violations, so as to justify the imposition
25 of punitive damages to punish and set an example of said Defendants.

26 ///

27 ///

28 ///

THIRTEENTH CAUSE OF ACTION
WRONGFUL CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY
(By Plaintiff against Defendant ALFREDOS MEX. INC.)

117. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

118. Plaintiff was employed by Defendants.

119. Defendants, acting by and through their officers, directors, managing agents, or supervisory employees, intentionally created or knowingly permitted the retaliation and hostile working conditions that were so intolerable and aggravated at the time of the resignation of Plaintiff that a reasonable employer would realize that a reasonable person in the position of Plaintiff would be compelled to resign.

120. Plaintiff was forced to resign from his employment because Defendants' acts of retaliation created an intolerable working environment. A reasonable person under the same circumstances, faced with the same or similar conduct, would have resigned.

121. Plaintiff was harmed.

122. The working conditions created by Defendants were a substantial factor in causing Plaintiff's harm.

123. Plaintiff's employment was constructively wrongfully terminated in violation of the fundamental public policies of the State of California with respect to retaliating against an employee for making complaints about harassment and mistreatment at the workplace. Plaintiff's work environment became intolerable, especially since his hours were significantly reduced and his pay was not enough to support his family. Consequently, Plaintiff was forced to quit his employment on or around February 11, 2023.

124. 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.

125. The foregoing conduct engaged in by Defendants and each of their directors,

1 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
2 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
3 an environment free of retaliation and labor code violations, so as to justify the imposition of
4 punitive damages to punish and set an example of said Defendants.

5 **FOURTEENTH CAUSE OF ACTION**

6 **UNFAIR COMPETITION**

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

8 **(By Plaintiff against Defendant ALFREDOS MEX. INC.)**

9 126. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

10 127. At all relevant times during the applicable limitations period, Plaintiff has been
11 an employee of Defendants and entitled to the benefits and protections of the Business and
12 Professions Code §§ 17200, *et seq.*

13 128. Defendants engaged in unfair competition by failing to 1) pay employees for all
14 hours worked at the correct rates of pay and 2) pay their employees premium wages for
15 workdays during which one or more meal or rest periods were not provided, and 3) reimburse
16 employees for necessary business expenses incurred in the course of performing their duties.

17 129. The unlawful conduct of Defendants alleged herein amounts to and constitutes
18 unfair competition within the meaning of California Business & Professions Code §§ 17200,
19 *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have
20 unfairly gained a competitive advantage over other comparable companies doing business in
21 California that comply with their legal obligations to, among other things, refrain from
22 retaliatory practices and prevent retaliation, pay their employees premium wages for workdays
23 in which they did not provide employees with one or more meal and rest periods, indemnify
24 them for all business expenses incurred during the course of performing their duties, including,
25 but not limited to, mobile phone expenses, and pay them all wages earned.

26 130. As a result of Defendants' unfair competition as alleged herein, Plaintiff has
27 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiff for all
28 hours worked, failed to provide him with premium wages for missed meal and rest periods,

1 and failed to reimburse Plaintiff for all expenses he incurred in the course of performing his
2 duties.

3 131. Pursuant to California Business & Professions Code § 17203, Plaintiff is
4 entitled to restitution of all monies rightfully belonging to him that Defendants did not pay him
5 or otherwise retained by means of their unlawful and unfair business practices.

6 132. Plaintiff is entitled to reasonable attorneys' fees in connection with his unfair
7 competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial
8 benefit doctrine and/or the common fund doctrine.

9 133. Accordingly, with respect to this cause of action, Plaintiff prays for the herein
10 stated relief, and an award of all reasonable costs and attorneys' fees, including interest
11 thereon, as permitted by law, all in amounts subject to proof.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- 14 1. For compensatory damages including lost past and future wages, commissions, and all
15 other sums of money, including employment benefits, together with interest on said
16 amounts, and any other economic injury to Plaintiff, according to proof;
- 17 2. For general damages according to proof;
- 18 3. For special and consequential damages to the extent allowed by law;
- 19 4. For punitive and exemplary damages against Defendant ALFREDOS MEX. INC. in an
20 amount subject to proof;
- 21 5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
22 subject to proof at trial;
- 23 6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
24 7. proof at trial;
- 25 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
26 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 27 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
28 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;

- 1 10. For maximum civil penalties available under the Labor Code and applicable Wage
2 Order against Defendants as described more particularly in the Complaint;
- 3 11. For restitution and disgorgement for all unfair business practices by Defendant
4 ALFREDOS MEX. INC. against Plaintiff in an amount according to proof;
- 5 12. For an order enjoining Defendant ALFREDOS MEX. INC. from further unfair and
6 unlawful business practices in violation of Business and Professions Code Sections
7 17200, et seq.;
- 8 13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor
9 Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated
10 damages, damages, penalties, and waiting time penalties according to proof to the
11 extent permitted by law;
- 12 14. For the imposition of civil penalties and/or statutory penalties;
- 13 15. For all interest as allowed by law;
- 14 16. For all costs and disbursements incurred in this suit;
- 15 17. Reasonable attorney's fees where available by law, including but not limited to,
16 pursuant to, Code of Civil Procedure section 1021.5, Labor Code section 1102.5(j),
17 and/or other applicable laws; and
- 18 18. For such other and further relief as this Court may deem proper.

19 **DEMAND FOR JURY TRIAL**

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

21
22 Dated: May 12, 2023

MM LAW, APC

23
24 By Maralle Messrelian
25 Maralle Messrelian, Esq.
26 Attorney for Plaintiff,
27 SERGIO CASTILLO MENDEZ
28

EXHIBIT A



MM LAW
A Professional Corporation

500 N. Central Ave., Suite 840
Glendale, CA 91203
Tel: 818-810-7747
Fax: 818-230-9018
maralle@mmlawapc.com

February 28, 2023

NOTICE VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency (LWDA)
Attn: PAGA Administrator
<https://dir.tfaforms.net/308>

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Alfredos Mex. Inc.
Mauro Ortiz Salas
Solmadain Gaytan
c/o Mauro Ortiz Salas, Agent for Service of Process
602 N. Coast Hwy
Oceanside, CA 92054

**Re: Sergio Castillo Mendez v. Alfredos Mex. Inc
Private Attorneys General Act**

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* (“PAGA”), Mr. Sergio Castillo Mendez (hereafter “Castillo”) provides notice on behalf of himself and of all individuals currently and formerly employed in California as non-exempt or hourly paid employees (hereafter the “Aggrieved Employees”), by Alfredos Mex Inc., a California corporation, Mauro Ortiz Salas (“Salas”) and Solmadain Gaytan (“Gaytan”) (hereafter collectively “ALFREDOS”), of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 351, 353, 510, 512, 558, 558.1, 1102.5, 1174, 1194, 1197, 1198, and 2802. Mauro Ortiz Salas and Solmadain Gaytan are being included in this PAGA notice pursuant to Labor Code Section 558.1 as they were or are owners/directors/managing agents of Alfredos Mex. Inc., were involved in the day-to-day operations of the business, and as such, controlled the wages, hours, and working conditions of Castillo and the other Aggrieved Employees. On behalf of himself and all other Aggrieved Employees, Castillo hereby provides this notice to the Labor & Workforce Development Agency and ALFREDOS and its agents and representatives.

At all relevant times, ALFREDOS has employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Castillo and the Aggrieved Employees are “employees” within the meaning of Wage Order 5-2001 (hereafter “the Wage Order”) § 2,

subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

An Aggrieved Employee pursuing a representative action under the PAGA could seek civil penalties for alleged Labor Code violations that affected the Aggrieved Employee, as well as separate California Labor Code violations that affected other employees. In *Huff v. Securitas Security Services USA, Inc.*, 233 Cal. Rptr. 3d 502 (Ct. App. 2018), the Court concluded that an employee affected by at least one California Labor Code violation could pursue civil penalties under PAGA on behalf of other Aggrieved Employees for all Labor Code violations by the same employer, even if such violations did not affect the employee initiating the PAGA action. Consequently, Castillo can equivocally bring the following labor code violations on behalf of all other employees, including hourly, non-exempt employees who were not specifically cooks.

STATEMENT OF FACTS

On or about August 5, 2022, ALFREDOS first began to employ Castillo as a cook at its Alfredo’s Mexican Food restaurant located at 602 N. Coast Hwy, in Oceanside, California. ALFREDOS continuously employed him in that capacity until on or about February 11, 2023 when his employment ended.

At all relevant times, ALFREDOS issued wages to Castillo and all of the other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times, ALFREDOS classified Castillo and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order. ALFREDOS employed Castillo and all of the Aggrieved Employees more than six, eight, ten, and twelve hours per day. During his tenure, Castillo generally worked six days a week from 10:00 a.m. to 6:00 p.m., and worked approximately 14 hours on Mondays. Castillo’s latest rate of pay was approximately \$18.00 per hour.

ALFREDOS failed to pay Castillo and other Aggrieved Employees for all time worked or subject to its control. Castillo and the other Aggrieved Employees were not paid for all hours worked and consistently worked “off the clock” in that the company had a policy and practice of rounding down work hours and “time shaving” which led to Castillo and others not being paid for all hours worked, which would include the minimum wage. In fact, Castillo’s pay stubs would consistently show only 80.00 hours worked every pay period. In addition, Castillo would clock out but continue working until the other cook arrived for the next shift. Moreover, to the extent employees such as Castillo and others worked through their meal periods and those meal periods were interrupted, they were not compensated for that time, which would be akin to a minimum wage violation. In addition, ALFREDOS collected and retained tips that ALFREDOS’ patrons paid to Castillo and the other Aggrieved Employees. On information and belief, owner Salas controlled the cash register and took all of the tips meant for employees. As such, Castillo and the other similarly situated employees were not given tips to which they were entitled. Furthermore, ALFREDOS ownership and management would often speak to or text/call Castillo and others about their schedules and work-related matters after they had clocked out at the end of their shifts. Castillo

would often receive text messages after midnight letting him know whether he was working the following day.

Due to the above “off the clock” violations, ALFREDOS failed to pay Castillo and the Aggrieved Employees properly-calculated overtime wages. The Aggrieved Employees’ 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 all hours worked and to pay employees the accurate amount of overtime, especially since the “off the clock” work was not factored into the equation. Furthermore, any incentive payments and/or bonus payments were not factored into employees’ regular rate of pay for purposes of deciphering the correct overtime rate of pay. In addition, any bonus and/or incentive payments were not factored into the correct meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

ALFREDOS failed to provide all compliant meal periods and authorize and permit all compliant rest periods to which Castillo and the other Aggrieved Employees were entitled. Castillo and other Aggrieved Employees were entitled to take off-duty, uninterrupted 30-minute meal periods before the fifth and tenth hours of work and to take uninterrupted 10-minute rest periods for every four hours or major fraction thereof worked. However, Castillo and the Aggrieved Employees did not receive their meal periods before the 5th hour worked and often were not able to take their meal periods at all due to the press of business. During his employment tenure, Castillo rarely took a meal break as he was the only cook on duty during his shift and it was impossible for him to clock out and take an uninterrupted, 30 minute meal period. Similarly, Castillo and the other Aggrieved Employees were not able to take their 10 minute rest breaks. Castillo could not comfortably use the restroom as owner Salas would knock on his door after two-three minutes and tell him to hurry up. Even when Castillo and other Aggrieved Employees would be clocked out for a meal period or would be on their rest breaks, ALFREDOS management/staff, including Salas, would frequently interrupt them with questions about work related matters. On information and belief, ALFREDOS did not provide premium wages for these meal and rest break violations; if ALFREDOS did provide premium wages, they were not paid at the correct rate, as explained above.

ALFREDOS failed to reimburse Castillo and the other Aggrieved Employees for business expenses they incurred in direct consequence of the discharge of their duties. ALFREDOS required Castillo and the Aggrieved Employees to use their own personal cell phones to communicate with ownership/management concerning work matters. ALFREDOS ownership/management texted Castillo and the others on a regular basis regarding their work schedules. However, ALFREDOS did not provide Castillo and the others with mobile phones and did not reimburse Castillo and the other Aggrieved Employees for these mobile phone expenses. Accordingly, ALFREDOS was in violation of California Labor Code sections 2800 and 2802.

ALFREDOS failed to pay its employees all wages due to them within any time period specified by California Labor Code section 204, including the minimum wages and overtime as described above as well as meal/rest break premiums and tips.

ALFREDOS did not provide Castillo and other Aggrieved Employees accurate, itemized wage statements. Wage statements must include, among other things, total hours worked by the employee. Labor Code § 226(a)(2). ALFREDOS issued wage statements that inaccurately reflected total hours worked, gross and net wages earned, and the number of hours worked at each hourly rate because of ALFREDOS's failure to properly pay wages as explained herein. Labor Code §§ 226(a)(1), (2), (5), (9). ALFREDOS' failure to maintain accurate records as to the hours worked daily by employees also constitutes a violation of Labor Code section 1174(d).

Finally, because ALFREDOS did not properly pay all wages earned as explained herein, ALFREDOS also failed to pay final wages owed to Castillo and other Aggrieved Employees in violation of Labor Code section 203. These earned but unpaid wages include minimum wages and compensation for all hours worked, overtime compensation, tips, premium pay for missed meal and rest breaks, and business expense reimbursement, among others.

Moreover, Castillo would also have individual claims against ALFREDOS for retaliation in violation of Labor Code section 1102.5 and constructive wrongful discharge. During his employment tenure, owner Mauro Ortiz Salas, would consistently harass Plaintiff and call him names, including but not limited to: "dumbo", "orejas de cazuela" (your ears look like pot handles), "inutil" (you're useless), "te voy a correr" (I'm going to fire you). Castillo complained about Salas' bullying and harassing behavior to Salas' wife, Gaytan (owner as well). In retaliation for his complaints, ALFREDOS reduced Castillo's work hours from six days a week to three days a week. Castillo's work environment became intolerable, especially since his hours were significantly reduced and his pay was not enough to support his family. Consequently, Castillo was forced to quit his employment on or around February 11, 2023.

For the reasons herein, on behalf of himself and the Aggrieved Employees, Castillo alleges that ALFREDOS committed the following violations of the California Labor Code and the Wage Order: 1) failed to pay wages for all time worked or subject to ALFREDOS' control, including correctly-calculated overtime wages; 2) unlawfully collected and retained tips meant for employees; 3) failed to provide meal periods or pay correctly-calculated premium wages in lieu thereof; 4) failed to authorize and permit rest periods or pay correctly-calculated premium wages in lieu thereof; 5) failed to reimburse reasonably necessary business expenses; 6) failed to provide compliant wage statements; 7) failed to maintain accurate records; and 8) failed to timely pay all wages owed during and upon separation of employment.

Accordingly, Castillo now seeks civil penalties on behalf of himself and the Aggrieved Employees based on ALFREDOS' alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry," where "Public Housekeeping Industry" includes "Restaurants." (*Id.*, §§ 1 & 2(P)(1).) At all relevant times during the applicable limitations period, ALFREDOS operated a restaurant. Accordingly, Castillo and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

**FAILURE TO PAY WAGES FOR ALL HOURS WORKED AT THE CORRECT
RATES OF PAY**

Labor Code §§ 510, 558, 1194, 1197, and 1198

Labor Code sections 510, 1194, and 1197 require employers to pay the wages agreed to and at least minimum wages for all time under the employer's control, overtime wages for hours worked over eight per day or forty per week at one and one-half times the employee's regular rate of pay, and double-time wages for hours worked over twelve in one day or for the first eight hours of work on the seventh consecutive day of work at two times the employee's regular rate of pay. Labor Code section 558 establishes a civil penalty for violation of Labor Code section 510. Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

ALFREDOS failed to pay all minimum, regular, and overtime wages to Castillo and other Aggrieved Employees because ALFREDOS paid wages based on rounded times, did not pay for off-the-clock work, and failed to pay overtime wages based on correct regular rates of pay.

TIP VIOLATIONS

Labor Code §§ 351 and 353

Labor Code § 351 prohibits an employer or agent of the employer from collecting, taking, or receiving any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deducting any amount from wages due an employee on account of a gratuity, or requiring an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Labor Code § 351 further declares that every gratuity is the sole property of the employee or employees to whom it was paid, given, or left for. Labor Code § 353 requires every employer to keep accurate records of all gratuities it receives, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise.

At all relevant times, ALFREDOS collected Castillo's and the other Aggrieved Employees' monetary tips in violation of Labor Code § 351 and did not maintain records showing tips received and paid to its employees in violation of Labor Code § 353.

FAILURE TO PROVIDE MEAL PERIODS

Labor Code §§ 226.7, 512, and 1198

Employers must provide employees a 30-minute, uninterrupted meal period after no more than five hours of work, and a second such meal period after no more than 10 hours work. Labor Code § 512(a); IWC Wage Order(s) §§ 11(A)-(B); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. If an employer fails to provide an employee a meal period in accordance with California law, the employer must pay the employee one hour of pay at the employee's regular rate for each work day the meal period is not provided. Lab. Code § 226.7(c); IWC Wage Order(s), § 11(D); *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

ALFREDOS failed to provide Castillo and other Aggrieved Employees with compliant meal periods and failed to pay one hour of correctly-calculated premium pay for each day such a meal period was not provided.

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

Labor Code § 226.7 & 1198

The Rest Period section of the applicable Wage Order provides: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” IWC Wage Order(s), § 12(A). If an employer fails to provide an employee a rest period in accordance with California law, the employer must pay the employee one hour of pay at the employee’s regular rate for each work day a rest period is not provided. IWC Wage Order(s), § 12(B); Labor Code § 226.7(c); *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

ALFREDOS failed to authorize and permit Castillo and other Aggrieved Employees to take compliant rest periods and failed to pay one hour of correctly-calculated premium pay for each day such a rest period was not provided.

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

Labor Code §§ 226

California employers are required to provide itemized wage statements showing, among other things, “gross wages earned,” “total hours worked by the employee,” “net wages earned,” and “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Labor Code §§ 226(a)(1), (2), (5), (9).

ALFREDOS did not provide itemized wage statements accurately reflecting Castillo’s and other Aggrieved Employees’ gross wages earned, total hours worked, net wages earned, and all applicable hourly rates and the number of hours worked at each rate.

FAILURE TO PROVIDE ACCURATE RECORDS

Labor Code §§ 1174, 1174.5, 1198; IWC Wage Order(s), § 7

An employer must maintain payroll records showing hours worked daily by, and wages paid to, its employees, in accordance with rules established by the Industrial Welfare Commission. Labor Code §1174. An employer must also maintain time records showing when each work period, and meal period, begins and ends. IWC Wage Order(s), § 7.

Because ALFREDOS rounded employees’ time worked, did not record off-the-clock work, and interrupted employees’ meal periods, ALFREDOS failed to maintain accurate records as to the hours worked daily by employees and as to when each work period and meal period began and ended.

FAILURE TO REIMBURSE FOR EXPENSES

Labor Code §§ 1198, 2802, and 2804

An employer must reimburse its employees for their reasonable business-related expenses. Labor Code § 2802. The right to reimbursement cannot be waived. Labor Code § 2804.

ALFREDOS failed to reimburse Castillo and other Aggrieved Employees for their reasonable business-related expenses, including use of their own personal cell phones in effectuating their job duties.

**FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT
& UPON SEPARATION**

Labor Code §§ 201-204

An employer must pay “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment...twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Labor Code § 204. An employer must pay all wages owed to terminated employees at the time of termination, or within 72 hours to employees who quit. Labor Code §§ 201-202. If an employer willfully fails to timely pay all wages to separated employees, the wages continue at the same rate for up to 30 days, until paid. Labor Code § 203.

As a result of its failure to pay all wages earned, as described above, ALFREDOS failed to pay all final wages due to Castillo and other Aggrieved Employees and violated Labor Code Sections 201-204.

RETALIATION

Labor Code § 1102.5

An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation. Lab. Code § 1102.5(c).

Castillo complained to ownership, including Solmadain Gaytan, about being harassed and bullied by owner Mauro Ortiz. Because of his complaints, ALFREDOS retaliated against Castillo reducing his work schedule and turning his work environment into a hostile one in violation of California Labor Code § 1102.5(c).

Castillo seeks civil penalties under California Labor Code § 1102.5(f) in an amount not to exceed \$10,000 for each violation by ALFREDOS of California Labor Code § 1102.5(c), as well as attorney’s fees and costs under Labor Code §§ 1102.5(j) and 2699(g).

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PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES LABOR CODE

Labor Code § 558.1

In relevant part, Labor Code section 558.1 states:

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

At all relevant times, Mauro Ortiz Salas and Solmadain Gaytan were employers of Castillo and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of ALFREDOS. Mauro Ortiz Salas and Solmadain Gaytan directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of Castillo and the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Aggrieved Employees, Castillo seeks the same civil penalties against Mauro Ortiz Salas and Solmadain Gaytan on the same grounds for which he seeks civil penalties against ALFREDOS.

CONCLUSION

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that Sergio Castillo Mendez will seek both reasonable attorneys’ fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,



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cc: Sergio Castillo