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**SUPERIOR COURT OF CALIFORNIA**

**SAN DIEGO COUNTY**

|                                      |   |                                      |
|--------------------------------------|---|--------------------------------------|
| MARCO ATEMPA, an individual,         | ) | CASE NO.: 37-2023-00035964-CU-OE-CTL |
|                                      | ) |                                      |
| Plaintiff,                           | ) | COMPLAINT FOR DAMAGES:               |
|                                      | ) |                                      |
| v.                                   | ) | 1. FAILURE TO PAY WAGES              |
|                                      | ) | 2. FAILURE TO TIMELY FURNISH         |
| PINO'S FOODS LLC; GIUSEPPE PINO      | ) | ACCURATE ITEMIZED WAGE               |
| BOTTALICO, an individual; and DOES 1 | ) | STATEMENTS                           |
| through 50, inclusive,               | ) | 3. UNFAIR BUSINESS PRACTICES         |
|                                      | ) | 4. WAITING TIME PENALTIES PER        |
| Defendants.                          | ) | LABOR CODE §203                      |
|                                      | ) | 5. MEAL AND REST PERIOD              |
|                                      | ) | VIOLATIONS                           |
|                                      | ) | 6. FAILURE TO TIMELY PROVIDE A       |
|                                      | ) | COPY OF PAYROLL RECORDS AND          |
|                                      | ) | EMPLOYEE FILE AND FAILURE TO         |
|                                      | ) | MAINTAIN ACCURATE TIME               |
|                                      | ) | RECORDS                              |
|                                      | ) | 7. PRIVATE ATTORNEYS GENERAL         |
|                                      | ) | ACT OF 2004 ("PAGA") PER LABOR       |
|                                      | ) | CODE §2699, et seq.                  |

[IMAGED FILE]

1 Plaintiff MARCO ATEMPA, an individual (hereinafter “Plaintiff”) alleges as follows:

2 **GENERAL ALLEGATIONS**

3 The public policy of California declares:

4 It is the public policy of this state to vigorously enforce minimum labor standards in  
5 order to ensure employees are not required or permitted to work under substandard  
6 unlawful conditions or for employers that have not secured the payment of compensation  
7 and to protect employers who comply with the law from those who attempt to gain a  
8 competitive advantage at the expense of their workers by failing to comply with  
9 minimum labor standards.

10 (Labor Code §90.5 subd. (a).)

11 Despite this clear mandate, DEFENDANTS blatantly violated the California Labor Code  
12 and the Industrial Welfare Commission (“IWC”) Wage Orders. Defendants willfully failed to  
13 pay all mandated minimum and overtime wages, failed to provide meal and rest periods and  
14 failed to pay meal and rest period premiums, paid the employees in cash under the table, and  
15 failed to provide and maintain proper employee records to their employees.

16 1. This lawsuit is brought in response to the Defendants’ refusal to pay Plaintiff and  
17 the other aggrieved employees all wages and premium wages that they earned during their  
18 employment with Defendants, failed to fully relieve them of their duties during their meal and  
19 rest periods, failed to provide them with proper records, among other Labor Code violations.

20 2. The acts complained of herein have occurred within the time period from four (4)  
21 years preceding the filing of the original Complaint herein (hereinafter, the “Relevant Time  
22 Period”).

23 **JURISDICTION AND VENUE**

24 3. The Superior Court of the State of California for the County of San Diego has  
25 jurisdiction over this case due to the fact that some of the alleged violations (a) of California  
26 Labor Code (i.e. §§ 200 et seq.), (b) California Business and Professions Code §§ 17200 et seq.  
27 and (c) related common law violations occurred in the County of San Diego.  
28

1           4.       Venue is proper in Central Division of San Diego County Superior Court pursuant  
2 to Code of Civil Procedure §395(a) and §395.5, because *inter alia*, (a) the Defendants' and  
3 Defendant corporation's businesses are situated in this County and liabilities claimed occurred in  
4 this County, and (b) complaints regarding such issues may be filed in the Central Division.  
5

6                               **PARTIES**

7           5.       Plaintiff MARCO ATEMPA is an individual over the age of eighteen (18) and  
8 was an employee of Defendants during the last 4 years.

9           6.       Plaintiff is informed and believes that Defendant PINO'S FOODS LLC is a  
10 California Limited Liability Company that owns and operates VENETOS ITALIAN  
11 RESTAURANT, and at all times mentioned herein operated its businesses within the jurisdiction  
12 of this Court.  
13

14           7.       Plaintiff is informed and believes that Defendant GIUSEPPE PINO BOTTALICO  
15 is an individual who during the relevant time period has owned, managed and operated and  
16 continues to own, manage and operate PINO'S FOODS LLC, and who at all times mentioned in  
17 this Complaint herein resided within the jurisdiction of this Court. GIUSEPPE PINO  
18 BOTTALICO was and remains a person acting on behalf of PINO'S FOODS LLC, on  
19 information and belief as the owner, member, managing agent, and director of PINO'S FOODS  
20 LLC, who violated and/or who caused to violate various Labor Code sections and other  
21 provisions regulating hours and days of work established by the Industrial Welfare Commission  
22 of the State of California rendering him individually liable pursuant to Labor Code Sections 558,  
23 558.1, 1197.1, and 2699 et. seq. In addition, GIUSEPPE PINO BOTTALICO is an officer,  
24 director, and person acting either individually or as a managing agent, who paid or caused to be  
25 paid the Plaintiff and the other aggrieved employees a wage less than the minimum, regular,  
26 and/or overtime rate of pay under the law, paying in cash under the table, failed to relieve them  
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1 of duties during their meal and rest periods, and failed to provide accurate records, or by an order  
2 of the commission and is therefore subject to a civil penalty, restitution of wages payable to the  
3 employee, and any applicable wages, damages and penalties plus fees and costs imposed  
4 pursuant to Labor Sections 203, 558, 558.1, and 2699 et. seq.

5  
6 8. DOES 1 to 50, inclusive are now, and/or at all times mentioned in this Complaint  
7 were licensed to do business and/or actually doing business in the State of California. Plaintiff  
8 does not know the true names or capacities, whether individual, partner or corporate, of DOES 1  
9 to 50, inclusive and for that reason, DOES 1 to 50 are sued under such fictitious names pursuant  
10 to California Code of Civil Procedure (“CCP”) §474. Plaintiff will amend this Complaint to  
11 allege such names and capacities as soon as they are ascertained.

12  
13 9. Plaintiff is informed and believes and thereon alleges that DOES 1 to 50,  
14 inclusive, are former co-employers and/or joint employers of Plaintiff.

15 10. Plaintiff is informed and believes and thereon alleges that DOES 1 to 50,  
16 inclusive, are successors in interest to Defendants or are otherwise obligated to pay Plaintiff the  
17 wages due and owing to them, e.g. by way of statute, common law, quantum meruit, express  
18 written contract, implied in fact contract, or by way of common counts such as money had and  
19 received. Plaintiff reserves the right to augment the foregoing allegations to more clearly set  
20 forth this Defendant’s liability as discovery progresses and reveals the same.

21  
22 11. Plaintiff is informed and believes, and based upon such information and belief  
23 alleges that the Defendants, and each of them, are now and/or at all times mentioned in this  
24 Complaint were in some manner legally responsible for the events, happenings and  
25 circumstances alleged in this Complaint.

26 12. Plaintiff is further informed and believes, and based upon such information and  
27 belief alleges, that at all times herein mentioned, all Defendants, and each of them, were and are  
28

1 the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants,  
2 and were, at all such times, acting within the course and scope of said employment and/or  
3 agency; furthermore, that each and every Defendant herein, while acting as a high corporate  
4 officer, director and/or managing agent, principal and/or employer, expressly directed, consented  
5 to, approved, affirmed and ratified each and every action taken by the other co-Defendants, as  
6 herein alleged and was responsible in whole or in part for the matters referred to herein.

8 13. Plaintiff is further informed and believes, and based upon such information and  
9 belief alleges, that at all times herein mentioned, Defendant, and each of them, proximately  
10 caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or  
11 damages alleged in this Complaint.

12 14. Plaintiff is further informed and believes, and based upon such information and  
13 belief alleges, that at all times herein mentioned, Defendants, and each of them were co-  
14 employers and/or joint employers of Plaintiff.

16 15. Defendants, and each of them, are now and/or at all times mentioned in this  
17 Complaint were members of and/or engaged in a joint venture, partnership and common  
18 enterprise, and were acting within the course and scope of, and in pursuit of said joint venture,  
19 partnership and common enterprise and, as such were co-employers and/or joint employers of  
20 Plaintiff.

22 16. Defendants, and each of them, at all times mentioned in this Complaint concurred  
23 with, contributed to, approved of, aided and abetted, condoned and/or otherwise ratified the  
24 various acts and omissions of each and every one of the other Defendants in proximately causing  
25 the complaints, injuries and/or damages alleged in this Complaint.

26 17. Plaintiff is informed and believes and thereon alleges that at all times herein  
27 mentioned, some of the Defendants DOES 1 through 50, Inclusive, were the *alter egos* of the  
28

1 named Defendants. Plaintiff is informed and believes and thereon alleges that there exists such a  
2 unity of interest and ownership between the named Defendants and DOES 1 through 50, that the  
3 individuality and separateness of the named Defendants and DOES 1 through 50 has ceased to  
4 exist. The business affairs of named Defendants and DOES 1 through 50, are, and at all times  
5 relevant hereto were, so mixed and intermingled that the same cannot reasonably be segregated,  
6 and the same are in inextricable confusion. Defendants, and at all times relevant hereto, used  
7 each other as a mere shell and conduit for the conduct of certain of Defendants' affairs. The  
8 recognition of the separate existence of Defendants would not promote justice, in that it would  
9 permit Defendants to insulate themselves from liability to Plaintiff. Accordingly, the named  
10 Defendants constitute the *alter ego* of Defendants DOES 1 through 50, and the fiction of their  
11 separate existence must be disregarded.  
12

### 13 **FIRST CAUSE OF ACTION**

### 14 **FAILURE TO PAY WAGES**

### 15 **(Against all Defendants)**

16  
17 18. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this  
18 section as though fully set forth herein.

19 19. Plaintiff was an "employee" of Defendants (as defined by section 350 of the  
20 Labor Code) but Defendants failed to pay Plaintiff and the other aggrieved employees all wages  
21 earned for all hours worked. Plaintiff and the other aggrieved employees were employed as  
22 cooks, food preparers, dishwashers, servers, and bussers.  
23

24 20. Pursuant to Labor Code section 1197, payment of less than the minimum wage  
25 fixed by the commission is unlawful.

26 21. During the entire period of time that Plaintiff and the other aggrieved employees  
27 were employed by Defendants, and for the four (4) years preceding the filing of this lawsuit,  
28

1 Defendants were required to compensate them at least at the minimum wage, but failed to carry  
2 out their duties and responsibilities as an employer imposed under the laws and regulations of the  
3 State of California and violated the law by failing to pay Plaintiff and the other aggrieved  
4 employees a minimum wage for all hours worked pursuant to all applicable wage orders and in  
5 accordance with Labor Code sections 200, 226, 500, 510, 558.1, 1194, 1194.2, and 1197.  
6

7 22. Defendants failed to pay Plaintiff and the other aggrieved employees all of the  
8 wages that they earned. Specifically, for instance, Defendants intentionally and maliciously  
9 failed to pay Plaintiff anything for his last week of work (“wage theft”) despite his many  
10 demands to Defendants to be paid, thus causing minimum wage violations.

11 23. In violation of state law, Defendants have knowingly and willfully refused to  
12 perform their obligations to compensate Plaintiff and the other aggrieved employees for  
13 minimum and regular wages earned and all hours worked. As a direct result, Plaintiff and the  
14 other aggrieved employees have suffered, and continue to suffer, substantial losses related to the  
15 use and enjoyment of such unpaid wages, lost interest on such wages, costs and attorneys’ fees in  
16 seeking to compel Defendants to fully perform its obligation under state law, all to their damage  
17 in amounts according to proof at the time of trial, but in amounts in excess of the minimum  
18 jurisdiction requirement of this Court. Defendants committed the acts alleged herein knowingly  
19 and willfully, with wrongful and deliberate intent.  
20  
21

22 24. Defendants’ conduct described herein violates Labor Code sections 200, 226, 500,  
23 510, 558, 558.1, 1194, 1194.2, 1197, and 1197.1. As a proximate result of the aforementioned  
24 violations, Plaintiff and the other aggrieved employees have been damaged in an amount  
25 according to proof at the time of trial, but in an amount in excess of the minimum jurisdiction  
26 requirement of this Court. Therefore, pursuant to Labor Code sections 200, 203, 226, 558,  
27 558.1, 1194, 1194.2, 1197, and 1197.1, Plaintiff is therefore entitled to recover the unpaid  
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1 balance of minimum wages and damages for minimum wage violations, including but not limited  
2 to LC 1194.2 liquidated damages in an amount to be proven at trial, plus interest, penalties,  
3 attorneys' fees, expenses, and costs of suit.

4         25. Pursuant to Labor Code §200, "wages" includes all amounts for labor performed  
5 by employees of every description, whether the amount is fixed or ascertained by the standard of  
6 time, task, piece, commission basis, or other method of calculation.

7         26. Plaintiff and the other aggrieved employees have not been paid for all of their  
8 hours worked at least at their regular rate of pay and are thus entitled to their earned unpaid  
9 wages in an amount to be proven at trial, plus interest, penalties, attorneys' fees and costs.

10         27. Under California law, including but not limited to, Labor Code sections 200, 226,  
11 500, 510, 558, 558.1, and 1198, Defendants were required to compensate Plaintiff and the other  
12 aggrieved employees for all overtime, which is calculated at one and one-half (1.5) times the  
13 regular rate of pay for hours worked in excess of forty (40) per week or after eight (8) in one day,  
14 and double time (2) times the regular rate of pay for hours worked on the seventh consecutive  
15 work day, or after twelve (12) hours in any workday.

16         28. Plaintiff and the other aggrieved employees are or were non-exempt employees  
17 entitled to overtime pay under California law, including but not limited to Labor Code sections  
18 200, 226, 500, 510, 558, 558.1, 1194 and 1198. Throughout Plaintiff's employment, Defendants  
19 required Plaintiff and the other aggrieved employees to work on average at least 66 hours per  
20 week, that is, at least on average at least 26 overtime hours per week, intentionally and  
21 maliciously failing to pay them at the overtime rate of pay for overtime hours worked, instead  
22 paying them at the regular rate of pay under the table in cash for the overtime hours worked  
23 ("wage theft"), thus causing them to not receive their overtime wages for their overtime hours  
24 worked.

1           29. Under the applicable wage orders, statutes and regulations, Plaintiff and the other  
2 aggrieved employees are entitled to one and one-half (1.5) times and double their regular rate of  
3 pay for overtime work performed during the entire course of their employment with Defendants.

4           30. As a direct result, Plaintiff and the other aggrieved employees have suffered  
5 substantial losses related to the use and enjoyment of such wages, lost interest on such wages,  
6 and expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligation  
7 under state law, all to their respective damage in amounts according to proof at the time of trial,  
8 but in amounts in excess of the jurisdiction of this Court. Defendants committed the acts alleged  
9 herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff,  
10 from improper motives amounting to malice, and in conscious disregard of Plaintiff's rights.  
11 Plaintiff is thus entitled to recover nominal, actual, compensatory damages in amounts according  
12 to proof at the time of trial, but in amounts in excess of the jurisdiction of this Court.

13           31. Defendants' conduct described herein violates Labor Code sections 200, 226, 500,  
14 510, 558, 558.1, 1194, 1198. As a proximate result of the aforementioned violations, Plaintiff  
15 has been damaged in an amount according to proof at the time of trial, but in an amount in excess  
16 of the jurisdiction of this Court. Therefore, pursuant to Labor Code sections 200, 203, 226, 558,  
17 558.1, 1198, and 1194, Plaintiff is entitled to recover the unpaid balance of overtime  
18 compensation Defendants owe to Plaintiff in an amount to be proven at trial, plus interest,  
19 penalties, attorneys' fees, expenses, and costs of suit.

20           32. An employer must pay its employees sick leave pursuant to Labor Code §246, et  
21 seq. Defendants failed to pay for sick pay leave in violation of Labor Code §246, et seq.  
22 Therefore, Plaintiff and the other aggrieved employees are entitled to unpaid sick pay leave in an  
23 amount to be proven at trial, plus interest, penalties, attorneys' fees and costs.

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**SECOND CAUSE OF ACTION**  
**FAILURE TO TIMELY FURNISH**  
**ACCURATE ITEMIZED WAGE STATEMENTS**  
**(Pursuant to Labor Code §226(a) and (e))**  
**(Against all Defendants)**

33. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this section as though fully set forth herein.

34. Plaintiff is informed and believes and thereon alleges that Defendants, in violation of Labor Code §226(a), engaged in a practice with respect to Plaintiff and the other aggrieved employees of regularly failing to furnish them with accurate, itemized statements in writing showing (1) all gross wages earned, (2) all deductions, (3) net wages earned, (4) accurate rate of pay during each respective pay period for which wages and premium wages have been and continue to be due and owing, (8) the name and address of the legal entity that is the employer, and/or (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, as well as all other information required by section 226 of the Labor Code. Specifically, Defendants failed to provide wage statements to Plaintiff and the other aggrieved employees showing the above required information to the employees' damage, particularly since Defendants paid them part in check and part in cash under the table, were not paid for meal and rest period premiums, and since they skimmed their wages ("wage theft").

35. Plaintiff seeks damages and penalties pursuant to Labor Code §226(e) for each violation by Defendants of Labor Code §226 and pursuant to §§ 226.3, 558, 558.1, plus attorneys' fees and costs. In addition, Plaintiff seeks preliminary and permanent injunctive relief pursuant to Labor Code §226(h).

1 **THIRD CAUSE OF ACTION**

2 **UNFAIR BUSINESS PRACTICES**

3 **(BUSINESS & PROFESSIONS CODE §17200, et seq.)**

4 **(Against all Defendants)**

5  
6 36. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this  
7 section as though fully set forth herein.

8 37. Defendants have engaged in unfair business practices in California by utilizing  
9 and engaging in an unlawful pattern and practice of failing to properly pay employee  
10 compensation as described throughout this Complaint, specifically, by requiring the Plaintiff and  
11 the other aggrieved employees to perform work without proper payment of overtime, regular,  
12 sick pay, minimum pay earned, without meal and rest periods and without meal and rest period  
13 premiums, without proper records, paying in cash under the table, and failed to pay and report  
14 proper taxes to the US and California governments. Defendants' use of such practices  
15 constitutes a statutorily illegal, and thus, unfair business practice and provides an unfair  
16 advantage over Defendants' competitors.  
17

18 38. Plaintiff seeks full restitution by Defendants as necessary and according to proof,  
19 to restore any and all monies withheld, acquired and/or converted by the Defendants by means of  
20 the unfair business practices complained of herein.  
21

22 39. Plaintiff seeks the appointment of a receiver, as necessary, to oversee said  
23 restitution, including all wages earned and unpaid, including interest thereon.

24 40. The acts complained of herein, occurred, at least in part, within the last 4 years  
25 preceding this Complaint for Damages.

26 41. Further, if Defendants are not enjoined from the unlawful conduct described  
27 above, Defendants will continue unabated in its unlawful conduct, which will continue to result  
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1 in irreparable injury to members of the general public, including, but not limited to Plaintiff and  
2 the other aggrieved employees, who are current and former employees of the Defendants, and for  
3 which there is no adequate remedy at law. Thus, Plaintiff requests that the Court issue a  
4 preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing  
5 conduct.  
6

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES UPON SEPARATION OF EMPLOYMENT**

9 **WAITING TIME PENALTIES PURSUANT TO LABOR CODE §203**

10 **(Against all Defendants)**

11 42. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this  
12 section as though fully set forth herein.  
13

14 43. Defendants failed to pay Plaintiff and the other aggrieved employees all earned  
15 wages upon the separation of their employment with Defendants in violation of Labor Code  
16 sections 201 and 202, including but not limited to, overtime, minimum, regular, sick pay, and  
17 meal and rest period premium wages.

18 44. Defendants' failure to pay Plaintiff and the other aggrieved employees all wages  
19 due was willful and done with malice. Plaintiff and the other aggrieved employees are therefore  
20 entitled to penalties pursuant to Labor Code §203, and pursuant to §§ 558, 558.1, plus attorneys'  
21 fees and costs.  
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**FIFTH CAUSE OF ACTION**  
**MEAL AND REST PERIOD VIOLATIONS**  
**LABOR CODE §§ 226.7 and 512**  
**(Against all Defendants)**

45. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this section as though fully set forth herein.

46. Under California Labor Code sections 226.7, 512 and California Wage Orders, Off Duty Meal Periods of 30 minutes are required for all non-exempt employees who work at least 5 hours in a shift, except that when a work period of not more than 6 hours will complete the day's work then the meal period may be waived by mutual consent of the employer and employee. Time records of meal periods must be kept except that meal periods during which operations cease need not be recorded. Employers must provide non-exempt employees 2 Off Duty Rest Periods of 10 minutes each in a normal 8 hour shift. Rest Periods need not be recorded. The Meal Periods are unpaid unless the employee is not fully relieved of all duties. Rest Periods must be paid. An employer who fails to provide off duty meal and rest periods (breaks) must pay the employee an additional 1 hour regular pay for each category of break not provided in a work day.

47. At all times mentioned herein, Defendants violated Labor Code sections 226.7 and 512 by refusing to allow Plaintiff and the other aggrieved employees to be fully relieved of their duties during their second meal period and third rest periods. Defendants did not allow Plaintiff and the aggrieved employees to be fully relieved of their duties during any of their meal and rest periods during busy periods, such as weekends or during other days when there was no one to cover them, and were required to work through them so the customers were not kept waiting.

1           48.     Accordingly, Plaintiff seeks damages available pursuant to the Labor Code,  
2 including but not limited to Labor Code sections 226.7, 512, 558, and 558.1 in an amount proven  
3 at trial, plus interest, penalties, fees, and costs.  
4

5                                   **SIXTH CAUSE OF ACTION**

6                                   **EMPLOYEE FILE & PAYROLL RECORDS VIOLATION**

7                                   **LABOR CODE §§ 1198.5, 432, 226(b), (c), and (f), 1174.5**

8                                   **(Against all Defendants)**

9           49.     Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this  
10 section as though fully set forth herein.  
11

12           50.     On or about April 17, 2023, Plaintiff through his counsel, requested in writing that  
13 Defendants provide Plaintiff with a copy of certain documents in his employee file and payroll  
14 and time records. Defendants failed to timely furnish Plaintiff with a copy of his employee file  
15 and payroll and time records in violation of Labor Code §§432, and 226(b),(c), (f), and 1198.5;  
16 IWC Orders 1 through 15, Section 7, and IWC Order 16, Section 6, despite many requests for  
17 them to do so. Plaintiff is entitled to recover any and all penalties and compensation provided by  
18 the Labor Code, including the above mentioned sections and sections 558 and 558.1, for  
19 Defendants' failure to furnish the requested personnel and payroll and time records including at  
20 least \$750.00 in penalties pursuant to LC §§226(f) and 1198.5, plus attorneys' fees and costs.  
21

22           51.     Pursuant to Labor Code §1174(d), Defendants have a legal obligation to “[k]eep,  
23 at a central location in the state or at the plants or establishments at which employees are  
24 employed, payroll records showing the hours worked daily by and the wages paid to, and the  
25 number of piece-rate units earned by and any applicable piece rate paid to, employees employed  
26 at the respective plants or establishments.”  
27  
28

52. Defendants failed to maintain records of Plaintiff's and the other aggrieved employees' accurate hours worked which Defendants were required to keep pursuant to Labor Code §1174(d). Therefore, Defendants violated Labor Code §1174(d) by failing to collect and keep records indicating the accurate daily hours worked by Plaintiff and the other aggrieved employees.

53. Pursuant to Labor Code §1174.5, “any person employing labor who willfully fails to maintain... accurate and complete records required by subdivision (d) of Section 1174... shall be subject to a civil penalty of five hundred dollars (\$500).” Accordingly, Defendants are required to pay Plaintiffs and the other aggrieved employees an additional \$500.00 along with consequential damages.

### **SEVENTH CAUSE OF ACTION**

## PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”)

**PER LABOR CODE §2699, et seq.**

**(Against All Defendants)**

54. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this section as though fully set forth herein.

55. On or about June 14, 2023, pursuant Labor Code sections 2699(a) and 2699.3, Plaintiff, through his counsel, provided notice in writing by online submission to the California Labor Workforce Development Agency (“LWDA”) and via certified US Mail to Defendants and each of them, that Plaintiff intended to assert a PAGA claim pursuant to section 2699(a) on his own behalf, and in a representative capacity on behalf of other aggrieved employees of Defendants, for Defendants’ violations of specified provisions of the California Labor Code. See Exhibit 1 attached to this Complaint. The LWDA did not respond within 65 days.

1           56. As a result, Plaintiff has perfected his right to sue Defendants in a civil action, and  
2 to collect statutory penalties, pursuant to Labor Code section 2699.3(a)(2)(A)(1) on behalf of all  
3 aggrieved employees (PAGA Employees).

4  
5           57. As a result of the acts alleged throughout this Complaint, Plaintiff brings this  
6 action on his own behalf, and in a representative capacity on behalf of other current or former  
7 aggrieved employees (PAGA Employees), for penalties pursuant to California Labor Code  
8 section 2699 for Defendants' violations of the enumerated Labor Code sections, including, but  
9 not limited to sections 200, 201, 202, 203, 210, 216, 220, 221, 222, 223, 224, 225.5, 226, 226.3,  
10 226.7, 227, 227.3, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1175, 1194, 1194.2, 1197.1, 1198,  
11 1198.5, 1199, and 2802.

12  
13           58. Pursuant to California Labor Code section 2699, Plaintiff and PAGA Employees  
14 are entitled to be awarded twenty-five (25%) percent of all penalties due under California law, in  
15 addition to interest, attorney's fees and costs.

16  
17           59. The Court should award seventy-five (75%) percent of all penalties due under  
18 California law to the State of California.

19           60. Plaintiff, on behalf of the State of California and the aggrieved employees,  
20 therefore seeks to recover from Defendants, and each of them, allowable damages and civil  
21 penalties for the violations claimed above regarding Plaintiff's claims, plus interest, costs, and  
22 attorneys' fees, plus civil penalties regarding the other aggrieved employees' claims in an  
23 amount according to proof at trial, in accordance with Labor Code sections 2699, *et seq.*

24  
25           61. Labor Code Section 558 states that "[a]ny employer or *other person* acting on  
26 behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
27 provision regulating hours and days of work in any order of the Industrial Welfare Commission  
28

1 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for  
2 each underpaid employee for each pay period for which the employee was underpaid in addition  
3 to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one  
4 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee  
5 was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages  
6 recovered pursuant to this section shall be paid to the affected employee. The Section goes on to  
7 state that “[t]he civil penalties provided for in this section are in addition to any other civil or  
8 criminal penalty provided by law.”  
9

10           62. Labor Code Section 558.1(a) provides in pertinent part: “Any employer or other  
11 person acting on behalf of an employer, who violates, or causes to be violated, any provision  
12 regulating minimum wages or hours and days of work in any order of the Industrial Welfare  
13 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or  
14 2802, may be held liable as the employer for such violation.”  
15

16           63. Defendants violated/violate, or caused/causes to be violated, multiple sections of  
17 the Labor Code as well as provisions regulating hours and days of work in any order of the  
18 Industrial Welfare Commission including those requiring payment of minimum and regular  
19 wages and payment of overtime wages and sick pay wages, meal and rest periods and premium  
20 wages, records violations, as set forth in detail throughout this Complaint.  
21

22           64. Accordingly, Plaintiff is also entitled to recovery of wages, premium wages,  
23 damages, and penalties pursuant to Labor Code Sections 558 and 558.1.  
24

### 25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiff prays for judgment against Defendants, as follows:

27 1. For compensatory damages, including but not limited to, those pursuant to Labor Code  
28 §§ 200, 201, 203, 218, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 246, 350-356, 500, 510,

1 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1194.3, 1197.1, 1198, 1198.5, 2802, 2699, et seq.,  
2 California Wage Orders, and other statutes and laws;

3 2. For pre-judgment interest pursuant to all applicable statutes including but not limited to,  
4 Labor Code §§218.6, et seq., loss of earnings damages, and pursuant to Civil Code §§ 3287(b)  
5 and 3289;

6  
7 3. For penalties pursuant to Labor Code §§ 203, 225.5, 226, 226(f) and 1198.5, 226.3,  
8 226.7, 246, 350-356, 512, 558, 558.1, 1174.5, 1194.2, 1197.1, 2802, civil penalties pursuant to  
9 section 2699, et seq., and other statutes and laws;

10 4. For all damages available pursuant to all applicable sections of the Labor Code;

11 5. For injunctive relief pursuant to Labor Code §226(h);

12 6. For an award of reasonable attorneys' fees and costs;

13  
14 7. For restitution of all monies due to Plaintiff and disgorged profits from the unlawful  
15 business practices of Defendants;

16 8. For all remedies available pursuant to Business and Professions Code section 17200 et  
17 seq.;

18 9. For all other appropriate injunctive, declaratory and equitable relief;

19 10. For interest to the extent permitted by law; and

20 11. For such other and further relief as the Court may deem proper.

21 Dated: August 21, 2023

22  
23   
24 Rodolfo Ruiz-Velasco, Esq.  
25 Attorneys for Plaintiff,  
26 MARCO ATEMPA  
27  
28

# **EXHIBIT 1**

# **RUIZ-VELASCO LAW FIRM**

June 14, 2023

**Via Electronic Submission**

California Labor & Workforce Development Agency  
Attn. PAGA Administrator  
455 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102

**All By Certified Mail**

Mr. Giuseppe Pino Bottalico  
Pino's Foods, LLC dba Venetos  
3625 Via Colina  
Oceanside, CA 92056

**Via email**

Karin L. Backstrom  
Backstrom Labor Law Inc.  
315 Laurel Street  
San Diego, CA 92101  
[karin@backstromlaborlaw.com](mailto:karin@backstromlaborlaw.com)

Attorneys for Defendants/Employers

Re: **Atempa v. Pino's Foods LLC dba Venetos, et al.**

To Whom It May Concern:

We represent Marco Atempa individually and on behalf of all other individuals (collectively "Plaintiffs") who are either former or current employees of Pino's Foods LLC dba Venetos Italian Restaurant and its owner, officer and managing agent Giuseppe Pino Bottalico (collectively "Defendants"). Pursuant to Labor Code section 2699.3, this letter constitutes written notice of Defendant's Labor Code violations and of our client's intent to recover statutory penalties under the Labor Code Private Attorney General Act of 2004. A copy of this letter is also being sent to Defendants via certified mail pursuant to Labor Code section 2699.3, and to their attorneys via email.

Plaintiffs were employed by Defendants as cooks, food preparers, dishwashers, servers, and bussers. Plaintiffs are regularly required to work on average 6 days per week from 11am to 10 pm, which amounts to over 66 hours of work per week or over 26 overtime hours per week without receiving overtime compensation, but instead getting paid at the regular rate of pay in cash for overtime hours worked, causing overtime wage violations ("wage theft"). Defendants underpay their employees, and thus owe them

wages. Plaintiff Atempa is still owed for his last week of work for which he was not paid anything, thus causing minimum wage violations.

Defendants fail to pay Plaintiffs for all of their earned sick pay for sick leave, which causes sick pay violations.

As a result of the violations above and below, Defendants failed to provide paycheck statements with accurate hours worked, rate of pay, and regular and overtime hours. Defendants also failed to provide all required information on the paycheck statements. Further, Defendants failed to keep accurate time records regarding Plaintiffs, in violation of Section 7 of the Wage Orders and Labor Code section 1174.5. On April 17, 2023 Plaintiff Atempa sent a written request for his employee file and records pursuant to LC §§ 226, 1198.5, and 432. To date, Defendants have failed to send all documents requested in violation of these LC sections despite many opportunities to do so.

Plaintiffs were not paid all of their wages owed at the time of their separation of work in violation of LC §§ 203 and 204.

In addition, Defendants failed to fully relieve Plaintiffs from their meal and rest periods and to pay them any premiums for their on-duty meal and rest periods. Specifically, Plaintiffs and other current and former employees were not fully relieved of their duties during their second meal and third rest periods because Defendants required them to work through their second meal and third rest periods. Further, Plaintiffs were not allowed to nor able to be fully relieved of their duties during any of the meal and rest periods during busy workdays such as weekends or when there was not one to cover them during the meal or rest periods.

The payment of a less wage than the California minimum wage and minimum wage violations, including failure to pay split shift premiums, are unlawful pursuant to Labor Code Sections 1197, 1197.1, 1194, 558, 558.1. Overtime compensation is statutorily required by California Labor Code Section 510, 558, 558.1. Meal and rest periods are required pursuant to Labor Code section 226.7 and 512, 558, 558.1. Failure to reimburse for expenses incurred in the course of one's employment is a violation of Labor Code Section 2802, et seq. Accurate wage statements must be timely given to employees pursuant to Labor Code section 226. Illegal deductions are in violation of LC Sections 220, 221, 222, 223, 224, et seq. Taking of gratuities from aggrieved employees is a violation of Labor Code sections 350-356. Failure to pay sick pay wages is a violation of LC 246. Defendants' employment practices implicate violations of numerous other Labor Code sections, including but not limited to the following: Labor Code §§

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98.6, 201, 202, 203, 204, 220, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 227.3, 350-356, 510, 512, 558, 558.1, 1102.5, 1194, 1194.2, 1197.1, 2802, et seq., and 2698, et seq.

Accordingly, Plaintiffs respectfully request that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, Plaintiffs will pursue these claims for statutory penalties on behalf of themselves and all other current and former employees. If you have any questions or concerns regarding the above, do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Rodolfo Ruiz-Velasco', written in a cursive style.

Rodolfo Ruiz-Velasco, Esq.