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ANTONIO MARTINEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT

(UNLIMITED JURISDICTION)

ANTONIO MARTINEZ,

Plaintiff,

vs.

ROOM FORTY, INC., a California
corporation; STEPHEN FORTUNATO, an
individual; and DOES 1 to 25, inclusive,

Defendants.

Case No.: **23STCV28103**

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) Age Discrimination in Violation of the Fair Employment and Housing Act (“FEHA”) (Gov. Code § 12940(a));
- 10) Failure To Prevent Discrimination in Violation of the FEHA (Gov. Code, §§ 12940(k));

- 11) Wrongful Termination in Violation of the FEHA (Gov. Code § 12940(a));
12) Wrongful Termination in Violation of Public Policy; and
13) Unfair Competition (Bus. & Prof. Code, § 17200 *et seq.*)

JURY TRIAL DEMANDED

COMES NOW Plaintiff, ANTONIO MARTINEZ (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 ROOM FORTY, INC., a California corporation; STEPHEN FORTUNATO, an individual; and DOES 1 to 25, inclusive, (collectively “ROOM FORTY” or “Defendants”).

JURISDICTION AND VENUE

2. Jurisdiction and venue are proper in this Court and this action is properly filed in the County of Los Angeles – Central District because Defendants ROOM FORTY, INC., STEPHEN FORTUNATO, and DOES 1 to 25, inclusive, do business in the County of Los Angeles and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

THE PARTIES

3. Plaintiff Antonio Martinez is a 68-year-old male resident of Los Angeles, 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 ROOM FORTY, INC. is and was a California corporation, doing

1 business in Los Angeles County, and which employed Plaintiff. As such, it is a citizen of
2 California based on Plaintiff's information and belief.

3 5. Defendant STEPHEN FORTUNATO is a citizen of California based on
4 Plaintiff's information and belief.

5 6. In relevant part, Labor Code section 558.1 states:

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

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

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

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

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

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

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

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

GENERAL ALLEGATIONS

13. ROOM FORTY first began to employ Plaintiff as a dishwasher on or around January 1, 2018. During his employment tenure, Plaintiff was also in charge of cleaning, general maintenance/repairs, carpentry, and plumbing matters. Plaintiff generally worked Monday through Friday from approximately 7:00 a.m. to 3:00 p.m. Plaintiff's employment ended in or around May 2023.

14. At all relevant times, ROOM FORTY issued wages to Plaintiff and all of the other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times, ROOM FORTY classified Plaintiff and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

15. At all relevant times, ROOM FORTY failed to pay Plaintiff and the other Aggrieved Employees for all time worked or subject to its control. To the extent employees such as Plaintiff and others worked through their meal periods and those meal periods were interrupted, they were not compensated for that time, which would be akin to a minimum wage

1 violation. Also, ROOM FORTY required Plaintiff to bring his own personal tools and did not
2 pay Plaintiff twice the minimum wage rate in violation of Wage Order 5-2001, section 9(B).

3 16. At all relevant times, due to the above “off the clock” violations, ROOM
4 FORTY failed to pay Plaintiff and the Aggrieved Employees properly-calculated overtime
5 wages. The Aggrieved Employees’ actual work hours, which included the “off the clock” work
6 as described above, entitled them to overtime, however, it was not company policy to keep
7 accurate track of all hours worked and to pay employees the accurate amount of overtime,
8 especially since the “off the clock” work was not factored into the equation. Furthermore, any
9 incentive payments and/or bonus payments were not factored into employees’ regular rate of
10 pay for purposes of deciphering the correct overtime rate of pay. In addition, any bonus and/or
11 incentive payments were not factored into the correct meal and rest break premium pay per
12 *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

13 17. At all relevant times, ROOM FORTY failed to provide all compliant meal
14 periods and authorize and permit all compliant rest periods to which Plaintiff and the other
15 Aggrieved Employees were entitled. Plaintiff and the other Aggrieved Employees were entitled
16 to take off-duty, uninterrupted 30-minute meal periods before the fifth and tenth hours of work
17 and to take uninterrupted 10-minute rest periods for every four hours or major fraction thereof
18 worked. Due to the workload, Plaintiff and the Aggrieved Employees would not be able to take
19 timely, uninterrupted meal periods before the 5th hour worked. Similarly, Plaintiff and the
20 other Aggrieved Employees were not able to take their 10-minute rest breaks due to the work
21 load/ press of business. During his employment tenure, Plaintiff never took rest breaks. On
22 information and belief, ROOM FORTY did not provide premium wages for these meal and rest
23 break violations; if ROOM FORTY did provide premium wages, they were not paid at the
24 correct rate, as explained above.

25 18. At all relevant times, ROOM FORTY failed to reimburse Plaintiff and the other
26 Aggrieved Employees for business expenses they incurred in direct consequence of the
27 discharge of their duties. During his employment, Plaintiff purchased numerous tools in order
28 to perform his work, including, but not limited to drills, drill bits, screwdrivers, among others.

1 However, ROOM FORTY did not provide these tools and did not reimburse Plaintiff for these
2 tool expenses. ROOM FORTY also required Plaintiff and the other Aggrieved Employees to
3 use their own personal cell phones to communicate with management concerning work matters.
4 ROOM FORTY did not reimburse Plaintiff or the other employees for their mobile phone
5 expenses. Accordingly, ROOM FORTY was in violation of California Labor Code sections
6 2800 and 2802.

7 19. At all relevant times, ROOM FORTY failed to pay its employees all wages due
8 to them within any time period specified by California Labor Code section 204, including the
9 minimum wages and overtime as described above as well as meal/rest break premiums.

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

21 21. At all relevant times, because ROOM FORTY did not properly pay all wages
22 earned as explained herein, ROOM FORTY also failed to pay final wages owed to Plaintiff and
23 the other Aggrieved Employees in violation of Labor Code section 203. These earned but
24 unpaid wages include minimum wages and compensation for all hours worked, overtime
25 compensation, premium pay for missed meal and rest breaks, and business expense
26 reimbursement, among others. ROOM FORTY has also violated Labor Code section 558 and
27 engaged in business practices which violate Business and Professions Code Section 17200.

28 22. In addition, Plaintiff would also have individual claims against ROOM FORTY

1 for violations of the Fair Employment and Housing Act (“FEHA”). On or around May 1, 2023,
2 ROOM FORTY’s chef, Adam Nadel, and manager Lorenzo Gomez had a meeting with
3 Plaintiff and informed Plaintiff that there was “no more work” for him. Plaintiff was confused
4 as the task board at work was full of daily tasks throughout the month of May. Chef Nadel and
5 Mr. Gomez informed Plaintiff that it was because of his age and that he was “too old” and
6 presented Plaintiff with documents, which Plaintiff refused to sign. Thereafter, ROOM FORTY
7 reduced Plaintiff’s work hours and scheduled Plaintiff to work only two days during that week
8 and only one day the following week. On or around May 15, 2023, Plaintiff called ROOM
9 FORTY’s scheduling coordinator, “Elvira” (last name unknown), to inquire about being
10 scheduled to work. However, ROOM FORTY did not schedule Plaintiff for any more
11 workdays. As such, ROOM FORTY wrongfully terminated Plaintiff’s employment in violation
12 of the FEHA and public policy. Any justification offered by ROOM FORTY was and is
13 pretextual as ROOM FORTY unequivocally had the required discriminatory animus.

14 23. Pursuant to California Government Code § 12960, Plaintiff has exhausted his
15 administrative remedies. Plaintiff filed a complaint with the State of California Civil Rights
16 Department (“CRD”) (previously “DFEH”) alleging claims in this complaint. On the same day,
17 the CRD issued a notice of right-to-sue to Plaintiff against the named Defendants.

18 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

1 27. Section 3 of the Wage Order states:

2 (A) Daily Overtime - General Provisions

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

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

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

28 (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.

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

32 29. Labor Code section 510 states:

33 Eight hours of labor constitutes a day's work. Any work in excess
34 of eight hours in one workday and any work in excess of 40 hours
35 in any one workweek and the first eight hours worked on the

seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any 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.

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

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

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

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

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

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

36. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an

1 amount, subject to proof, to the extent that he was not paid the full amount of wages earned
2 during each pay period during the applicable limitations period, including minimum, overtime,
3 and double-time wages.

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

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REST BREAKS**

9 **(Lab. Code §§ 226.7 and 1198)**

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

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

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

15 40. Labor Code § 1198 states,

16 "The maximum hours of work and the standard conditions of labor fixed
17 by the commission shall be the maximum hours of work and the standard
18 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."

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

20 **Rest Periods:**

21 (A) Every employer shall authorize and permit all employees
22 to take rest periods, which insofar as practicable shall be in the
23 middle of each work period. The authorized rest period time shall
be based on the total hours worked daily at the rate often (10)
minutes net rest time per four (4) hours or major fraction thereof.
24 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)
25 hours. Authorized rest period time shall be counted as hours
worked for which there shall be no deduction from wages.

26
27 (B) If an employer fails to provide an employee a rest period
28 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.

42. 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.

43. 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.

44. 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.

45. 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.

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

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff against all Defendants)

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

48. At all relevant times during the applicable limitations period, Plaintiff was a

1 non-exempt employee of Defendants and entitled to the benefits and protections of California
2 Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

3 49. Labor Code § 1198 states,

4 “The maximum hours of work and the standard conditions of labor fixed
5 by the commission shall be the maximum hours of work and the standard
6 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.”

7 50. In relevant part, Labor Code Section 512 states

8 “An employer may not employ an employee for a work period of more
9 than five hours per day without providing the employee with a meal
10 period of not less than 30 minutes, except that if the total work period
11 per day of the employee is no more than six hours, the meal period may
12 be waived by mutual consent of both the employer and employee. An
13 employer may not employ an employee for a work period of more than
14 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.”

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

16 Meal Periods:

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

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

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

53. During the relevant time period, Defendants failed to provide Plaintiff with

1 compliant meal periods before the fifth hour of work and failed to pay one hour of correctly-
2 calculated premium pay for each day such a meal period was not provided.

3 54. 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 additional wages owed for all meal
5 periods not provided to him.

6 55. By reason of the above, Plaintiff is entitled to premium wages for workdays in
7 which one or more meal periods were not provided to him pursuant to California Labor Code §
8 226.7, plus interest and costs.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO INDEMNIFY**

11 **(Lab. Code §§ 1198 & 2802)**

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

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

14 57. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
15 entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802, and the
16 Wage Order.

17 58. In pertinent part, California Labor Code § 2802(a) states:
18 An employer shall indemnify his or her employee[s] for all
19 necessary expenditures incurred by the employee in direct
20 consequence of the discharge of his or her duties.

21 59. California Labor Code § 1198 prohibits employers from employing their
22 employees under conditions prohibited by the Wage Order.

23 60. ROOM FORTY failed to reimburse Plaintiff for business expenses he incurred
24 in direct consequence of the discharge of his duties. During his employment, Plaintiff purchased
25 numerous tools in order to perform his work, including, but not limited to drills, drill bits, and
26 screwdrivers, among others. However, ROOM FORTY did not provide these tools and did not
27 reimburse Plaintiff for these tool expenses. ROOM FORTY also required Plaintiff to use his
28 own personal cell phone to communicate with management concerning work matters. ROOM
FORTY did not reimburse Plaintiff for his mobile phone expenses. Accordingly, ROOM

1 FORTY was in violation of California Labor Code sections 2800 and 2802.

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

6 62. By reason of the above, Plaintiff is entitled to reimbursement for all necessary
7 expenditures and losses and interest due and owing to within three years (3) of the date of the
8 filing of the Complaint until the date of entry of judgment pursuant to California Labor Code §
9 2802(b). Further, Plaintiff seeks reasonable attorney's fees pursuant to Labor Code § 2802(c).

10 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

24 66. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover
25 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
26 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
27 pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
28 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to

1 the 1-year period immediately preceding the date this lawsuit was filed.

2 67. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
3 sustained damages, including loss of earnings, in an amount to be established at trial. As a
4 further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff
5 is entitled to recover penalties, in an amount to be established at trial, as well as costs and
6 attorney's fees pursuant to statute.

7 68. 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 proof
9 at trial.

10 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

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

25 73. After Plaintiff's employment with Defendants ended, Defendants willfully
26 refused and continue to refuse to pay him unpaid wages as required by Labor Code Section 203.

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

1 at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
2 preceding the filing of this lawsuit.

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

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

9 **SEVENTH CAUSE OF ACTION**

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

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

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

13 77. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

16 79. At all times relevant during the liability period, Defendants failed to pay
17 Plaintiff the full amount of all owed wages when due as required by California Labor Code
18 Section 204.

19 80. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
20 informed, believes, and thereon alleges, that all times relevant during the applicable limitations
21 period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours
22 worked, including the minimum wage, overtime hours, double time hours, and premium pay for
23 missed meal and rest breaks.

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

28 82. Under this cause of action, Plaintiff prays for penalties due under the statutes

1 alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof
2 at trial.

3 **EIGHTH CAUSE OF ACTION**

4 **CIVIL PENALTIES**

5 **(Lab. Code §§ 2698, *et seq.*)**

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

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

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

14 85. During the applicable time period, Defendants violated California Labor Code
15 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802.

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

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

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

28 B. For violations of California Labor Code § 226(a), two hundred fifty

1 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
2 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
3 established by California Labor Code § 226.3).

4 C. For violations of California Labor Code §§ 510, 512, and 558.1, fifty
5 dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars
6 (\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
7 established by California Labor Code § 558).

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

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

16 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
17 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
18 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
19 period for each subsequent violation (penalty amounts established by California Labor Code §
20 2699(f)(2)).

21 88. Plaintiff has complied with the procedures for bringing suit specified in
22 California Labor Code § 2699.3. By letter dated July 22, 2023, Plaintiff filed written notice
23 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
24 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
25 to have been violated, including the facts and theories to support the alleged violations. Plaintiff
26 accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to
27 take action in response within 65 calendar days of the date of Plaintiff’s notice.

28 89. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved

1 Employees are entitled to an award of civil penalties and reasonable attorney's fees and costs in
2 connection with their claims for civil penalties.

3 **NINTH CAUSE OF ACTION**

4 **AGE DISCRIMINATION IN VIOLATION OF THE FEHA**

5 **(Gov. Code § 12940(a))**

6 **(By Plaintiff against all Defendants except STEPHEN FORTUNATO)**

7 90. Plaintiff incorporates by reference each and every paragraph of this Complaint
8 as if fully alleged herein.

9 91. Plaintiff was and is at all times relevant hereto an employee covered by
10 Government Code § 12926(c).

11 92. Defendants were at all times relevant hereto employers who employed five or
12 more persons within the meaning of Government Code § 12926(d), and California Government
13 Code §§ 12940, et seq., was in full force and effect and was binding on Defendants.

14 93. The Fair Employment and Housing Act prohibits an employer and its agents
15 from discriminating against employees, on the basis of their age. Cal. Gov. Code § 12940(a).

16 94. Plaintiff was born in 1955 and was 67 years old when ROOM FORTY
17 terminated his employment.

18 95. Throughout his employment tenure and at the time of his termination, Plaintiff
19 performed his work with the utmost diligence and competence.

20 96. On or around May 1, 2023, ROOM FORTY's chef, Adam Nadel, and manager
21 Lorenzo Gomez had a meeting with Plaintiff and informed Plaintiff that there was "no more
22 work" for him. Plaintiff was confused as the task board at work was full of daily tasks
23 throughout the month of May. Chef Nadel and Mr. Gomez informed Plaintiff that it was
24 because of his age and that he was "too old" and presented Plaintiff with documents, which
25 Plaintiff refused to sign. Thereafter, ROOM FORTY reduced Plaintiff's work hours and
26 scheduled Plaintiff to work only two days during that week and only one day the following
27 week. On or around May 15, 2023, Plaintiff called ROOM FORTY's scheduling coordinator,
28 "Elvira" (last name unknown), to inquire about being scheduled to work. However, ROOM

1 FORTY did not schedule Plaintiff for any more workdays.

2 97. Plaintiff's age was a substantial motivating reason for Defendants' decision to
3 reduce Plaintiff's work hours and terminate his employment. On information and belief,
4 Defendants continued to employ the younger employees and Plaintiff was replaced by someone
5 significantly younger than him.

6 98. As a proximate result of the wrongful acts of Defendants, Plaintiff has been
7 harmed in that Plaintiff has suffered actual, consequential and incidental financial losses,
8 including without limitation, loss of salary and benefits, and the intangible loss of employment-
9 related opportunities and damage to his professional reputation, all in an amount subject to
10 proof at the time of trial. Plaintiff claims such amounts as damages together with prejudgment
11 interest pursuant to Civil Code Sections 3287 and/or § 3288 and/or any other provision of law
12 providing for prejudgment interest.

13 99. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
14 and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and
15 emotional distress. Plaintiff is informed and believes and thereon alleges that he will continue
16 to experience said emotional suffering for a period in the future he cannot presently ascertain,
17 all in an amount subject to proof at the time of trial.

18 100. The acts taken toward Plaintiff were carried out by and/or ratified by
19 Defendants and/or managing agent employees of Defendants acting in a despicable, oppressive,
20 fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to injure and
21 damage Plaintiff, thereby justifying an award to him of punitive damages in a sum appropriate
22 to punish and make an example of Defendants.

23 101. FEHA provides for an award of reasonable attorneys' fees and costs incurred
24 by a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and
25 will continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
26 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
27 award of attorneys' fees and costs.

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1 related opportunities and damage to his professional reputation, all in an amount subject to
2 proof at the time of trial. Plaintiff claims such amounts as damages together with prejudgment
3 interest pursuant to Civil Code Sections 3287 and/or § 3288 and/or any other provision of law
4 providing for prejudgment interest.

5 109. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
6 and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and
7 emotional distress. Plaintiff is informed and believes and thereon alleges that he will continue
8 to experience said emotional suffering for a period in the future he cannot presently ascertain,
9 all in an amount subject to proof at the time of trial.

10 110. The acts taken toward Plaintiff were carried out by and/or ratified by
11 Defendants and/or managing agent employees of Defendants acting in a despicable, oppressive,
12 fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to injure and
13 damage Plaintiff, thereby justifying an award to him of punitive damages in a sum appropriate
14 to punish and make an example of Defendants.

15 **ELEVENTH CAUSE OF ACTION**

16 **WRONGFUL TERMINATION IN VIOLATION OF THE FEHA**

17 **(Gov. Code § 12940(a))**

18 **(By Plaintiff against all Defendants except STEPHEN FORTUNATO)**

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

21 112. At all times mentioned herein, the FEHA, Government Code section 12900 *et*
22 *seq.*, was in full force and effect and binding upon Defendants and each of them.

23 113. Government Code section 12940(a) provides that it is an unlawful employment
24 practice for an employer to discharge a person from employment because of age.

25 114. Under California Government Code section 12921, “The opportunity to seek,
26 obtain, and hold employment without discrimination because of ... age...is ... recognized as
27 and declared to be a civil right.”

28 115. Defendants, and each of them, violated the FEHA when they reduced Plaintiff’s

1 work hours and terminated Plaintiff's employment due to his age.

2 116. As a proximate result of the wrongful acts of Defendants, Plaintiff has been
3 harmed in that Plaintiff has suffered actual, consequential and incidental financial losses,
4 including without limitation, loss of salary and benefits, and the intangible loss of employment-
5 related opportunities and damage to his professional reputation, all in an amount subject to
6 proof at the time of trial. Plaintiff claims such amounts as damages together with prejudgment
7 interest pursuant to Civil Code Sections 3287 and/or § 3288 and/or any other provision of law
8 providing for prejudgment interest.

9 117. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
10 and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and
11 emotional distress. Plaintiff is informed and believes and thereon alleges that he will continue
12 to experience said emotional suffering for a period in the future he cannot presently ascertain,
13 all in an amount subject to proof at the time of trial.

14 118. The acts taken toward Plaintiff were carried out by and/or ratified by
15 Defendants and/or managing agent employees of Defendants acting in a despicable, oppressive,
16 fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to injure and
17 damage Plaintiff, thereby justifying an award to him of punitive damages in a sum appropriate
18 to punish and make an example of Defendants.

19 **TWELFTH CAUSE OF ACTION**

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

21 **(By Plaintiff against all Defendants except STEPHEN FORTUNATO)**

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

23 120. Plaintiff was employed by Defendants.

24 121. At all times during his employment with Defendants, Plaintiff performed his
25 duties with the utmost diligence and competence.

26 122. The state and federal statutes recited below embody fundamental, substantial,
27 and well-established public policies of the United States and State of California. By terminating
28 Plaintiff, Defendants violated these fundamental, substantial, and well-established public

1 policies:

2 (A) At all times herein mentioned, the California Fair Employment & Housing Act
3 (FEHA), Government Code Section 12900, was in full force and effect and binding upon
4 Defendants and each of them. It prohibits age discrimination in all aspects of employment
5 including hiring, termination and terms and conditions. Cal.Gov.Code § 12940(a).

6 (B) Under California Government Code Section 12921, the opportunity to seek, obtain
7 and hold employment without discrimination because of age is recognized as and declared to be
8 a civil right.

9 123. Plaintiff's employment was wrongfully terminated in or around May 2023
10 with respect to discriminating against an employee on account of his age.

11 124. Moreover, Plaintiff was forced to hire an attorney to assist him to end these
12 illegal activities.

13 125. As set forth above, said conduct violated the fundamental public policies of the
14 State of California as reflected in its laws, objectives and policies. Said statutes and
15 constitutional expressions of public policy include, but are not limited to, the FEHA, and the
16 California Constitution, Article 1 section 8. These laws inure to the benefit of the public at large,
17 and not just the private interests of the employers and employees whom they govern or protect.

18 126. As a direct and proximate result of the aforementioned acts and omissions of
19 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
20 loss of income (past and future), loss of employment benefits (past and future), general and
21 compensatory damages (past and future), mental pain and anguish and emotional distress (past
22 and future), and will continue to suffer in the future, in an amount to be proved at trial.

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

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1 **THIRTEENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

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

4 **(By Plaintiff against all Defendants except STEPHEN FORTUNATO)**

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

6 129. At all relevant times during the applicable limitations period, Plaintiff has been
7 an employee of Defendants and entitled to the benefits and protections of the Business and
8 Professions Code §§ 17200, *et seq.*

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

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

23 132. As a result of Defendants' unfair competition as alleged herein, Plaintiff has
24 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiff for all
25 hours worked, failed to provide him with premium wages for missed meal and rest periods, and
26 failed to reimburse Plaintiff for all expenses he incurred in the course of performing his duties.

27 133. Pursuant to California Business & Professions Code § 17203, Plaintiff is
28 entitled to restitution of all monies rightfully belonging to him that Defendants did not pay him

1 or otherwise retained by means of their unlawful and unfair business practices.

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

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

8 **PRAYER FOR RELIEF**

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

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

- 1 12. For an order enjoining Defendant ROOM FORTY, INC. from further unfair and
2 unlawful business practices in violation of Business and Professions Code Sections
3 17200, et seq.;
- 4 13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor
5 Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated
6 damages, damages, penalties, and waiting time penalties according to proof to the extent
7 permitted by law;
- 8 14. For the imposition of civil penalties and/or statutory penalties;
- 9 15. For all interest as allowed by law;
- 10 16. For all costs and disbursements incurred in this suit;
- 11 17. Reasonable attorney's fees where available by law, including but not limited to, pursuant
12 to, Labor Code section 2698 *et seq.*, the FEHA, Code of Civil Procedure section 1021.5,
13 and/or other applicable laws; and
- 14 18. For such other and further relief as this Court may deem proper.

15 **DEMAND FOR JURY TRIAL**

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

17
18 Dated: November 16, 2023

MM LAW, APC

19 By Maralle Messrelia
20 Maralle Messrelia, Esq.
21 Attorney for Plaintiff,
22 ANTONIO MARTINEZ
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