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FILED
Superior Court of California
County of Los Angeles
05/01/2023

David W. Slayton, Executive Officer / Clerk of Court
By: M. Arellanes Deputy

Attorneys for Plaintiffs NANCY JAYLENE CRUZ, JANCO BARBOZA,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE LOS ANGELES COUNTY**

NANCY JAYLENE CRUZ, JANCO BARBOZA,
on behalf of themselves and for all similarly
situated persons, and the general public;

Plaintiffs,

vs.

LOS COMPADRES RESTAURANT, INC. and
DOES 1-50,

Defendants.

Case No.: 23STCV03673

Assigned to: DEPT 12, Hon. Carolyn Kuhl

**FIRST AMENDED COMPLAINT FOR
CLASS ACTION DAMAGES FOR:**

1. Unpaid missed rest breaks (*Labor Code Section 226.7 and IWC Wage Order No. 5--2001 section 12*);
2. Unpaid missed meal breaks (*Labor Code Sections 226.7 and 512*);
3. Failure to pay for all overtime worked (*Labor Code Sections 510 and 1194*);
4. Failure to pay minimum wage and pay for all wages earned (*Labor Code Sections 204, 1194 and 1197*);
5. Failure to pay Gratuities (*Labor Code Sections 200, 221, 350-356*);
6. Failure to maintain accurate payroll records (*Labor Code Sections 226(a) and 1174*);
7. Failure to pay wages upon separation (*Labor Code Sections 201 – 203*);
8. Failure to pay for sick days (*Labor Code §246(a) and 248.5*);
9. Failure to Reimburse Required Business Expenses (*Labor Code*

1) *section 2802);*
2)
3)
4)
5)
6)
7)

10. Violation of California *Business and Professions Code* §17200, et seq.

11. Civil Penalties Pursuant to *Labor Code* § 2699 (PAGA Penalties);

6 **DEMAND FOR JURY TRIAL**

7
8 COME NOW PLAINTIFFS NANCY JAYLENE CRUZ, JANCO BARBOZA, individually on
9 behalf of themselves and on behalf of all similarly situated individuals, and the general public, and
10 allege as follows:

11 (The allegations in this First Amended Complaint, stated on information and belief, have
12 evidentiary support and/or are likely to have more evidentiary support after reasonable opportunity for
13 further investigation and discovery.)

13 **NATURE OF THE ACTION**

14 1. Defendant, LOS COMPADRES RESTAURANT, INC, is operating a business in Los
15 Angeles County in California.

16 2. During the relevant timeframe, Plaintiffs and Class Members were employed by
17 Defendant, LOS COMPADRES RESTAURANT, INC, in their store/restaurant located at 3229 E.
18 ANAHEIM Street, Long Beach CA 90804 and 11600 Rosecrans Ave, Norwalk, CA 90650.

19 3. This action for relief arises from Defendant's failure to provide off-duty rest and meal
20 periods as required by law; failure to compensate Plaintiffs and Class Members at the required rate for
21 each occasion in which Defendant failed to provide rest and meal breaks; failure to pay overtime wages
22 and for all hours worked; failure to keep accurate payroll records, such that Plaintiffs and Class Members
23 were given wage statements that did not accurately reflect all the hours worked and all wages earned;
24 failure to wages due upon separation on time; and failure to pay the minimum wage and all wages
25 earned.

26 **THE PARTIES**

27 4. Plaintiffs are NANCY JAYLENE CRUZ, JANCO BARBOZA,, and each of them is a
28 resident of California.

- 1 5. Defendant, LOS COMPADRES RESTAURANT, INC., at all times mentioned herein, is
2 an employer whose employees worked for them throughout the County of Los Angeles,
3 Orange County and in other counties in the State of California.
- 4 6. The true names and capacities, whether individual, corporate, associate or otherwise of
5 each of the Defendants designated herein as a DOE are unknown to Plaintiffs and Class
6 Members at this time, who therefore, sue said Defendants by fictitious names, DOES 1
7 to 50, and will ask leave of this Court for permission to amend this Complaint to show
8 their names and capacities when the same have been ascertained. Plaintiffs and Class
9 Members are informed and believe and thereon alleges that each of the Defendants
10 designated as a DOE is legally responsible in some manner for the events and happenings
11 herein referred to, and caused injuries and damages thereby to Plaintiffs and Class
12 Members as herein alleged.
- 13 7. Unless otherwise individually referred to, whenever, in this Complaint, reference is made
14 to "Defendants," such reference shall refer to all Defendants.
- 15 8. Plaintiffs and Class Members, on information and belief and based upon such basis,
16 allege that at all times herein mentioned, each of the Defendants were acting as the agent,
17 servant, employee of each of the other Defendants, within the scope of said agency and
18 employment.
- 19 9. During the times and places of the incident in question, Defendants, and each of them,
20 their agents, servants and employees became liable to Plaintiffs and Class Members for
21 the reasons described in the complaint herein, and thereby proximately caused Plaintiffs
22 to sustain damages as set forth herein.
- 23 10. Plaintiffs and Class Members, on information and belief and based upon such basis,
24 allege that all Defendants carried out a joint scheme, business plan or policy in all
25 respects pertinent hereto and all acts and omissions herein complained of were performed
26 within the course and scope of said employment, service, agency, common scheme, plan
27 and/or policy.
- 28 11. Plaintiffs and Class Members, on information and belief and based upon such basis,
 allege that Defendants' founders, owners, shareholders, executive officers, managers,
 and supervisors directed, authorized, ratified and/or participated in the conduct that gives

1 rise to the claims asserted herein and derived personal financial benefit from such
2 conduct at the expense of Plaintiffs and Class Members.

3 **JURISDICTION AND VENUE**

- 4 12. This Court has jurisdiction over this action pursuant to California *Code of Civil*
5 *Procedure* § 410.10. The damages exceed the jurisdictional minimum of this Court.
6 13. Venue is proper in this Court, pursuant to California *Code of Civil Procedure* § 395.5
7 because the incidents complained of occurred in Los Angeles and Orange County,
8 California.

9 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTIONS**

- 10 14. Plaintiffs and Class Members are informed and believe that Defendant own, manage,
11 and/or operate LOS COMPADRES RESTAURANT, INC., a California Corporation
12 doing business, at locations throughout California, including in Orange and Los
13 Angeles County.
14 15. Defendant employed Plaintiffs and Class Members as non-exempt hourly employees.
15 16. Plaintiff Nancy Jaylene Cruz, was hired by Defendant LOS COMPADRES
16 RESTAURANT, INC, beginning in October, 2004, as a server, last pay rate was
17 \$13/hour. Plaintiff was terminated sometime after March 20, 2020, due to the pandemic
18 and because Nancy had COVID-19 and other medical issues. Her boss was Edgar Torres.
19 Her manager was Gerardo. Defendant refused to allow her return to her job after she
20 informed them about her illness, medical condition and disability. She was also
21 terminated due to her complaints about lack of full and timely breaks and non-receipt of
22 accurate wages. Her requests to take timely and full breaks were denied by the Defendant
23 and she was not allowed to take all her statutory rest or meal breaks. Defendant refused
24 to pay her accurate wages including accurate share of tips.
25 17. Plaintiff Janco Barbosa, was hired beginning in March 2018, as a busboy, last pay rate
26 was \$15/hour. His boss was Peter Macias. Plaintiff was constructively terminated in
27 March 2021, because he was not getting rest or meal break, working without full breaks
28 was taking its toll on him and his requests to be allowed to take breaks were denied by
the Defendant. He was also not paid his share of tips and accurate wages.

- 1 18. There were periods where Plaintiffs and Class Members routinely worked more than
2 eight hours per day. Defendant failed to pay Plaintiffs and Class Members overtime
3 wages at the legal rates of pay for all overtime hours worked.
- 4 19. During the relevant timeframe, Plaintiffs and Class Members often worked shifts of over
5 four hours, and were not given a ten-minute, uninterrupted rest break for each such shift.
6 Plaintiffs and Class Members worked during the rest periods either under the direction
7 and supervision of Defendant, or with Defendant's knowledge and consent. Furthermore,
8 Defendant created schedules that made it difficult or impossible for Plaintiffs and Class
9 Members to take their rest breaks.
- 10 20. During the relevant timeframe, Plaintiffs and Class Members worked shifts of over five
11 hours but they were not provided with meal breaks or the breaks were interrupted. Also
12 at times when Plaintiffs and Class Members had to work more than ten hours, they
13 were not provided their second thirty-minute, uninterrupted meal break for each such
14 shift. Plaintiffs and Class Members worked during the meal periods either under the
15 direction and supervision of Defendant, or with Defendant's knowledge and consent.
16 Furthermore, Defendant created schedules that made it difficult or impossible for
17 Plaintiffs and Class Members to take either of their uninterrupted meal breaks.
- 18 21. Defendant failed to compensate Plaintiffs and Class Members at the required rate for
19 each occasion in which Defendant failed to provide rest breaks and meal breaks. As
20 such, Defendant failed to pay for all the hours worked and all wages earned by
21 Plaintiffs and Class Members.
- 22 22. During the relevant timeframe, Defendant failed to pay Plaintiffs and Class Members
23 all overtime wages at the legal rates of pay for all overtime hours worked.
- 24 23. Plaintiffs and Class Members were not paid for missed rest and meal breaks and their
25 paycheck and wage statements did not account for the premiums due to Plaintiffs and
26 Class Members for the missed rest and meal breaks, nor accounted for overtime pay for
27 hours Plaintiffs and Class Members worked in excess of eight hours per day or 40 hours
28 per week.
24. Defendant failed to maintain accurate payroll records, such that Plaintiffs and Class
Members were given wage statements that did not accurately reflect their true
compensation and all the hours worked.

- 1 25. To date, Defendant did not issue the final paychecks to Plaintiffs and Class Members to
2 include all of their overtime, compensation for her missed breaks, and sick days, in
3 accordance with the timeframes prescribed by law.

4 **CLASS ACTION ALLEGATIONS**

- 5 26. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all
6 other persons similarly situated, and thus, seek class certification. The class shall be
7 defined as follows:

8 “All persons who were employed at LOS COMPADRES RESTAURANT, INC., in the
9 State of California during the period commencing four years from the date of filing,
10 through the entry of final judgment in this action.”

- 11 27. Plaintiffs and Class Members propose that the following sub-classes be created:

- 12 a. A proposed sub-class (*hereinafter* “Meal Period Class”) is defined as: All
13 individuals who have been employed and are currently employed at LOS
14 COMPADRES RESTAURANT, INC., within the relevant time periods prior to the
15 filing of this Complaint until resolution of this lawsuit who did not receive their
16 required meal breaks pursuant to the *California Labor Code* and/or applicable
17 orders of the IWC.
- 18 b. A proposed sub-class (*hereinafter* “Rest Period Class”) is defined as: All
19 individuals who have been employed and are currently employed at LOS
20 COMPADRES RESTAURANT, INC., within the relevant time periods prior to the
21 filing of this Complaint until resolution of this lawsuit who did not receive their
22 required rest breaks pursuant to the *California Labor Code* and/or applicable orders
23 of the IWC.
- 24 c. A proposed sub-class (*hereinafter* “Underpaid Class”) is defined as: All individuals
25 who have been and are currently employed at LOS COMPADRES
26 RESTAURANT, INC., within the relevant time periods prior to the filing of this
27 Complaint until resolution of this lawsuit who were not paid full complete and
28 accurate compensation for all hours worked.
- d. A proposed sub-class (*hereinafter* “Gratuities Class”) is defined as: All individuals
who have been and are currently employed at LOS COMPADRES
RESTAURANT, INC., within the relevant time periods prior to the filing of this

1 Complaint until resolution of this lawsuit who were not paid the Gratuities they
2 were entitled to receive.

- 3 e. A proposed sub-class (*hereinafter* “Overtime Class”) is defined as: All individuals
4 who have been and are currently employed at LOS COMPADRES
5 RESTAURANT, INC., within the relevant time periods prior to the filing of this
6 Complaint until resolution of this lawsuit who were not paid full complete and
7 accurate compensation for all overtime worked.
- 8 f. A proposed sub-class (*hereinafter* “Wage Statement Class”) is defined as: All
9 individuals who have been and are currently employed at LOS COMPADRES
10 RESTAURANT, INC., within the relevant time periods prior to the filing of this
11 Complaint until resolution of this lawsuit who were not provided with wage
12 statements to accurately reflect gross wages earned. Specifically, all the hours
13 worked, the overtime and additional hours of pay employees earn for each workday
14 they did not receive a meal and/or rest break. This subclass includes the Class
15 Members whose final paycheck did not accurately reflect gross wages earned.
16 Specifically, all the hours worked, the overtime and additional hours of pay
17 employees earn for each workday they did not receive a meal and/or rest break.
- 18 g. A proposed sub-class (*hereinafter* “Final Paycheck Class”) is defined as: All
19 individuals who were employed at LOS COMPADRES RESTAURANT, INC.,
20 within the relevant time periods prior to the filing of this Complaint until resolution
21 of this lawsuit who did not receive their final paycheck within 72 hours after the
22 final day of work or at the time of their termination.
- 23 h. A proposed sub-class (*hereinafter* “Minimum Wage Class”) is defined as: All
24 individuals who have been and are currently employed at LOS COMPADRES
25 RESTAURANT, INC., within the relevant time periods prior to the filing of this
26 Complaint until resolution of this lawsuit who did not receive at least the minimum
27 wage for all the hours worked.
- 28 i. A proposed sub-class (*hereinafter* “Sick Days Class”) is defined as: All individuals
who have been and are currently employed at LOS COMPADRES
RESTAURANT, INC., within the relevant time periods prior to the filing of this
Complaint until resolution of this lawsuit who worked in California for Defendant

for 30 or more days within a year from the commencement of employment and did not receive paid sick days.

28. The proposed class (*hereinafter* “Class”) shall consist of all individuals found in the following sub-classes: Meal Period Class, Rest Period Class, Underpaid Class, Overtime Class, Wage Statement Class, Gratuities Class, Final Paycheck Class, Minimum Wage Class, and Sick Days Class.

29. All claims alleged herein arise under California law for which Plaintiffs and Class Members seek relief authorized by California law.

30. Excluded from the Class are Defendant(s) in this action, any entity in which Defendant(s) have a controlling interest, any officers, directors, and shareholders of Defendant, and legal representatives, heirs, successors, and assigns of Defendant.

31. There is a well-defined community of interest in this litigation and the Class is easily ascertainable:

Numerosity: The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the Class is unknown to Plaintiffs at this time. However, the Class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendant’s employment records.

Typicality: Plaintiffs are qualified to and will fairly and adequately protect the interests of each Class Member with whom they have a well-defined community of interest, and Plaintiffs’ claims (or defenses, if any), are typical of all Class Members as demonstrated herein.

Adequacy: Plaintiffs are qualified to, and will fairly and adequately protect the interests of each Class Member with whom they have a well-defined community of interest and typicality of claims, as alleged herein. Plaintiffs acknowledge that they have an obligation to the Court to make known any relationship, conflict, or differences with any Class Member. Plaintiffs’ attorneys and proposed Class counsel are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and, throughout the duration of this action, will continue to incur costs and attorneys’ fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

1 Superiority: The nature of this action makes the use of class action adjudication
2 superior to other methods. Class action will achieve economies of time, effort, and
3 expense as compared with separate lawsuits, and will avoid inconsistent outcomes
4 because the same issues can be adjudicated in the same manner and at the same time for
5 the entire class.

- 6 32. There are common questions of law and fact as to the Class (and each subclass, if any),
7 that predominate over questions affecting only individual members, including but not
8 limited to:
- 9 A. Whether Defendant had a policy of not providing uninterrupted statutory mandated rest
10 periods to Plaintiffs and Class Members or compensation for rest periods;
 - 11 B. Whether Defendant had a policy of not providing uninterrupted statutory mandated
12 meal periods to Plaintiffs and Class Members or compensation for meal periods;
 - 13 C. Whether Defendant created schedules in such a manner that made it difficult or
14 impossible for Plaintiffs, and similarly situated Class Members, to take uninterrupted
15 rest periods;
 - 16 D. Whether Defendant created schedules in such a manner that made it difficult or
17 impossible for Plaintiffs, and similarly situated Class Members, to take uninterrupted
18 meal periods;
 - 19 E. Whether Defendant failed to pay Plaintiffs and Class Members for the overtime hours
20 worked during the relevant timeframe;
 - 21 F. Whether Defendant had a policy of requiring Plaintiffs and Class Members to continue
22 working before clocking in and/or after clocking out;
 - 23 G. Whether Defendant failed to pay Plaintiffs and Class Members for the total hours
24 worked during the relevant timeframe;
 - 25 H. Whether Defendant failed to pay Plaintiffs and Class Members for accrued sick pay;
 - 26 I. Whether Defendant failed to keep accurate payroll records, such that accurate wage
27 statements were not issued to Plaintiffs and Class Members;
 - 28 J. Whether Defendant failed to pay Plaintiffs and Class Members an accurate and timely
 final paycheck;
 - K. Whether Defendant failed to pay Plaintiffs and Class Members at least minimum wage
 for all the hours worked;

- 1 L. Whether Defendant improperly retained, converted, appropriated, or deprived Plaintiffs
2 and other Class Members of the use of monies or sums, which Plaintiffs and Class
3 Members were legally entitled to;
- 4 M. Whether Defendant engaged in unfair business practices in violation of California
5 Business and Professions Code §§ 17200, et seq.; and
- 6 N. The appropriate amount of the damages, restitution, or monetary penalties resulting
7 from Defendant's violations of California law.
8

9 **FIRST CAUSE OF ACTION**

10 **Unpaid Missed Rest Breaks (Labor Code § 226.7(a) and IWC Wage Order No. 5-2001**
11 **section 12)**

12 *(By Plaintiffs and Class Members Against all Defendants)*

- 13 33. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
14 herein, the material allegations set out in each and all previous paragraphs of this
15 Complaint.
- 16 34. At all times herein set forth, Labor Code section 218 authorizes an employee to sue
17 directly for any wages or penalty due to him or her under this article of the Labor Code.
- 18 35. At all times herein set forth, Labor Code section 226.7(a) provides that no employer
19 shall require an employee to work during any rest period mandated by an applicable
20 order of the IWC.
- 21 36. The language of IWC Wage Order No. 5-2001 section 12(A) relating to rest periods
22 tracks the language of the Labor Code. (*Code of Regulations*, title 8, section 11070,
23 subd. 11.), which states: "Every employer shall authorize and permit all employees to
24 take rest periods, which insofar as practicable shall be in the middle of each work
25 period. The authorized rest period time shall be based on the total hours worked daily
26 at the rate of ten (10) minutes net rest time per four hours or major fraction thereof.
27 However, a rest period need not be authorized for employees whose total daily work
28 time is less than three and one-half (3 ½) hours. Authorized rest period time shall be
counted as hours worked for which there shall be no deductions from wages".

- 1 37. During the relevant time period, Plaintiffs and Class Members worked more than three
2 and one-half (3 ½) hours per workday, and were not allowed to take paid rest breaks
3 that they were legally entitled to pursuant to IWC Wage Order No. 5-2001 section 12.
4 Defendant's conduct, as alleged herein, violates IWC Wage Order 5-2001 section 12
5 and Labor Code § 226.7(a), which provides that no employer shall require any
6 employee to work during any rest period mandated by an applicable order of the IWC.
- 7 38. Pursuant to Labor Code section 226.7(b), and IWC Wage Order No. 5-2001 section 12
8 (B), Plaintiffs and Class Members are entitled to recover from Defendant one (1)
9 additional hour of pay at Plaintiffs' and Class Members' regular rate of compensation
10 for each work day that a rest period was not provided, for a three-year statutory period
11 dating back from the date of the commencement of this action.

12 **SECOND CAUSE OF ACTION**

13 **Unpaid Missed Meal Breaks (Labor Code §§ 226.7(a) and 512)**

14 *(By Plaintiffs and Class Members Against all Defendants)*

- 15 39. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
16 herein, the material allegations set out in each and all previous paragraphs of this
17 Complaint.
- 18 40. At all times herein set forth, Labor Code section 218 authorizes employees to sue
19 directly for any wages or penalty due to them under this article of the California Labor
20 Code.
- 21 41. At all times herein set forth, Labor Code section 226.7 provides that no employer shall
22 require an employee to work during any meal period mandated by an applicable order
23 of the IWC.
- 24 42. At all times herein set forth, Labor Code section 512(a) provides that an employer may
25 not employ an employee for a work period of more than five (5) hours per day without
26 providing the employee with a meal period of not less than thirty (30) minutes, except
27 that if the total work period per day of the employee is not more than six (6) hours, the
28 meal period may be waived by mutual consent of both the employer and the employee.
43. At all times herein set forth, Labor Code section 512(a) further provides that an
employer may not employ an employee for a work period of more than ten (10) hours
per day without providing the employee with a second meal period of not less than

thirty (30) minutes, except that if the total hours worked is no more than twelve (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.

44. The language of applicable IWC Order, section 11 relating to meal periods tracks the language of the Labor Code. (*Cal. Code Regs.*, tit. 8, section 11090, subd. 11.)
45. Defendant fostered a work environment where the taking of uninterrupted thirty (30) minute meal breaks by its employees was essentially prohibited because Defendants were more concerned about their profit margin, than its own employees' welfare. As such, Plaintiffs and Class Members could not take any thirty (30) minute uninterrupted meal breaks without the risk of being reprimanded or terminated.
46. Because Defendant failed to afford proper meal periods, they are liable to Plaintiffs and Class Members for one hour of additional pay at the regular rate of compensation for each workday that the proper meal periods were not provided, pursuant to Labor Code section 226.7(b) and applicable IWC wage order, section 11(B).
47. By violating Labor Code sections 226.7 and 512, and applicable wage order, section 11, Defendant is also liable to Plaintiffs and Class Members for reasonable attorneys' fees and costs under Labor Code section 218.5.

THIRD CAUSE OF ACTION

Failure to Pay All Overtime Wages Earned (Labor Code §§ 510 and 1194)

(By Plaintiffs and Class Members Against all Defendants)

48. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.
49. At all relevant times during the applicable limitations period, Plaintiffs and Class Members have been non-exempt employees of Defendant and entitled to the benefits of Labor Code sections 510 and 1194 and IWC Wage Order 5-2001, section 3.
50. Section 2(k) of the Wage Order defines hours worked as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."
51. In relevant part, Section 3 of the applicable Wage Order states: (A) Daily Overtime-General Provisions:

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

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

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

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

20 52. Labor Code section 510 states: "Eight hours of labor constitutes a day's work. Any
21 work in excess of eight hours in one workday and any work in excess of 40 hours in
22 any one workweek and the first eight hours worked on the seventh day of work in any
23 one workweek shall be compensated at the rate of no less than one and one-half times
24 the regular rate of pay for an employee. Any work in excess of 12 hours in one day
25 shall be compensated at the rate of no less than twice the regular rate of pay for an
26 employee. In addition, any work in excess of eight hours on any seventh day of a
27 workweek shall be compensated at the rate of no less than twice the regular rate of pay
28 of an employee. Nothing in this section requires an employer to combine more than one
rate of overtime compensation in order to calculate the amount to be paid to an
employee for any hour of overtime work."

- 1 53. With respect to overtime wages, the regular rate of pay under California law must
2 include “all remuneration for employment paid to, on behalf of, the employee.” O.L.
3 2002.06.14 (quoting 29 U.S.C. Section 207(e)). This requirement includes, but is not
4 limited to, commissions and nondiscretionary bonuses. (See *Huntington Memorial*
5 *Hosp. v. Superior Court* (2005) 131 Cal App.4th 893, 904-05.)
- 6 54. Plaintiffs and Class Members were working more than eight hours a day and more than
7 40 hours a week and they were not paid overtime.
- 8 55. Plaintiffs and Class Members have been damaged in a sum to be proven and request
9 relief as described below.

FOURTH CAUSE OF ACTION

Failure to Pay Minimum Wage and Pay for all Wages Earned (Labor Code §§ 204, 1194 and 1197)

(By Plaintiffs and Class Members Against all Defendants)

- 12 56. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
13 herein, the material allegations set out in each and all previous paragraphs of this
14 Complaint.
- 15 57. Labor Code section 204 requires California employers to pay employees for all wages
16 earned.
- 17 58. Defendant failed to compensate Plaintiffs and Class Members for all hours worked,
18 including, but not limited to, the hours worked during their meal and rest breaks, as
19 well as overtime pay, and for which they did not receive the proper compensation under
20 the law.
- 21 59. Plaintiffs and Class Members have been damaged in a sum to be proven and request
22 relief as described below.

FIFTH CAUSE OF ACTION

Failure to Pay All the Gratuities and Unlawful Deduction of Gratuities (Labor Code §§ 200, 221, 350-356)

(By Plaintiffs and Class Members Against all Defendants)

- 26 60. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
27 herein, the material allegations set out in each and all previous paragraphs of this
28 Complaint.

- 1 61. Plaintiffs and Class Members were employees of Defendant who did not receive
2 proper protections and benefits of the laws governing gratuities paid by patrons to
3 employees.
- 4 62. Labor Code § 200 defines wages to include "all amounts for labor performed by
5 employees of every description, whether the amount is fixed or ascertained by the
6 standard of time, task, piece, commission basis, or other method of calculation."
7 Labor Code § 221 states that "[i]t shall be unlawful for any employer to collect or
8 receive from an employee any paid of wages theretofore paid by said employer to
9 said employee."
- 10 63. Labor Code § 350(e) states that" 'Gratuity' includes any tip, gratuity, money, or
11 part thereof that has been paid or given to or left for an employee by a patron of a
12 business over and above the actual amount due the business for services rendered
13 or for goods, food, drink, or articles sold or served to the patron. Any amounts
14 paid directly by a patron to a dancer employed by an employer subject to
15 Industrial Welfare Commission Order No. 5 or 10 shall be deemed a gratuity."
- 16 64. Pursuant to Labor Code § 351, no employer or agent (Defendants), "shall collect,
17 take, or receive any gratuity or a part thereof that is paid, given to, or left for an
18 employee by a patron, or deduct any amount from wages due an employee on
19 account of a gratuity, or require an employee to credit the amount, or any paid
20 thereof, of a gratuity against and as a part of the wages due the employee from the
21 employer. Every gratuity is hereby declared to be the sole property of the
22 employee or employees to whom it was paid, given, or left for. An employer that
23 permits patrons to pay gratuities by credit card shall pay the employees the full
24 amount of the gratuity that the patron indicated on the credit card slip, without
25 any deductions for any credit card payment processing fees or costs that may be
26 charged to the employer by the credit card company. Payment of gratuities made
27
28

1 by patrons using credit cards shall be made to the employees not later than the
2 next regular payday following the date the patron authorized the credit card
3 payment."

4 65. At all relevant times, Defendant deducted credit card processing fees from
5 Plaintiffs' and the Class Members' gratuities left for them by patrons, in violation
6 of California law. Additionally, Plaintiffs and the Gratuities Subclass were often
7 not permitted to leave the premises for rest breaks, in violation of California law.

8 66. Defendant violated Labor Code §§ 221 and 351, every pay period, because
9 Plaintiffs and the Class Members were not provided with all gratuities left for
10 them by patrons.

11 67. At all relevant times herein, Defendant deducted credit card processing fees and
12 costs from gratuities received by Plaintiffs and the Class Members, thereby
13 receiving an economic benefit.

14 68. By their willful deduction of credit card processing fees and costs from the
15 gratuities received by Plaintiffs and the Class Members, Defendant willfully
16 violated Labor Code §§ 221, 350-356. As a result of the Defendant's wrongful
17 conduct, Plaintiffs and the other similarly situated Employees have been
18 damaged in amounts to be proven at trial.

19 69. Also, as a direct result of Defendant's violations of Labor Code §§ 350-356,
20 Defendant, and each of them, are liable to Plaintiffs and the Class Members, for
21 unlawful deduction of gratuities, penalties, costs, and interest.
22

23 **SIXTH CAUSE OF ACTION**

24 ***Failure to Maintain and Produce Accurate Payroll Records***

25 ***(Labor Code §§ 226(a), 1174, 1174.5, 1198 and IWC Wage Order No. 5-2001)***

26 ***(By Plaintiffs and Class Members Against all Defendants)***
27
28

- 1 70. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
2 herein, the material allegations set out in each and all previous paragraphs of this
3 Complaint.
- 4 71. Labor Code section 226(a), applicable IWC such as Wage Order No 5-2001, section
5 7(A), and Labor Code section 1174 require employers to maintain accurate payroll
6 records and to provide semi-monthly or at the time of each payment of wages to furnish
7 each employee with a statement itemizing, among other things, the total hours worked
8 by the employee.
- 9 72. Defendant has violated Labor Code Sections 226(a) and 1174, and applicable IWC
10 wage order such as WO No. 5, section 7(A) by willfully failing to keep required payroll
11 records showing the actual hours worked each day by Plaintiffs and Class Members. As
12 a direct and proximate result of Defendant's failure to maintain payroll records,
13 Plaintiffs and Class Members have suffered economic harm as they have been
14 precluded from accurately monitoring the number of hours worked and thus seeking
15 payment for all missed meal periods and rest breaks.
- 16 73. Plaintiffs requested Defendants to produce their employment and payroll records on
17 2/13/2023 but Defendants refused to produce them.
- 18 74. In 2013, the Legislature amended subdivision (e) of Labor Code section 226, adding
19 language explaining that an "employee is deemed to suffer injury for purposes of this
20 subdivision if the employer fails to provide accurate and complete information as
21 required" by subdivision (a) of that statute, and "the employee cannot promptly and
22 easily determine from the wage statement alone one or more" of several of the required
23 items, including total hours worked, all applicable hourly rates in effect, and the
24 corresponding number of hours worked at each rate. (Lab. Code, § 226, subd.
25 (e)(2)(B).) The amended statute further provides that " 'promptly and easily determine'
26 means a reasonable person would be able to readily ascertain the information without
27 reference to other documents or information." (Lab. Code, § 226, subd. (e)(2)(C).) This
28 provision renders the inquiry an objective one; the amendment "clarifies that injury
arises from defects in the wage statement, rather than from a showing that an individual
experienced harm as a result of the defect." (*Lubin, supra*, 5 Cal.App.5th at p. 959; see
also *Garnett v. ADT, LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1133 ["Whether an

employee suffered injury is based solely on the information provided on the wage statement.”].)

75. Plaintiff has suffered injury and sustained actual damages because the Defendants failed to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone the amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a). Plaintiff cannot determine which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Plaintiff has been damaged in a sum to be proven at trial.
76. Plaintiff and Class Members are also entitled to \$4,000 in damages for Defendants’ violation and being liable for this cause of action, in addition to an award of costs and reasonable attorneys’ fees under Labor Code § 226(e)(1) and \$500 under Labor Code of Labor Code § 1174.5.
77. Plaintiffs and Class Members have been damaged in a sum to be proven and request relief as described below.

SEVENTH CAUSE OF ACTION

Failure to Pay Wages Upon Separation (Labor Code §§ 201-203)

(By Plaintiffs and Class Members Against all Defendants)

78. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.
79. Labor Code sections 201 – 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter; unless the employee had given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with Labor Code sections 201 and 202, then the wages of the employee

shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

80. During the relevant time period, Defendant failed to pay Plaintiffs and Class Members, who are no longer employed by Defendant, Plaintiffs' and Class Members' wages, earned and unpaid, either at the time of discharge, or within seventy-two (72) hours of them leaving Defendant's employ in violation of Labor Code sections 201 – 203.
81. Plaintiffs and Class Members have been damaged in a sum to be proven and request relief as described below.

EIGHTH CAUSE OF ACTION

Failure to Pay for Sick Days (Violation of Labor Code §246(a) and §248.5)

(By Plaintiffs and Class Members Against all Defendants)

82. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.
83. Labor Code section 246(a) provides: (a) (1) An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.
84. Labor Code section 248.5(a) provides for this action and penalties.
85. Defendant failed and refused to pay Plaintiffs and Class Members for their sick days.

NINTH CAUSE OF ACTION

Failure to Reimburse Required Business Expenses

(Labor Code section 2802)

Plaintiffs and Class Members, Against All Defendants)

86. Plaintiffs incorporates by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.
87. Labor Code section 2802 requires an employer to "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties..."
88. Plaintiffs and Class Members had to spend their own money to carry out their duties for Defendant's business, but Defendant failed to accurately reimburse them for these costs.

1 Plaintiffs were required to use their own cell phones to perform their job duties. Plaintiffs
2 were required to buy uniforms and shoes to perform their jobs.

3 89. Plaintiff was not reimbursed for having to spend their own money in carrying out job
4 duties for Defendant such as.

5 90. All said expenses were necessary for Plaintiffs to fulfill her job functions for the
6 Defendants.

7 91. Plaintiffs sought reimbursement of these necessary expenses incurred at Defendant's
8 direction, but Defendants have refused to reimburse and indemnify for Plaintiffs for these
9 expenses.

10 92. Accordingly, for Plaintiffs has been deprived of legally required reimbursement, and
11 Defendant should be liable to for Plaintiffs for these sums, plus attorney's fees, plus
12 interest.

13 93. The monies retained by Defendant should be deemed for Plaintiffs monies, held in trust
14 for Plaintiffs and subject to a proper claim for reimbursement and disgorgement.

15 **TENTH CAUSE OF ACTION**

16 **Violation of California Business & Professions Code § 17200, et seq.**

17 *(By Plaintiffs and Class Members Against all Defendants)*

18 94. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein,
19 the material allegations set out in each and all previous paragraphs of this Complaint.

20 95. California Business & Professions Code Section 17200 prohibits unfair competition in
21 the form of any unlawful, unfair, or fraudulent business act or practice.

22 96. California Business & Professions Code Section 17204 allows "any person acting for
23 the interest of itself, its members or the general public" to prosecute a civil action for
24 violation of the UCL.

25 97. Beginning at an exact date unknown to Plaintiffs and Class Members, but at least four
26 years prior to the filing of this action, Defendant have improperly, fraudulently, and
27 unlawfully failed to provide Plaintiffs and Class Members with meal and rest breaks,
28 failed to provide compensation for the missed meal and rest breaks, failed to provide
compensation for all hours worked and all wages earned, failed to pay compensation
for all over-time hours worked, failed to pay for sick days, and provided Plaintiffs and

1 Class Members with inaccurate wage statements, and have thereby committed
2 unlawful, unfair, and/or fraudulent business acts and practices as defined by California
3 Business & Professions Code Section 17200, by engaging in the
4 following:

- 5 i. Failing and refusing to provide meal periods and rest breaks to Plaintiffs and Class
6 Members;
- 7 ii. Failing to pay all accrued meal period and rest break compensation to Plaintiffs and
8 Class Members;
- 9 iii. Failing to pay all the gratuities Plaintiffs and Class Member were entitled to
10 receives;
- 11 iv. Failing to pay for all hours worked and pay for all overtime compensation and sick
12 days to Plaintiffs and Class Members; and
- 13 v. Failing to maintain accurate payroll record and provide accurate itemized wage
14 statement to Plaintiffs and Class Members.

15 The violation of these laws serve as unlawful, unfair, and/or fraudulent predicate acts
16 and practices for purposes of California Business and Professions Code Section 17200.

17 98. As a direct and proximate result of Defendant's unlawful, unfair, and/or fraudulent acts
18 and practices described herein, Defendant has received and continue to hold ill-gotten
19 gains belonging to Plaintiffs and Class Members. As a direct and proximate result of
20 Defendant's unlawful business practices, Plaintiffs and Class Members have suffered
21 economic injuries including, but not limited to, compensation for missed meal periods
22 and over-time hours worked. Defendant has profited from their unlawful, unfair, and/or
23 fraudulent acts and practices in failing to provide meal period and rest break
24 compensation to Plaintiffs and Class Members, as well as compensation for over-time
25 hours worked.

26 99. Plaintiffs and Class Members are entitled to restitution pursuant to California Business
27 & Professions Code Sections 17203 and 17208 for all meal period and rest break
28 compensation, unpaid wages and interest since four years prior to the filing of this
action.

- 1 100. Plaintiffs and Class Members are entitled to enforce all applicable penalty provisions of
2 the California Labor Code pursuant to California Business & Professions Code Section
3 17202.
- 4 101. Plaintiffs' and Class Members' success in this action will enforce important rights
5 affecting the public interest. In this regard, Plaintiffs and Class Members, sue on behalf
6 of themselves and the general public. Plaintiffs and Class Members seek and are
7 entitled to unpaid compensation, declaratory and injunctive relief, civil penalties, and
8 any other appropriate remedy.
- 9 102. Injunctive relief is necessary and appropriate to prevent Defendant from continuing and
10 repeating their unlawful, unfair and fraudulent business acts and practices alleged
11 above. In order to prevent Defendant from profiting and benefitting from their wrongful
12 and illegal acts and continuing those acts, an order requiring Defendant to disgorge all
13 the profits and gains they have reaped and restore such profits and gains to the Plaintiffs
14 and Class Members, from whom they were unlawfully taken.
- 15 103. Plaintiffs and Class Members have assumed the responsibility of enforcement of the
16 laws and lawful claims specified herein. There is a financial burden incurred in
17 pursuing this action which is in the public interest. Therefore, reasonable attorneys'
18 fees are appropriate pursuant to Cal. Code of Civil Procedure Section 1021.5.
- 19 104. By all of the said foregoing alleged conduct Defendant has committed, and are
20 continuing to commit, ongoing unlawful, unfair and fraudulent business practices
21 within the meaning of Cal. Business & Professions Code Section 17200, et seq.
- 22 105. As a direct and proximate result of the unfair business practices described above,
23 Plaintiffs and Class Members have all suffered significant losses and Defendant has
24 been unjustly enriched.
- 25 106. Pursuant to Cal. Business & Professions Code Section 17203, Plaintiffs and Class
26 Members are entitled to: (a) restitution of money acquired by Defendant by means of
27 their unfair business practices, in amounts not yet ascertained but to be ascertained at
28 trial; (b) injunctive relief against defendant's continuation of their unfair business
practices, and (c) a declaration that defendant's business practices are unfair within the
meaning of the statute.

ELEVENTH CAUSE OF ACTION
Civil Penalties Pursuant to Labor Code § 2699
(PAGA penalties)

(By Plaintiffs, as the representatives of Aggrieved Employees, Against all Defendants)

107. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in previous paragraphs of this Complaint.

108. Plaintiffs on behalf of the people of the State of California and as “Aggrieved Employees” acting as private attorney under the California Labor Code Private Attorneys General Act of 2004, §2698, *et seq.*, brings this action, on a representative basis. All current and former employees of Defendant within one year of serving notice on the LWDA to the present are Aggrieved Employees.

109. Defendants failed to comply with Labor Code requirements due to erroneous, willful and intentional employment practices and policies. Plaintiffs brings this representative action on behalf of themselves, all other similarly situated aggrieved employees, and the State of California, based upon the claims articulated below. Plaintiff provided notice of the claims pursuant to § 2698 *et. seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice period required by 2699.3(a)(2)(B). Accordingly, Plaintiffs now bring this Complaint for civil penalties under the Private Attorneys General Act (“PAGA”), *Labor Code* §2698 *et seq.*

110. As a result of the actions alleged herein, Plaintiffs seek penalties under Labor Code sections 2698 and 2699 because of Defendants’ violation of Labor Code sections 98.6, 201-204, 210, 216, 218.5, 221, 225.5, 223, 226, 226(a), 226(b), 226.2, 226.3, 226.7, 226.8, 233, 234, 246, 256, 510-512, 551-553, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.5, 1198-1199.5 and 2698-2699, 2699.5, 2802 and applicable IWC, which call for civil penalties.

111. Plaintiffs and Aggrieved Parties request for penalties pursuant to Labor Code § 2699:

A. As applicable, for civil penalties under Labor Code § 2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically

provided, in the amount of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation; and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation;

- B. As applicable, civil penalties under Labor Code § 558 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for violations of Labor Code sections 500-556, in the amount of \$50.00 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages, and \$100.00 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;
- C. As applicable, for civil penalties under Labor Code section 1197.1 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for violations of Labor Code sections 1194 and 1197, in the amount of \$100.00 for each underpaid aggrieved employee for each pay period the aggrieved employee was intentionally underpaid in addition to an amount sufficient to recover underpaid wages, and \$250.00 for each subsequent violation for each underpaid aggrieved employees regardless of whether the initial violation was intentionally committed in addition to an amount sufficient to recover underpaid wages;
- D. As applicable, for civil penalties under Labor Code § 210 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each employee who is/was not paid wages in accordance with Labor Code §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5) in the amount of a civil penalty of \$100.00 for each aggrieved employee per pay period for each initial violation, and \$200.00 for each aggrieved employee per pay period for each subsequent violation;
- E. As applicable, for civil penalties under Labor Code § 226.3 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each violation of Labor Code § 226(a), in the amount of \$250.00 for

1 each aggrieved employee per pay period for each violation and \$1,000.00 for
2 each aggrieved employee per pay period for each subsequent violation; and
3 F. As applicable, for any and all additional civil penalties and sums as provided by
4 the Labor Code and/or other relevant statutes.

5 112. In addition, Plaintiffs seek seventy-five percent (75%) of all penalties obtained
6 under Labor Code section 2699 to be allocated to the LWDA, for education of
7 employers and employees about their rights and responsibilities under the Labor
8 Code, and twenty-five percent (25%) to Plaintiff and all other similarly situated
9 aggrieved employees.

10 113. Further, Plaintiffs are entitled to recover reasonable attorneys' fees and costs
11 pursuant to Labor Code section 2699(g)(1) and any other applicable statute.

12 114. Labor Code section 2699.3 provides: "The aggrieved employee or representative
13 shall give written notice by certified mail to the Labor and Workforce Development
14 Agency and the employer of the specific provisions of this code alleged to have
15 been violated, including the facts and theories to support the alleged violation."

16 115. Plaintiffs complied with Labor Code section 2699.3. Written notice was served on
17 Defendant in accordance with the provision of Section 2699.3, on February 13,
18 2023. To date, the California Labor and Workforce Development Agency has not
19 provided Plaintiff with a notice of intent to investigate these violations, and more
20 than 65 days have since passed from the postmark date of the notice provided by
21 Plaintiff. Attached to this complaint as **Exhibit "A"**, is a copy of the proof of
22 mailing. Moreover, Defendant has failed to provide Plaintiff with notice that it has
23 cured the violations, will cure the violations now, or will cure the violations in the
24 future. Consequently, pursuant to Labor Code section 2699.3(a)(2)(A), Plaintiff
25 may proceed and file a complaint for penalties pursuant to Labor Code section 2699.

26 **REQUEST FOR JURY TRIAL**

27 Plaintiffs and Class Members hereby request a trial by jury for all issues so triable.

28 **PRAYER FOR RELIEF**

Plaintiffs and Class Members request:

1. That this action be certified as a class action;

2. That Plaintiffs be appointed as the representative of the Class;
3. That counsel for Plaintiffs is appointed as Class counsel.
4. For general and special compensatory damages, according to proof;
5. For statutory damages;
6. For payments pursuant to Labor Code §§ 226.7, 558;
7. For payments pursuant to California Code of Civil Procedure § 338;
8. For reasonable attorney's fees and for costs of suit incurred herein pursuant to Labor Code §§ 218.5 and 226(e);
9. For pre-judgment interest on any unpaid wages from the date such amounts were due pursuant to Labor Code §§ 200, 221, 350-356, 218.6, 1194, 1197 and any other applicable statute.
10. For civil penalties pursuant to pertinent Labor Code;
11. For the disgorgement of any and all "unpaid wages" and incidental losses, according to proof;
12. For restitution of "unpaid wages" and pre-judgment interest from the day such amounts were due and payable;
13. For reasonable attorney's fees pursuant to *Code of Civil Procedure* § 1021.5;
14. For exemplary and punitive damages;
15. For to injunctive relief including reinstatement, reimbursement of lost wages/benefits;
16. For penalties under Labor Code §§ 2698-2699 and 2699.5;
17. For such other and further relief as the court deems just and proper.

DATED: April 30, 2023

LAW OFFICES OF FARRAH MIRABEL

BY: /s/ Farrah Mirabel
Farrah Mirabel, Esq.
ATTORNEYS FOR PLAINTIFFS

EXHIBIT “A”

Law Offices of
Farrah Mirabel
Fmesq@mirabel.com
1070 Stradella Rd.
Los Angeles, California 90077
Tel (714) 972-0707 Fax (949) 417-1796

February 13, 2023

via CERTIFIED MAIL to DEFENDANT
and ONLINE filing with LWDA

Attn. PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
(510) 286-1362

Los Compadres Mexican Restaurant, Inc.
3229 E Anaheim St,
Long Beach, CA 90804

In Re PAGA NOTICE: Nancy Jaylene Cruz, Gabriela Barboza, Janco Barboza v. Los Compadres Mexican Restaurant

Dear PAGA Administrator:

Our firm represents the interests of **Nancy Jaylene Cruz, Janco Barboza** (Plaintiffs), employees of **Los Compadres Mexican Restaurant** (referred to as the “Defendant”). Plaintiffs were employed by Defendant as follows:

Nancy Jaylene Cruz between Oct 2004, until March 20, 2020, as a server
Janco Barboza, between March 2018, until March 2021 as a busboy

The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* We request that your agency investigate the claims in this letter and the labor code and wage order violations as listed below.

This notice is submitted, at a foundation level, on behalf of the Plaintiffs and all other Defendant’s employees, both current and former, impacted by the alleged Labor Code violations including, *inter alia*, Labor Code sections:

- 1. Violation of Labor Code § 226.7(a) (Missed Rest Breaks);**
- 2. Violation of Labor Code § 226.7, 512 and 1198 (Missed Meal Breaks);**

3. **Violation of Labor Code §1194 & §1197 (Failure to Pay Minimum Wages);**
4. **Violation of Labor Code §510 and 1194, 1198 (Failure to Pay All Overtime Worked);**
5. **Violation of Labor Code § 204 (Failure to Pay All Wages Earned);**
6. **Violation of Labor Code § 226, 1174, 1198.5 and 226, (Failure to Keep Records, Improper Wage Statements and maintain accurate personnel and payroll records);**
7. **Violation of Labor Code § 201-203 (Failure to Pay Wages Upon Separation);**
8. **Violation of Labor Code Sections 1197.5, 1199.5 (paying Hispanic employees from South America, less than other employees);**
9. **Violation of Labor Code § 2802 (Failure To Reimburse Required Business Expenses);**

During the relevant timeframe, Defendant employed Plaintiffs as non-exempt hourly employees. Plaintiffs were employed as laborers to perform various jobs such as groundman, grassman, traffic controller, maintenance etc.

Their superiors, Edgar Torres, and Peter Macias were not allowing them to take any rest breaks for full day of work which lasted minimum of 4 hours. Plaintiffs were hired to work shifts of over four hours, up but were not allowed to take a ten-minute, uninterrupted rest break for each 4 hour shift. Plaintiffs worked during the rest periods either under the direction and supervision of Defendant, or with Defendant's knowledge and consent.

Defendant failed to compensate Plaintiffs at the required rate for each occasion in which Defendant failed to provide rest breaks. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiffs and other employees to take their rest breaks during each of the 4 hour shifts.

Also, during their employment, Plaintiffs did not receive a thirty-minute, uninterrupted, off-duty meal break for every shift they worked that lasted more than five hours. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiffs to take uninterrupted meal breaks every 5 hours. When they were working more than 10 hours, they never got a second meal break either. Also, Plaintiffs' meal breaks were interrupted by their superiors.

Plaintiffs and other employees received wages and wage statements which did not account for all the hours worked and did not account for the premiums due to employees for the missed breaks, nor accounted for overtime pay for hours employees worked. When Plaintiffs worked more than 40 hours a week, they were not paid over time for all the hours worked more than 40 hours per week.

Therefore, Plaintiffs claim that Defendant did not provide them and all other past and present employees with uninterrupted rest and meal breaks. Defendant is understaffed and

cannot possibly provide its employees including Plaintiffs with their statutory breaks. Furthermore, Plaintiffs claim that the past and present employees did not receive an hour of premium pay, for each missed break, for all days they did not receive a proper rest or meal break. As a result, Defendant failed to pay its employees for all wages earned.

Defendant failed to maintain accurate payroll records, such that Plaintiffs were given wage statements which were inaccurate and Plaintiffs were not paid for all their wages and overtime compensation.

Defendant did not issue an accurate final paycheck to Plaintiffs in accordance with the timeframes prescribed by law.

Plaintiffs claim on their own behalf and also on behalf of all past and present employees that they worked in excess of statutory hours per week and did not receive compensation for all the hours worked and were not paid overtime.

Plaintiffs claim that because Defendant did not properly compensate its employees for all the hours worked, did not pay for an hour of pay, for each missed break, for all days they did not receive a proper rest and meal break, and failed to pay them overtime for all hours worked, the employees' wage statements did not accurately reflect all the hours worked and the wages earned. As such, Plaintiffs claim that Defendant provided all its past and present employees with improper wage statements.

Plaintiffs claim that Defendant intentionally discriminated against them and other employees because they are Hispanic immigrant, non sophisticated laborers from Southern America with no knowledge of labor law and Defendant purposefully hires them to exploit them and take advantage of them by underpaying their wages, without getting accurate overtime payment. Plaintiffs were discouraged from taking sick days and were told that if they needed sick days, they had to prove it by having medical proof.

Moreover, Defendant failed to pay timely accurate paycheck upon the separation of the employees. Therefore, Plaintiffs also claim a violation of Labor Code section 201-203 on behalf of all employees who stopped working for the Defendant.

Plaintiffs claim that Defendant's conduct, as stated herein, including not keeping track of actual working hours and meal periods, not paying its employees all wages owed, including wages for all hours worked, overtime, missed rest and meal breaks, and not providing its employees with accurate wage statements, not paying timely paycheck upon the separation of the employee, has been unfair, unlawful, and harmful to all its past and present employees, including Plaintiffs, and to the general public. As such, this letter is written to comply with the notice and reporting requirements of Labor Code section 2699.3.

In connection with his PAGA claims, Plaintiffs seek PAGA penalties from at least one year prior to the date of this Notice and ongoing (the "PAGA Period"). Plaintiffs seek to represent the following groups of aggrieved employees:

a. The “Aggrieved Employees”:

All non-exempt individuals who are or were California residents for state tax purposes and who are or were employed by Defendants as hourly employees in the State of California and who worked one or more shifts of (3.5) hours or longer during the PAGA Period.

i. The “Overtime Aggrieved Employees”:

All Aggrieved Employees who worked more than 8 hours in a workday or more than 40 hours in a workweek for Defendants during the PAGA Period;

ii. The “Rest Break Aggrieved Employees”:

All Aggrieved Employees who did not receive their duty free rest break from Defendants during the PAGA Period;

iii. The “Meal Break Aggrieved Employees”:

All Aggrieved Employees who did not receive their duty free meal break from Defendants during the PAGA Period;

iv. The “Wage Statement Aggrieved Employees”:

All Aggrieved Employees who were issued one or more wage statements from Defendants during the PAGA Period;

v. The “Waiting Time Penalty Aggrieved Employees”:

All Aggrieved Employees whose employment with Defendants terminated during the PAGA Period;

vi. The “Reimbursement Aggrieved Employees”:

All Aggrieved Employees who did not receive reimbursement for work-related personal cell-phone expenses from Defendants and payment for Aggrieved employees’ such as boots, helmets, gloves and ear plugs during the PAGA Period

DEFENDANT’S OVERTIME VIOLATIONS

Labor Code § 510 provides that any work in excess of eight hours on any day, as well as all hours worked on the seventh consecutive day of a workweek, shall be compensated at the rate of no less than 1.5 times the regular rate of pay. See also Section 3(A) of IWC Wage Order No. 16.

Here, Defendant hired Plaintiffs and the Overtime Aggrieved Employees to work as laborers in California and to work on various projects of Defendants. Plaintiffs and the Overtime Aggrieved Employees often worked more than 8 hours and over 40 hours per week. In fact, Plaintiffs and the Aggrieved Employees submitted daily and weekly time

logs showing daily overtime. The same time records also show that Plaintiffs and the Overtime Aggrieved Employees routinely worked over 40 hours per week. Despite these records, Defendants' wage statements issued to Plaintiffs and the Aggrieved Employees intentionally misstated and under-reported hours worked in a misguided attempt to cover up this failure to pay overtime.

Concerning Labor Code section 510 and Section 3(A) of IWC Wage Order, Defendant did not accurately pay Plaintiffs and the Overtime Aggrieved Employees any overtime wages corresponding to one and a half time of Plaintiffs and the Overtime Aggrieved Employees' hourly rates of pay. Plaintiffs and the Overtime Aggrieved Employees often worked eight hours per day and often worked over 40 hours per week. Defendant violated Labor Code § 510 by failing to pay Plaintiffs and Aggrieved Employees their overtime wages at the applicable overtime rates, including daily overtime and weekly overtime, and instead merely paid Plaintiffs and the Overtime Aggrieved Employees straight time wages for all hours worked.

DEFENDANTS' REST PERIOD VIOLATIONS

Under California law, employees are entitled to ten minute duty free rest breaks for each 4 hours of work, or major fraction thereof. See the applicable IWC Wage Order, Section 12 and Labor Code section 226.7.

Under Labor Code § 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time or the proper timing for rest breaks called for under the law (as specified in the applicable Wage Order), "it has violated the wage order and is liable." The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

Here, Plaintiffs and the Rest Break Aggrieved Employees were not provided their first timely ten- minute duty-free rest break. Furthermore, because Defendant was understaffed, Plaintiffs and the Rest Break Aggrieved Employees were under time pressures to finish their work-related tasks on time, which was often rest break-preclusive.

DEFENDANTS' MEAL BREAK VIOLATIONS

Section 512 of the Labor Code and Section 11 of the applicable IWC Wage Order state that California employers must provide 30-minute duty-free meal breaks on or before the

5th and 10th hour of employees shifts. California employers are obligated to keep records of meal breaks taken pursuant to Section 7(A) of the applicable IWC Wage Order.

Here, Plaintiffs and the Meal Break Aggrieved Employees were not provided their first timely thirty- minute duty-free meal break. Furthermore, because Defendant was understaffed, Plaintiffs and the Meal Break Aggrieved Employees were under time pressures to finish their work-related tasks on time, which was often full thirty minute meal break-preclusive.

DEFENDANTS' WAGE STATEMENT VIOLATIONS

Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...; and,
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Due to, *inter alia*, Defendants' failure to pay Plaintiffs and the other Wage Statement Aggrieved Employees accurate overtime payments and rest and meal break premiums, the wage statements issued by Defendants to Plaintiffs and the other Wage Statement Aggrieved Employees do not indicate the correct amount of gross wages earned, total hours worked, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

Defendants' violation of Labor Code § 226 was knowing and intentional. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiffs or other employees paid on commission" even though it believed that employees paid solely on commission or commission and salary "are exempt and therefore we do not record hours on a wage statement").

Defendants' failure to furnish accurate itemized wage statements has caused Plaintiffs and the other Wage Statement Aggrieved Employees to incur economic damages in that they were not aware that they were owed and not paid compensation for their time spent on overtime work and statutory rest and meal breaks. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to the employee to add up the daily hours shown on the time cards or other records so that the employee must perform arithmetic computations to determine the total hours worked during the pay period, the requirements of section 226 would not be met"); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by not including, inter alia, total hours worked giving rise to claims under both Section 226 and for PAGA penalties); *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949, 960-961 (2005) (reversing summary judgment for defendants where wage statements did not "give an accurate report of the hours plaintiff worked, at least not on its face"); Labor Code § 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the gross or net wages earned by the employee during the pay period).

Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury.

Aggrieved Employees will prevail on their claim for PAGA penalties under Labor Code § 226(a). *See Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, "all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed above."); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that "for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury."); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) ("Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.").

Further and in addition to the penalties outlined above, Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." As explained in detail above, Defendants failed to provide Plaintiffs and the other Wage Statement Aggrieved Employees with accurate itemized wage statements. Accordingly, Defendants are additionally liable for Labor Code § 226.3 penalties for their violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 ["the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim."]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) ("Lab. Code §

226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties.”).¹

DEFENDANTS’ FAILURE TO PAY WAGES ON A TIMELY BASIS

Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

Due to Defendants’ failure to pay Plaintiffs and the other Wage Statement Aggrieved Employees for overtime wages, rest period premiums owed,² Defendants violated Labor Code § 204 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail

¹ *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D.Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326, *18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7–9, 2011 WL 2434043; *Willis v. Xerox Bus. Servs., LLC* (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

² Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5’”); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to be considered “wages” for purposes of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7, 2013) 2013 WL 4038617, at *3–4 [distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay wages...can be based on amounts owed under section 226.7.”). The issue is currently before the California Supreme Court in the *Naranjo* case. *See Naranjo v. Spectrum Security Services, Inc.*, Cal. Supreme Court Case No. S258966.

above, Plaintiffs and the other Aggrieved Employees are entitled to recover penalties under Labor Code § 210 through PAGA.

DEFENDANT’S FAILURE TO REIMBURSE BUSINESS EXPENSES

Pursuant to Labor Code § 2802(a) “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer....” The purpose of this statute is “to prevent employers from passing their operating expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (quoting legislative history from the 2000 amendment to the statute). Labor Code Section 2802(c) also clarifies that “the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

Specifically, under Labor Code § 2802, employers must reimburse employees for required work-related use of personal cell phones, regardless of whether they incur any additional out-of-pocket expense from that work-related use. *See Cochran v. Schwan’s Home Service*, 228 Cal. App. 4th 1137 (2014) (reversing denial of class certification in cell phone reimbursement class action). *Cochran* held that “[i]f an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all. . . . It is irrelevant whether the employee changed plans to accommodate work-related cell phone usage. . . . To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed.” *Id.* at 1144-45 (emphasis added); *see also Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs’ motion for partial summary judgment on the plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

The employer’s obligation to reimburse business-related expenses arises when the employer “knew or should have known” that its employees have incurred a business-related expense. *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Wilson v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan Illston) (adopting the “knew or should have known” standard from *RadioShack*). Notably, these claims are not waivable per Section 2804 of the Labor Code.

Under Labor Code § 2802, where, as here, an employer expects Plaintiffs and the Reimbursement Aggrieved Employees to use their cell phone for work, their vehicle mileage, and to buy or use other items such as boots, helmet, gloves, ear plugs then Defendant must reimburse employees.

Accordingly, Defendant violated Labor Code § 2802 and continue to do so by failing to reimburse Plaintiffs and all other Reimbursement Aggrieved Employees for all work-related charges they incurred in connection with their job duties. By failing to reimburse Plaintiffs and the Reimbursement Aggrieved Employees for their personal expenses incurred for work-related purposes, Defendant violated Labor Code § 2802, as well as the applicable IWC Wage Order.

DEFENDANT'S FAILURE TO PAY ALL WAGES DUE UPON TERMINATION

Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

Due to Defendant's faulty policies described above, including its failure to pay for overtime wages and rest period premiums, Defendants violated Labor Code § 203, for those employees whose employment ended within the last one year and ongoing (i.e., the Waiting Time Aggrieved Employees) by willfully failing to pay them all wages due upon the termination of their employment. Moreover, Plaintiffs and the Reimbursement Aggrieved Employees did not receive their last paystub within 72 hours of their termination.

This notice is hereby given to and is made against Defendants, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors managers, managing agents, or entities who are or may be liable under law for any of those alleges violations as to any locations or employees who worked at any time in the state of California. Plaintiffs can be contacted through their attorney of record:

Farrah Mirabel, Esq.
LAW OFFICES OF FARRAH MIRABEL
1070 Stradella Rd.
Los Angeles, California 90077

Plaintiffs and other similarly situated individuals, past and present employees, may also be entitled to penalties pursuant to Labor Code section 2699, et seq.

On behalf of Plaintiffs, and all other past and present employees, our office will be filing a civil complaint against Defendant, alleging the above causes of action including PAGA claim and request damages pursuant to but not limited to the following labor code sections ***98.6, 201-205, 210, 216, 218.5, 221, 225.5, 223, 226.2, 226.3, 226.7, 233, 234, 246, 246.5, 510-512, 551-553, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.1, 1198-1199.5, 2802 and 2698-2699, 2699.5 and 2802 and applicable IWC.***

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action (and a class action) against Defendant seeking, *inter alia*, PAGA penalties under Labor Code § 2699, to be brought by the Plaintiffs individually, on a class basis, and on behalf of the Aggrieved Employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the putative class and the aggrieved employees. If Defendant is interested in attempting to resolve this matter, including the PAGA claims, please have counsel contact us by **March 13, 2023**, so that we may discuss an informal discovery plan and the possibility of early mediation.

Very truly yours,

LAW OFFICES OF FARRAH MIRABEL
/s/ Farrah Mirabel
Farrah Mirabel, Esq.

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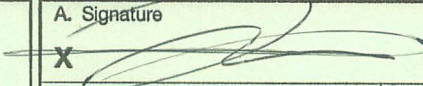
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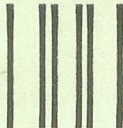
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