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Assigned for All Purposes
Judge Randall Sherman
Dept. CX105

Attorneys for Plaintiff,
TEODORO MOLINA PENALOSA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
(UNLIMITED JURISDICTION)

TEODORO MOLINA PENALOSA,

Plaintiff,

vs.

2751 WEST COAST ACQUISITION
COMPANY, LLC, a California Limited
Liability Company; and DOES 1 to 25,
inclusive,

Defendant(s).

Case No.: 30-2023-01336739-CU-OE-CXC

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 Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 5) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 6) Failure to Provide Personnel Records;
- 7) Failure to Provide Pay Records;
- 8) Civil Penalties (Lab. Code §§ 2698, *et seq.*);
- 9) Retaliation Under Labor Code Section 1102.5;
- 10) Retaliation Under Labor Code Section 6310;
- 11) Negligent Hiring, Retention, Supervision, & Training;
- 12) Wrongful Termination in Violation of Public Policy; and

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

JURY TRIAL DEMANDED

COMES NOW Plaintiff, TEODORO MOLINA PENALOSA (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 2751 WEST COAST ACQUISITION COMPANY, LLC, and DOES 1-25, inclusive (collectively “WEST COAST” or “Defendants”).

JURISDICTION AND VENUE

2. Jurisdiction and venue are proper in this Court and this action is properly filed in the County of Orange because Defendants 2751 WEST COAST ACQUISITION COMPANY, LLC and DOES 1-25, inclusive, do business in the County of Orange and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Orange is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

THE PARTIES

3. Plaintiff TEODORO MOLINA PENALOSA is a resident of Orange County, California. 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 2751 WEST COAST ACQUISITION COMPANY, LLC is and was a California limited liability company, doing business in Orange County, and which employed Plaintiff. As such, it is a citizen of California based on Plaintiff’s information and belief.

5. The “Aggrieved Employees” are all current and former non-exempt or hourly

1 paid employees who worked for Defendants in California during the relevant time period
2 pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys
3 General Act of 2004 (“PAGA”).

4 6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
5 participation in the conduct alleged herein, of the defendants sued as DOES 1-25, inclusive, but
6 is informed and believes and thereon alleges that said defendants are legally responsible for the
7 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
8 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE
9 defendants when ascertained.

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

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

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

24 **GENERAL ALLEGATIONS**

25 10. WEST COAST first began to employ Plaintiff as a cook over fourteen (14)
26 years ago to work at its Billy’s At The Beach restaurant in Newport Beach, California. WEST
27 COAST terminated Plaintiff’s employment on or around February 1, 2023. Towards the latter
28 part of his employment, Plaintiff generally worked Wednesdays from 4:00 p.m. to 10:00-10:30

1 p.m. and Thursdays/Fridays from approximately 9:00 a.m. to 4:00 p.m. Plaintiff was also
2 scheduled to work Thursdays 9:00 a.m. to 9:00 p.m.

3 11. At all relevant times, WEST COAST issued wages to Plaintiff and the other
4 Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times,
5 WEST COAST classified Plaintiff and all of the other Aggrieved Employees as non-exempt
6 employees entitled to the protections of the Labor Code and the Wage Order. Plaintiff's latest
7 rate of pay was approximately \$22.00 per hour.

8 12. WEST COAST failed to pay Plaintiff and the other Aggrieved Employees for
9 all time worked or subject to its control. Plaintiff and the other Aggrieved Employees worked
10 "off the clock" in that the company had a policy and practice of rounding down work hours
11 which led to Plaintiff and others not being paid for all hours worked, which would include the
12 minimum wage. Moreover, to the extent employees such as Plaintiff and others worked
13 through their meal periods and those meal periods were interrupted, they were not
14 compensated for that time, which would be akin to a minimum wage violation.

15 13. Due to the above "off the clock" violations, WEST COAST failed to pay
16 Plaintiff and the Aggrieved Employees properly-calculated overtime wages. The Aggrieved
17 Employees' actual work hours, which included the "off the clock" work as described above,
18 entitled them to overtime, however, it was not company policy to keep accurate track of all
19 hours worked and to pay employees the accurate amount of overtime, especially since the "off
20 the clock" work was not factored into the equation. Furthermore, any incentive payments
21 and/or bonus payments were not factored into employees' regular rate of pay for purposes of
22 deciphering the correct overtime rate of pay, premium wages for missed meal and rest breaks,
23 and sick leave wages.

24 14. WEST COAST failed to provide all compliant meal periods and authorize and
25 permit all compliant rest periods to which Plaintiff and the other Aggrieved Employees were
26 entitled. Plaintiff and the other Aggrieved Employees were entitled to take off-duty,
27 uninterrupted 30-minute meal periods before the fifth and tenth hours of work and to take
28 uninterrupted 10-minute rest periods for every four hours or major fraction thereof worked.

1 Due to the workload, Plaintiff and the Aggrieved Employees would not be able to take timely,
2 uninterrupted meal periods before the 5th hour worked. When Plaintiff was able to take a meal
3 period, his meal breaks were often interrupted by supply/produce deliveries to the restaurant,
4 as he would have to check the packages and sign the delivery papers. Similarly, Plaintiff and
5 the other Aggrieved Employees were not able to take their 10-minute rest breaks due to the
6 work load/ press of business. During his 14-year employment tenure, Plaintiff never took rest
7 breaks. On information and belief, WEST COAST did not always provide premium wages for
8 these meal and rest break violations; if WEST COAST did provide premium wages, they were
9 not paid at the correct rate, as explained above.

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

13 16. WEST COAST did not provide Plaintiff and the other Aggrieved Employees
14 accurate, itemized wage statements. Wage statements must include all hours worked, overtime
15 hours worked, all applicable hourly rates, the correct legal name and correct address of
16 employer entity, gross wages earned, all deductions, net wages earned, reimbursement for
17 business expenses, the correct start and end of the applicable pay period, the employee ID
18 numbers or social security numbers, among other items. Labor Code § 226(a)(2). WEST
19 COAST issued wage statements that inaccurately reflected total hours worked, gross and net
20 wages earned, and the number of hours worked at each hourly rate because of WEST
21 COAST's failure to properly pay wages as explained herein. Labor Code §§ 226(a)(1), (2),
22 (5), (9). WEST COAST's failure to maintain accurate records as to the hours worked daily by
23 employees also constitutes a violation of Labor Code section 1174(d).

24 17. Finally, because WEST COAST did not properly pay all wages earned as
25 explained herein, WEST COAST also failed to pay final wages owed to Plaintiff and the other
26 Aggrieved Employees in violation of Labor Code section 203. These earned but unpaid wages
27 include minimum wages and compensation for all hours worked, overtime compensation, and
28 premium pay for missed meal and rest breaks, among others.

18. Moreover, WEST COAST failed to provide paid sick leave to Plaintiff and the other Aggrieved Employees in violation of Labor Code sections 233 and 246. In or around December 2022, Plaintiff became sick with Covid-19 and asked the chef, Roberto Luna, if he could use his sick days and get his sick days paid. However, on information and belief, WEST COAST did not pay Plaintiff for these sick days.

19. WEST COAST has also violated Labor Code section 558 and engaged in business practices which violate Business and Professions Code Section 17200.

20. During Plaintiff's employment tenure, one of the chefs at the restaurant, Roberto Luna, would allow the cooks and other back of the house employees to drink alcohol while working/cooking. Such unlawful and unsafe working conditions made Plaintiff very uncomfortable. In fact, on or around January 19, 2023, when Plaintiff was concerned and unhappy with the other cooks drinking, chef Roberto Luna became upset with Plaintiff and told Plaintiff to go home. Plaintiff reported his concerns regarding the on-the-job drinking and complained to his supervisor, sous chef Bartolo Hernandez. Plaintiff complained to Bartolo Hernandez on January 26, 2023 and January 27, 2023. Bartolo Hernandez told Plaintiff that he couldn't do much about the situation. Not surprisingly, on or around February 1, 2023, Bartolo Hernandez called Plaintiff and informed him that Roberto Luna had made the decision to terminate Plaintiff's employment and that he would not be going back to work anymore. Plaintiff, a 14- year employee with a positive performance record, was hastily terminated from his unemployment and was not provided with a reason for his termination. Any justification offered by WEST COAST was and is pretextual as WEST COAST unequivocally had the required retaliatory animus.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

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

(By Plaintiff against all Defendants)

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

22. At all relevant times, Plaintiff was a non-exempt employee of Defendants and

1 entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198,
2 and the Wage Order.

3 23. Wage Order 5-2001, section 2(K) defines “hours worked” as “the time during
4 which an employee is subject to the control of an employer, and includes all the time the
5 employee is suffered or permitted to work, whether or not required to do so.”

6 24. Section 3 of the Wage Order states:

7 (A) Daily Overtime - General Provisions

8 (1) The following overtime provisions are applicable to
9 employees 18 years of age or over and to employees 16 or
10 17 years of age who are not required by law to attend
11 school and are not otherwise prohibited by law from
12 engaging in the subject work. Such employees shall not
13 be employed more than eight (8) hours in any workday or
14 more than 40 hours in any workweek unless the employee
15 receives one and one-half (1 ½) times such employee’s
16 regular rate of pay for all hours worked over 40 hours in
17 the workweek. Eight (8) hours of labor constitutes a day’s
18 work. Employment beyond eight (8) hours in any
19 workday or more than six (6) days in any workweek is
20 permissible provided the employee is compensated for
21 such overtime at not less than:

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

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

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

25. Section 4 of the Wage Order requires an employer to pay non-exempt employees

1 at least the minimum wage set forth therein for all hours worked, which consist of all hours that
2 an employer has actual or constructive knowledge that employees are working.

3 26. Labor Code section 510 states:

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

13 27. California Labor Code § 1194 invalidates any agreement between an employer
14 and an employee to work for less than the minimum wage required under the applicable Wage
15 Order.

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

19 29. California Labor Code § 1198 makes it unlawful for an employer to employ an
20 employee under conditions that violate the Wage Order.

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

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

32. As described more fully above, Defendants failed to pay all minimum, regular, and overtime wages to Plaintiff because Defendants 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.

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

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

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(Lab. Code §§ 226.7 and 1198)

(By Plaintiff against all Defendants)

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

36. 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, 1198, and the Wage Order.

37. 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.”

38. 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 of ten (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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

employee's regular rate of compensation for each workday that the meal period is not provided.

49. 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.

50. 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.

51. 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.

52. 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.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(California Labor Code Section 226)

(By Plaintiff against all Defendants)

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

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

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

1 California Labor Code Section 226(a).

2 56. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover
3 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
4 violation occurs and one hundred dollars (\$100) per employee for each violation in a
5 subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000),
6 plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of
7 action pursuant to the 1-year period immediately preceding the date this lawsuit was filed.

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

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

16 **FIFTH CAUSE OF ACTION**

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

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

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

20 59. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

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

26 62. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
27 informed, believes, and thereon alleges, that all times relevant during the applicable limitations
28 period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours

1 worked, including the minimum wage, overtime hours, and premium pay for missed meal and
2 rest breaks.

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

7 64. 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.

10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE PERSONNEL RECORDS**

12 **(Plaintiff against Defendants)**

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

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

18 67. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the
19 employer shall make the contents of those personnel records available for inspection to the
20 current or former employee, or his or her representative, at reasonable intervals and at
21 reasonable times..." On information and belief, Defendants intentionally failed to provide
22 Plaintiff with personnel records when requested by Plaintiff via letter on April 3, 2023, as
23 required by law. Plaintiff requested his personnel records in accordance with California Labor
24 Code section 1198.5(k) on April 3, 2023 via certified U.S. mail.

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

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

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE PAY RECORDS

(Plaintiff against all Defendants)

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

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

72. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.” On information and belief, Defendants intentionally failed to provide Plaintiff with pay records when requested by Plaintiff via letter, on April 3, 2023, and as required by law. Plaintiff requested his pay records in accordance with California Labor Code section 226 on April 3, 2023, via U.S. certified mail. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his pay records within 21 days.

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

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

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1 **EIGHTH CAUSE OF ACTION**

2 **CIVIL PENALTIES**

3 **(Lab. Code §§ 2698, et seq.)**

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

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

6 76. 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 77. During the applicable time period, Defendants violated California Labor Code
13 §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 246.5, 510, 512, 558, 1102.5, 1174, 1194, 1197,
14 1198, and 6310.

15 78. 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 79. 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, 233, 246, 246.5, 510,
21 512, 558, 1102.5, 1174, 1194, 1197, 1198, and 6310 during the applicable limitations period in
22 the 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, 233,
16 246, 246.5, 1194, and 1198, 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: an amount not
23 to exceed \$10,000 for each violation by Defendants of California Labor Code § 1102.5(b), as
24 well as attorney's fees and costs under Labor Code § 2699(g) (penalty amounts established by
25 California Labor Code § 1102.5(f)).

26 80. Plaintiff has complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letter dated April 3, 2023, Plaintiff filed written notices
28 online with the Labor and Workforce Development Agency ("LWDA") and gave written notice

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

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

10 **NINTH CAUSE OF ACTION**

11 **RETALIATION**

12 **(Lab. Code § 1102.5)**

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

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

15 83. According to Labor Code section 1102.5, subdivision (b),

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

22 84. Defendants were employers for purposes of California law.

23 85. Plaintiff was an employee of Defendants, performing work on behalf of
24 Defendants.

25 86. During his employment tenure, Plaintiff reported his concerns about workplace
26 safety, and specifically, his concerns regarding on-the-job drinking. Defendants retaliated
27 against Plaintiff for his complaints by terminating his position in violation of Labor Code §
28 1102.5.

87. 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.

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

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

TENTH CAUSE OF ACTION

RETALIATION

(Lab. Code § 6310)

(By Plaintiff against all Defendants)

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

91. At all times material to this Complaint, California Labor Code § 6310 was in effect and binding on Defendants. California Labor Code section 6310 prohibits employers from firing or discriminating against any employee because the employee has informed their employer about unsafe working conditions.

92. As discussed fully above, Plaintiff complained to Defendants about unsafe working conditions at the workplace.

93. Defendants willfully and/or with reckless indifference violated California Labor Code section 6310 by retaliating against Plaintiff for complaining of unsafe working conditions.

94. As a direct and proximate result of the aforementioned acts and omissions of

1 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
2 loss of income (past and future), loss of employment benefits (past and future), general and
3 compensatory damages (past and future), mental pain and anguish and emotional distress (past
4 and future), and will continue to suffer in the future, in an amount to be proved at trial.

5 95. Pursuant to Labor Code Section 6310, Defendants are liable for statutory
6 damages, including reimbursement for lost wages and work benefits.

7 96. Defendants' conduct described herein was undertaken, authorized and/or ratified
8 by Defendants' officers, directors and/or managing agents. The aforementioned conduct of said
9 officers, directors and/or managing agents and individuals was therefore undertaken on behalf
10 of Defendants.

11 97. Defendants committed the acts herein alleged maliciously, fraudulently, and
12 oppressively in conscious disregard for Plaintiff's rights, and Plaintiff is entitled to recover
13 punitive damages from Defendants in an amount according to proof.

14 98. As a result of the conduct of Defendants and each of them, Plaintiff was forced
15 to retain an attorney in order to protect his rights.

16 99. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff is entitled to recover
17 civil penalties for Defendants' violations of Labor Code section 6310.

18 100. Plaintiff further demands reasonable attorney's fees and costs pursuant to Labor
19 Code section 2699, subdivision (g)(1).

20 **ELEVENTH CAUSE OF ACTION**

21 **NEGLIGENT HIRING, RETENTION, SUPERVISION, AND TRAINING**

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

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

25 102. Defendants owed a duty of care to Plaintiff to appoint, hire, retain, supervise,
26 and train persons who would furnish a place of employment that is safe and healthful for the
27 employees therein. Defendants owed a duty of care to Plaintiff not to retain managers or
28 employees who would retaliate against employees for engaging in protected activities.

1 Defendants owed a duty of care to Plaintiff to supervise their managers and employees closely
2 to ensure that they would provide a safe working environment and refrain from retaliating
3 against Plaintiff. Defendants owed a duty of care to Plaintiff to train their managers and
4 employees not to engage in retaliation.

5 103. As described above, Defendants breached these duties. Chef Roberto Luna
6 would allow the cooks and other back of the house employees to drink alcohol while
7 working/cooking. Sous chef Bartolo Hernandez informed Plaintiff that he could not do much
8 about this situation after Plaintiff reported his concerns regarding the on-the-job drinking to
9 him. WEST COAST retaliated against Plaintiff by terminating his employment after Plaintiff
10 reported his concerns about on-the-job drinking. As a result, Defendants caused damages to
11 Plaintiff.

12 104. As a proximate cause of Defendants' negligent hiring, retention, supervision,
13 and training of their managers and employees, Plaintiff has suffered and continues to suffer
14 damages, including losses of earnings and benefits, according to proof.

15 **TWELFTH CAUSE OF ACTION**

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

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

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

20 106. The state and federal statutes recited below embody fundamental, substantial,
21 and well-established public policies of the United States and State of California. By terminating
22 Plaintiff, Defendants violated these fundamental, substantial, and well-established public
23 policies:

24 A. According to Labor Code section 1102.5, subdivision (b), an employer
25 shall not retaliate against an employee for disclosing information to a person with authority
26 over the employee who has the authority to correct the violation if the employee has
27 reasonable cause to believe that the information "discloses a violation of state or federal
28 statute, or a violation of or noncompliance with a local, state, or federal rule or regulation."

1 B. California Labor Code section 6310 prohibits employers from firing or
2 discriminating against any employee because the employee has informed their employer about
3 unsafe working conditions.

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

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

14 **THIRTEENTH CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

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

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

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

19 110. At all relevant times during the applicable limitations period, Plaintiff has been
20 an employee of Defendants and entitled to the benefits and protections of the Business and
21 Professions Code §§ 17200, *et seq.*

22 111. Defendants engaged in unfair competition by failing to pay employees for all
23 hours worked at the correct rates of pay and pay their employees premium wages for workdays
24 during which one or more meal or rest periods were not provided, among others.

25 112. The unlawful conduct of Defendants alleged herein amounts to and constitutes
26 unfair competition within the meaning of California Business & Professions Code §§ 17200,
27 *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have
28 unfairly gained a competitive advantage over other comparable companies doing business in

1 California that comply with their legal obligations to, among other things, pay their employees
2 premium wages for workdays in which they did not provide employees with one or more meal
3 and rest periods, pay them all wages earned, and refrain from retaliatory practices and prevent
4 retaliation.

5 113. As a result of Defendants' unfair competition as alleged herein, Plaintiff has
6 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiff for all
7 hours worked, failed to provide him with premium wages for missed meal and rest periods,
8 and retaliated against him in violation of Labor Code sections 1102.5/6310.

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

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

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

18 **PRAYER FOR RELIEF**

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

- 20 1. For compensatory damages including lost past and future wages, commissions, and all
21 other sums of money, including employment benefits, together with interest on said
22 amounts, and any other economic injury to Plaintiff, according to proof;
- 23 2. For general damages according to proof;
- 24 3. For special and consequential damages to the extent allowed by law;
- 25 4. For punitive and exemplary damages against Defendant 2751 WEST COAST
26 ACQUISITION COMPANY, LLC in an amount subject to proof;
- 27 5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
28 subject to proof at trial;

- 1 6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
- 2 7. proof at trial;
- 3 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
- 4 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 5 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
- 6 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 7 10. For maximum civil penalties available under the Labor Code and applicable Wage
- 8 Order against Defendants as described more particularly in the Complaint;
- 9 11. For restitution and disgorgement for all unfair business practices by Defendant 2751
- 10 WEST COAST ACQUISITION COMPANY, LLC against Plaintiff in an amount
- 11 according to proof;
- 12 12. For an order enjoining Defendant 2751 WEST COAST ACQUISITION COMPANY,
- 13 LLC from further unfair and unlawful business practices in violation of Business and
- 14 Professions Code Sections 17200, et seq.;
- 15 13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor
- 16 Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated
- 17 damages, damages, penalties, and waiting time penalties according to proof to the
- 18 extent permitted by law;
- 19 14. For the imposition of civil penalties and/or statutory penalties;
- 20 15. For all interest as allowed by law;
- 21 16. For all costs and disbursements incurred in this suit;
- 22 17. Reasonable attorney's fees where available by law, including but not limited to,
- 23 pursuant to, Code of Civil Procedure section 1021.5, Labor Code section 1102.5(j),
- 24 and/or other applicable laws; and

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18. For such other and further relief as this Court may deem proper.

DEMAND FOR JURY TRIAL

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

Dated: July 17, 2023

MM LAW, APC

By Maralle Messreliah

Maralle Messreliah, Esq.

Attorney for Plaintiff,

TEODORO MOLINA PENALOSA