

MARALLE MESSRELIAN (SBN 316974)
maralle@mmlawapc.com

MM LAW, APC
500 N. Central Ave., Ste 840
Glendale, CA 91203
Telephone (818) 810-7747
Facsimile (818) 230-9018

Attorneys for Plaintiffs,
HUMBERTO CASTILLO and ALEX AGUILAR

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Superior Court of California,
County of San Diego

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO-NORTH DIVISION
(UNLIMITED JURISDICTION)

HUMBERTO CASTILLO and ALEX
AGUILAR,

Plaintiffs,

vs.

DDA LEUCADIA INC. d/b/a
LE PAPAGAYO, a California corporation;
DARRIN CAMPBELL JR., an individual;
and DOES 1 to 50, inclusive,

Defendant(s).

Case No.: 37-2023-00038363-CU-OE-NC

COMPLAINT FOR DAMAGES FOR:

- 1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 6) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203);
- 7) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 8) Civil Penalties (Lab. Code §§ 2698, *et seq.*);
- 9) Retaliation Under Labor Code Section 1102.5;
- 10) Wrongful Termination in Violation of Public Policy; and
- 11) Unfair Competition (Bus. & Prof. Code, § 17200 *et seq.*)

JURY TRIAL DEMANDED

1 COME NOW Plaintiffs, HUMBERTO CASTILLO (“CASTILLO”) and ALEX
2 AGUILAR (“AGUILAR”) (hereafter “Plaintiffs”), and complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiffs bring this action based on alleged violations of the California Labor
5 Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), the
6 Business and Professions Code, and public policy against DDA LEUCADIA INC. d/b/a LE
7 PAPAGAYO, a California corporation; DARRIN CAMPBELL JR., an individual; and DOES
8 1 to 50, inclusive, (collectively “LE PAPAGAYO” or “Defendants”).

9 **JURISDICTION AND VENUE**

10 2. Jurisdiction and venue are proper in this Court and this action is properly filed
11 in the North County of San Diego because Defendants DDA LEUCADIA INC. d/b/a LE
12 PAPAGAYO, DARRIN CAMPBELL JR., and DOES 1-50, inclusive, do business in the
13 North County of San Diego and because Defendants’ obligations and liabilities arise therein,
14 and because the work that was performed by Plaintiffs in the North County of San Diego is the
15 subject of this action. Moreover, Plaintiffs’ damages sought herein exceed \$25,000.

16 **THE PARTIES**

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

21 4. Plaintiff AGUILAR is a resident of the city of San Diego. At all relevant times,
22 Plaintiff Aguilar was an “employee” within the meaning of Title 8 California Code of
23 Regulations Section 11050 and an “Aggrieved Employee” within the meaning of Labor Code
24 Section 2699(c).

25 5. Defendant DDA LEUCADIA INC. d/b/a LE PAPAGAYO is a corporation
26 organized and existing under the laws of California and a citizen of California based on
27 Plaintiffs’ information and belief.

28 6. Defendant DARRIN CAMPBELL JR. is a citizen of California based on

1 Plaintiffs' information and belief.

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

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

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

12 8. Based on Plaintiffs' information and belief, Defendant DARRIN CAMPBELL
13 JR. is a natural person, and an owner, director, officer, and/or managing agent of DDA
14 LEUCADIA INC. d/b/a LE PAPAGAYO, who directly or indirectly, or through his agent,
15 employed or exercised control over the wages, hours, or working conditions of Plaintiffs and
16 the Aggrieved Employees (defined below). Therefore, he is liable to Plaintiffs and the
17 Aggrieved Employees for his violations of, or causing Defendants to violate, Labor Code
18 sections 203, 226, 226.7, 1194, and 2802 pursuant to Labor Code section 558.1.

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

23 10. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
24 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
25 are informed and believe and thereon allege that said defendants are legally responsible for the
26 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
27 Plaintiffs will amend the Complaint to allege the true names and capacities of the DOE
28 defendants when ascertained.

11. Plaintiffs are informed and believe and thereon allege that, at all relevant times
herein, all Defendants were the agents, employees and/or servants, masters or employers of the
remaining Defendants, and in doing the things hereinafter alleged, were acting within the

1 course and scope of such agency or employment, and with the approval and ratification of each
2 of the other Defendants.

3 12. Plaintiffs are informed and believe and thereon allege that each and every one
4 of the acts and omissions alleged herein were performed by, and/or are attributable to, all
5 Defendants, each acting as agents and/or employees, and/or under the direction and control of
6 each of the other Defendants, and that said acts and failures to act were within the course and
7 scope of said agency, employment, and/or direction and control.

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

12 **GENERAL ALLEGATIONS**

13 14. LE PAPAGAYO first began to employ Plaintiff CASTILLO as a cook on or
14 around January 27, 2017 to work at its restaurant in Encinitas, California. CASTILLO's latest
15 rate of pay was \$23.00 per hour. CASTILLO generally worked Monday, Tuesday, and Friday
16 to Sunday from 4:00 p.m. to 10:00 p.m. LE PAPAGAYO terminated CASTILLO's
17 employment on or around April 16, 2023.

18 15. LE PAPAGAYO first began to employ Plaintiff AGUILAR as a cook on or
19 around February 6, 2016 to work at its restaurant in Encinitas, California. AGUILAR's latest
20 rate of pay was \$23.00 per hour. AGUILAR generally worked five days a week, Wednesday
21 through Sunday, from 4:00 p.m. to 10:00 p.m. LE PAPAGAYO terminated AGUILAR's
22 employment on or around April 16, 2023.

23 16. At all relevant times, LE PAPAGAYO issued wages to Plaintiffs and all of the
24 other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant
25 times, LE PAPAGAYO classified Plaintiffs and all of the other Aggrieved Employees as non-
26 exempt employees entitled to the protections of the Labor Code and the Wage Order.

27 17. LE PAPAGAYO failed to pay Plaintiffs and the other Aggrieved Employees for
28 all time worked or subject to its control. Plaintiffs and the other Aggrieved Employees worked

1 “off the clock” in that the company had a policy and practice of rounding down work hours
2 which led to Plaintiffs and others not being paid for all hours worked, which would include the
3 minimum wage. Moreover, at all relevant times, LE PAPAGAYO required Plaintiffs and the
4 Aggrieved Employees to perform work while clocked-out and failed to compensate them for
5 this time. LE PAPAGAYO instructed Plaintiffs and the Aggrieved Employees to perform
6 necessary work duties after they clocked-out for the day, including but not limited to cleaning
7 their stations, organizing the utensils and ingredients they had been using, and sweeping the
8 floor. On information and belief, Plaintiffs’ supervisor, Benjamin Contreras Garcia, has at
9 times instructed Plaintiffs to clock out and continue working to help out the staff, especially on
10 Fridays when it was busier. LE PAPAGAYO failed to compensate Plaintiffs and the Aggrieved
11 Employees for this work performed off-the-clock. Moreover, to the extent the Aggrieved
12 Employees worked through their meal periods and those meal periods were interrupted, they
13 were not compensated for that time, which would be akin to a minimum wage violation.

14 18. Due to the above “off the clock” violations, LE PAPAGAYO failed to pay
15 Plaintiffs and the Aggrieved Employees properly-calculated overtime wages. The Aggrieved
16 Employees’ actual work hours, which included the “off the clock” work as described above,
17 entitled them to overtime, however, it was not company policy to keep accurate track of all
18 hours worked and to pay employees the accurate amount of overtime, especially since the “off
19 the clock” work was not factored into the equation. Furthermore, any incentive payments
20 and/or bonus payments were not factored into employees’ regular rate of pay for purposes of
21 deciphering the correct overtime rate of pay, premium wages for missed meal and rest breaks,
22 and sick leave wages per *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

23 19. LE PAPAGAYO failed to provide all compliant meal periods and authorize and
24 permit all compliant rest periods to which Plaintiffs and the other Aggrieved Employees were
25 entitled. Due to the workload and failure to hire sufficient staff members, Plaintiffs and the
26 Aggrieved Employees would not be able to take a timely, uninterrupted, 30-minute off-duty
27 meal period within the first five hours of work. Similarly, Plaintiffs and the other Aggrieved
28 Employees were not able to take their 10-minute rest breaks due to the work load. During their

1 7-year employment tenure, Plaintiffs never clocked out for meal periods and never took rest
2 breaks. In fact, Plaintiffs were so busy that they barely had time to use the restroom on most
3 days. Rest breaks were never offered to Plaintiffs and Plaintiffs' supervisor, Benjamin
4 Contreras Garcia, would get angry if Plaintiffs wanted to take rests during their shifts. Meal and
5 rest breaks were definitively not part of LE PAPAGAYO's culture, especially in a fast-paced
6 restaurant environment. On information and belief, LE PAPAGAYO did not always provide
7 premium wages for these meal and rest break violations; if LE PAPAGAYO did provide
8 premium wages, they were not paid at the correct rate, as explained above.

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

12 21. LE PAPAGAYO failed to reimburse Plaintiffs and the other Aggrieved
13 Employees for business expenses they incurred in direct consequence of the discharge of their
14 duties. At all relevant times, LE PAPAGAYO required Plaintiffs and the Aggrieved Employees
15 to use their personal mobile phones to perform their job duties but did not reimburse them for
16 their mobile phone expenses, nor did they provide them with mobile phones as an alternative.
17 Due to frequent last-minute changes in the work schedule, LE PAPAGAYO's management
18 frequently contacted Plaintiffs and the Aggrieved Employees on their personal mobile phones
19 to coordinate their work hours.

20 22. LE PAPAGAYO did not provide Plaintiffs and the other Aggrieved Employees
21 accurate, itemized wage statements. Wage statements must include all hours worked, overtime
22 hours worked, all applicable hourly rates, the correct legal name and correct address of
23 employer entity, gross wages earned, all deductions, net wages earned, reimbursement for
24 business expenses, the correct start and end of the applicable pay period, the employee ID
25 numbers or social security numbers, among other items. Labor Code § 226(a)(2). LE
26 PAPAGAYO issued wage statements that inaccurately reflected total hours worked, gross and
27 net wages earned, and the number of hours worked at each hourly rate because of LE
28 PAPAGAYO's failure to properly pay wages as explained herein. Labor Code §§ 226(a)(1),

1 (2), (5), (9). LE PAPAGAYO's failure to maintain accurate records as to the hours worked
2 daily by employees also constitutes a violation of Labor Code section 1174(d).

3 23. Finally, because LE PAPAGAYO did not properly pay all wages earned as
4 explained herein, LE PAPAGAYO also failed to pay final wages owed to Plaintiffs and the
5 other Aggrieved Employees in violation of Labor Code section 203. These earned but unpaid
6 wages include minimum wages and compensation for all hours worked, overtime
7 compensation, and premium pay for missed meal and rest breaks, among others.

8 24. LE PAPAGAYO has also violated Labor Code section 558 and engaged in
9 business practices which violate Business and Professions Code Section 17200.

10 25. Plaintiffs would also have individual claims against LE PAPAGAYO for
11 retaliation in violation of Labor Code sections 1102.5 and wrongful termination in violation of
12 public policy. Both CASTILLO and AGUILAR complained to management, specifically to
13 supervisor Benjamin Contreras Garcia, about not receiving tips. CASTILLO and AGUILAR
14 believed that the back-of-the-house employees should be receiving a share of the tips and that
15 LE PAPAGAYO was violating California law, especially since they had been informed that
16 cooks, dishwashers, and other back-of-the-house employees at other restaurants received a
17 share of the tips. On or around April 16, 2023, shortly after Plaintiffs had voiced their concerns
18 about not receiving tips, LE PAPAGAYO terminated both CASTILLO's and AGUILAR's
19 employment.

20 **FIRST CAUSE OF ACTION**

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

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

23 **(By Plaintiffs against all Defendants)**

24 26. Plaintiffs incorporate all paragraphs of the Complaint as if fully alleged herein.

25 27. At all relevant times, Plaintiffs were non-exempt employees of Defendants and
26 entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198,
27 and the Wage Order.

28 28. Section 2(K) of the Wage Order defines "hours worked" as "the time during

1 which an employee is subject to the control of an employer, and includes all the time the
2 employee is suffered or permitted to work, whether or not required to do so.”

3 29. Section 3 of the Wage Order states:

4 (A) Daily Overtime - General Provisions

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

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

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

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

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

1 31. Labor Code section 510 states:

2 Eight hours of labor constitutes a day's work. Any work in excess
3 of eight hours in one workday and any work in excess of 40
4 hours in any one workweek and the first eight hours worked on
5 the seventh day of work in any one workweek shall be
6 compensated at the rate of no less than one and one-half times the
7 regular rate of pay for an employee. Any work in excess of 12
8 hours in one day shall be compensated at the rate of no less than
9 twice the regular rate of pay for an employee. In addition, any
10 work in excess of eight hours on any seventh day of a workweek
11 shall be compensated at the rate of no less than twice the regular
12 rate of pay of an employee. Nothing in this section requires an
13 employer to combine more than one rate of overtime
14 compensation in order to calculate the amount to be paid to an
15 employee for any hour of overtime work.

16 32. California Labor Code § 1194 invalidates any agreement between an employer
17 and an employee to work for less than the minimum wage required under the applicable Wage
18 Order.

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

22 34. California Labor Code § 1198 makes it unlawful for an employer to employ an
23 employee under conditions that violate the Wage Order.

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

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

 37. As described more fully above, Defendants failed to pay all minimum, regular,

1 overtime, and double time wages to Plaintiffs because Defendants paid wages based on rounded
2 times, did not pay for off-the-clock work, and failed to pay overtime and double time wages
3 based on correct regular rates of pay.

4 38. As a result of Defendants' unlawful conduct, Plaintiffs have suffered damages in
5 an amount, subject to proof, to the extent that they were not paid the full amount of wages
6 earned during each pay period during the applicable limitations period, including minimum,
7 overtime, and double-time wages.

8 39. As a result of Defendants' conduct, Plaintiffs seek damages and/or restitution for
9 unpaid wages which Defendants failed to pay them at the rates set forth herein, interest thereon,
10 and costs of suit and reasonable attorney's fees pursuant to California Labor Code §§ 1194.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PROVIDE REST BREAKS**

13 **(Lab. Code §§ 226.7 and 1198)**

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

15 40. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

16 41. At all relevant times during the applicable limitations period, Plaintiffs were
17 non-exempt employees of Defendants and entitled to the benefits and protections of California
18 Labor Code §§ 226.7, 1198, and the Wage Order.

19 42. Labor Code § 1198 states,

20 "The maximum hours of work and the standard conditions of labor
21 fixed by the commission shall be the maximum hours of work and the
22 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."

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

24 Rest Periods:

25 (A) Every employer shall authorize and permit all employees
26 to take rest periods, which insofar as practicable shall be in the
27 middle of each work period. The authorized rest period time
28 shall be based on the total hours worked daily at the rate often
(10) minutes net rest time per four (4) hours or major fraction
thereof. However, a rest period need not be authorized for
employees whose total daily work time is less than three and

one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

44. 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.

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

46. Defendants failed to authorize and permit Plaintiffs 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.

47. As a result of Defendants' unlawful conduct, Plaintiffs have suffered damages in an amount subject to proof to the extent they were not paid additional wages owed for all rest breaks not provided to them.

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

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THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(Lab. Code §§ 226.7, 512, and 1198)
(By Plaintiffs against all Defendants)

49. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

50. At all relevant times during the applicable limitations period, Plaintiffs were non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

51. 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.”

52. In relevant part, Labor Code Section 512 states
“An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee...
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the

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

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

55. During the relevant time period, Defendants failed to provide Plaintiffs 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.

56. As a result of Defendants' unlawful conduct, Plaintiffs have suffered damages in an amount subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

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

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

(By Plaintiffs against all Defendants)

58. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

59. At all relevant times, Plaintiffs were non-exempt employees of Defendants and entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802, and the Wage Order.

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

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

61. California Labor Code § 1198 prohibits employers from employing their

1 employees under conditions prohibited by the Wage Order.

2 62. At all relevant times during the applicable limitations period, Defendants
3 required Plaintiffs to use their own personal cell phone to communicate with management
4 concerning work matters. However, Defendants did not Plaintiffs for their mobile phone
5 expenses.

6 63. Plaintiffs are informed and believe and thereon allege that, at all relevant times,
7 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
8 Defendants' failure to indemnify Plaintiffs for the reasonable expenses they incurred in the
9 course of performing their duties.

10 64. By reason of the above, Plaintiffs are entitled to reimbursement for all necessary
11 expenditures and losses and interest due and owing to them within three years (3) of the date of
12 the filing of the Complaint until the date of entry of judgment pursuant to California Labor
13 Code § 2802(b). Further, Plaintiffs seek reasonable attorney's fees pursuant to Labor Code §
14 2802(c).

15 **FIFTH CAUSE OF ACTION**

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

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

18 **(By Plaintiffs against all Defendants)**

19 65. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

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

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

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

69. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs have sustained damages, including loss of earnings, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiffs are entitled to recover penalties, in an amount to be established at trial, as well as costs and attorney's fees pursuant to statute.

70. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

SIXTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201-203)

(By Plaintiffs against all Defendants)

71. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

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

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

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

1 for failure to pay an employee owed wages.

2 75. After Plaintiffs' employment with Defendants ended, Defendants willfully
3 refused and continue to refuse to pay their unpaid wages as required by Labor Code Section
4 203.

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

9 77. Under this cause of action, Plaintiffs also pray for attorney's fees and costs
10 under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages
11 as set forth herein. Plaintiffs also pray for interest under California Labor Code Section 218.6.

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

15 **SEVENTH CAUSE OF ACTION**

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

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

18 **(By Plaintiffs against all Defendants)**

19 79. Plaintiffs incorporate all paragraphs of this complaint as if fully alleged herein.

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

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

25 82. Defendants failed to pay Plaintiffs all wages earned each pay period. Plaintiffs
26 are informed, believe, and thereon allege, that all times relevant during the applicable
27 limitations period, Defendants maintained a policy or practice of not paying Plaintiffs wages
28 for all hours worked, including the minimum wage, overtime hours, double time hours, and

1 premium pay for missed meal and rest breaks.

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

6 84. Under this cause of action, Plaintiffs pray for penalties due under the statutes
7 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
8 proof at trial.

9 **EIGHTH CAUSE OF ACTION**

10 **CIVIL PENALTIES**

11 **(Lab. Code §§ 2698, *et seq.*)**

12 **(By Plaintiffs against all Defendants)**

13 85. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

14 86. Plaintiffs are Aggrieved Employees under the Private Attorneys General Act
15 of 2004 ("PAGA") because they were employed by Defendants during the applicable statutory
16 period and suffered one or more of the violations of the Labor Code set forth in this Complaint.
17 Plaintiffs seek to recover on their own behalf, on behalf of the State of California, and on
18 behalf of all current and former Aggrieved Employees of Defendants, the civil penalties
19 provided by PAGA, plus reasonable attorney's fees and costs.

20 87. During the applicable time period, Defendants violated California Labor Code
21 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1102.5, 1174, 1194, 1197, 1198, and
22 2802.

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

26 89. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the
27 Aggrieved Employees are entitled to recover civil penalties for each of the Defendants'
28 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1,

1 1102.5, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the
2 following amounts:

3 A. For violations of California Labor Code § 204, one hundred dollars
4 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
5 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
6 established by California Labor Code § 210).

7 B. For violations of California Labor Code § 226(a), two hundred fifty
8 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
9 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
10 established by California Labor Code § 226.3).

11 C. For violations of California Labor Code §§ 510, 512, and 558.1, fifty
12 dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars
13 (\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
14 established by California Labor Code § 558).

15 D. For violations of California Labor Code § 1174, five hundred dollars
16 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
17 California Labor Code § 1174.5).

18 E. For violations of California Labor Code § 1197, one hundred dollars
19 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
20 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation,
21 per pay period (regardless of whether the initial violations were intentionally committed)
22 (penalty amounts established by California Labor Code § 1197.1).

23 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
24 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period
25 for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per
26 pay period for each subsequent violation (penalty amounts established by California Labor
27 Code § 2699(f)(2)).

28 G. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs individually

1 are entitled to recover civil penalties for each of the Defendants' violations of California Labor
2 Code §1102.5 during the applicable limitations period in the following amounts: For violations
3 of California Labor Code § 1102.5, an amount not to exceed \$10,000 for each violation by
4 Defendants of California Labor Code § 1102.5(b)(c), as well as attorney's fees and costs under
5 Labor Code § 2699(g) (penalty amounts established by California Labor Code § 1102.5(f)).

6 90. Plaintiffs have complied with the procedures for bringing suit specified in
7 California Labor Code § 2699.3. By letter dated May 9, 2023, Plaintiffs filed written notice
8 online with the Labor and Workforce Development Agency ("LWDA") and gave written notice
9 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
10 to have been violated, including the facts and theories to support the alleged violations.
11 Plaintiffs accompanied their LWDA notice with a fee in the amount of \$75.00. The LWDA has
12 failed to take action in response within 65 calendar days of the date of Plaintiffs' notice.

13 91. Pursuant to California Labor Code § 2699(g), Plaintiffs and the Aggrieved
14 Employees are entitled to an award of civil penalties and reasonable attorney's fees and costs in
15 connection with their claims for civil penalties.

16 **NINTH CAUSE OF ACTION**

17 **RETALIATION**

18 **(Lab. Code § 1102.5)**

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

20 92. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

21 93. According to Labor Code section 1102.5, subdivision (b),

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

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1 94. This statute reflects the broad public policy interest in encouraging workplace
2 whistleblowers to report unlawful acts without fearing retaliation.

3 95. Defendants were employers for purposes of California law.

4 96. Plaintiffs were employees of Defendants, performing work on behalf of
5 Defendants.

6 97. During their employment tenure, Both CASTILLO and AGUILAR complained
7 to management, specifically to supervisor Benjamin Contreras Garcia, about not receiving
8 tips. CASTILLO and AGUILAR believed that the back-of-the-house employees should be
9 receiving a share of the tips, and that LE PAPAGAYO was violating California law, especially
10 since they had been informed that cooks, dishwashers, and other back-of-the-house employees
11 at other restaurants received a share of the tips.

12 98. Defendants retaliated against Plaintiffs for their complaints by terminating their
13 employment.

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

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

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

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1 8. These laws inure to the benefit of the public at large, and not just the private interests of the
2 employers and employees whom they govern or protect.

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

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

13 **ELEVENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

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

16 **(By Plaintiffs against Defendant DDA LEUCADIA INC.)**

17 111. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

18 112. At all relevant times during the applicable limitations period, Plaintiffs have
19 been employees of Defendants and entitled to the benefits and protections of the Business and
20 Professions Code §§ 17200, *et seq.*

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

25 114. 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, refrain from
2 retaliatory practices and prevent retaliation, pay their employees premium wages for workdays
3 in which they did not provide employees with one or more meal and rest periods, indemnify
4 them for all business expenses incurred during the course of performing their duties, including,
5 but not limited to, mobile phone expenses, and pay them all wages earned.

6 115. As a result of Defendants' unfair competition as alleged herein, Plaintiffs have
7 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiffs for all
8 hours worked, failed to provide them with premium wages for missed meal and rest periods,
9 and failed to reimburse Plaintiffs for all expenses they incurred in the course of performing
10 their duties.

11 116. Pursuant to California Business & Professions Code § 17203, Plaintiffs are
12 entitled to restitution of all monies rightfully belonging to them that Defendants did not pay
13 them or otherwise retained by means of their unlawful and unfair business practices.

14 117. Plaintiffs are entitled to reasonable attorneys' fees in connection with their
15 unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the
16 substantial benefit doctrine and/or the common fund doctrine.

17 118. Accordingly, with respect to this cause of action, Plaintiffs pray for the herein
18 stated relief, and an award of all reasonable costs and attorneys' fees, including interest
19 thereon, as permitted by law, all in amounts subject to proof.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs pray for relief and judgment against Defendants as follows:

- 22 1. For compensatory damages including lost past and future wages, commissions, and all
23 other sums of money, including employment benefits, together with interest on said
24 amounts, and any other economic injury to Plaintiffs, according to proof;
- 25 2. For general damages according to proof;
- 26 3. For special and consequential damages to the extent allowed by law;
- 27 4. For punitive and exemplary damages against Defendant DDA LEUCADIA INC. in an
28 amount subject to proof;

- 1 5. For damages and penalties under Labor Code Section 226 for Plaintiffs in an amount
- 2 subject to proof at trial;
- 3 6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
- 4 7. proof at trial;
- 5 8. For one hour of wages due to Plaintiffs for each work period of more than five (5) hours
- 6 when Plaintiffs did not receive an uninterrupted thirty (30) minute meal period;
- 7 9. For one hour of wages due to Plaintiffs for each work period of four (4) hours or major
- 8 fraction thereof when Plaintiffs did not receive a ten (10) minute rest break;
- 9 10. For maximum civil penalties available under the Labor Code and applicable Wage
- 10 Order against Defendants as described more particularly in the Complaint;
- 11 11. For restitution and disgorgement for all unfair business practices by Defendant DDA
- 12 LEUCADIA INC. against Plaintiffs in an amount according to proof;
- 13 12. For an order enjoining Defendant DDA LEUCADIA INC. from further unfair and
- 14 unlawful business practices in violation of Business and Professions Code Sections
- 15 17200, et seq.;
- 16 13. For all remedies available to Plaintiffs under the applicable Wage Order and the Labor
- 17 Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated
- 18 damages, damages, penalties, and waiting time penalties according to proof to the
- 19 extent permitted by law;
- 20 14. For the imposition of civil penalties and/or statutory penalties;
- 21 15. For all interest as allowed by law;
- 22 16. For all costs and disbursements incurred in this suit;
- 23 17. Reasonable attorney's fees where available by law, including but not limited to,
- 24 pursuant to, Code of Civil Procedure section 1021.5, Labor Code section 1102.5(j),
- 25 and/or other applicable laws; and

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

2 **DEMAND FOR JURY TRIAL**

3 Plaintiffs hereby demand as a matter of right, a trial by jury in this case.

4
5 Dated: September 5, 2023

MM LAW, APC

6
7 By Maralle Messrelian
8 Maralle Messrelian, Esq.
9 Attorney for Plaintiffs,
10 HUMBERTO CASTILLO and
11 ALEX AGUILAR
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