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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

NOEMI VILLAGOMEZ and ANDREA
MARTINEZ, as individuals and on behalf of
all others similarly situated,

Plaintiff,

vs.

MARCOS & JAVIERS, LLC, a California
limited liability company dba JAVIER'S
CANTINA & GRILL; JAVIER'S-UTC, LLC,
a Nevada limited liability company; and
DOES 1 through 100,

Defendants.

Case No. 30-2020-01131297-CU-OE CXC

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§
1182.12, 1194, 1194.2, 1197);**
- (2) FAILURE TO PAY ALL OVERTIME
WAGES OWED (LABOR CODE §§ 204,
510, 558, 1194, 1198);**
- (3) FAILURE TO PROVIDE MEAL
PERIODS (LABOR CODE §§ 226.7,
512, 558);**
- (4) FAILURE TO AUTHORIZE AND
PERMIT REST PERIODS (LABOR
CODE §§ 226.7, 516, 558);**

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- (5) FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION (LABOR CODE §§ 201-203);**
- (6) FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS (LABOR CODE § 226 *et seq.*);**
- (7) UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*); and**
- (8) CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACTION OF 2004 (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Andrea Martinez (“Martinez”) and Plaintiff Juana Maria Ramirez Angeles
2 (“Ramirez Angeles”) (Ramirez Angeles and Martinez are collectively referred to herein as
3 “Plaintiffs”), on behalf of themselves and all others similarly situated, hereby bring this Second
4 Amended Class and Representative Action Complaint (“SAC”) against Marcos & Javiers, LLC,
5 a California limited liability company dba Javier’s Cantina & Grill; Javier’s-UTC, LLC, a Nevada
6 limited liability company, and DOES 1 to 100, inclusive (collectively “Defendants”), and on
7 information and belief alleges as follows:

8 **JURISDICTION**

9 1. Plaintiffs, on behalf of themselves and all others similarly situated, hereby bring
10 this SAC for recovery of unpaid wages and penalties under California Business and Professions
11 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 218 *et seq.*, 226 *et seq.*, 226.7, 510, 512, 516,
12 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.* and Industrial Welfare Commission Wage
13 Order 5 (“Wage Order 5”), in addition to seeking declaratory relief and restitution. This SAC is
14 brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
15 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
16 this Court's jurisdictional minimum.

17 **VENUE**

18 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
19 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
20 County of Orange. Defendants own, maintain offices, transact business, have agent(s) within the
21 County of Orange, and/or otherwise are found within the County of Orange, and Defendants are
22 within the jurisdiction of this Court for purposes of service of process.

23 **PARTIES**

24 3. Plaintiffs are both individuals over the age of eighteen (18). At all relevant times
25 herein, Plaintiffs were and currently are, California residents. During the four years immediately
26 preceding the filing of the lawsuit in this action and within the statute of limitations periods
27 applicable to each cause of action pled herein, Plaintiffs were employed by Defendants as non-
28 exempt employees. Plaintiff were, and are, victims of Defendants’ policies and/or practices

1 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
2 by Labor Code §§ 201-204, 218 *et seq.*, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194,
3 1194.2, 1197, 1198, 2698 *et seq.*, and California Business and Professions Code § 17200 *et seq.*
4 (“Unfair Competition Law”); and Wage Order 5, which sets employment standards for the public
5 housekeeping industry, which includes the industry in which Plaintiffs worked for Defendants.

6 4. Plaintiffs are informed and believe, and based thereon allege, that during the four
7 years preceding the filing of the lawsuit and continuing to the present, Defendants did (and
8 continue to do) business by serving elevated Mexican cuisine in its self-described friendly and
9 captivating ambiance. Defendants employed Plaintiffs and other, similarly-situated non-exempt
10 employees within, among other counties, Orange County and the state of California and,
11 therefore, were (and are) doing business in Orange County and the State of California.

12 5. Plaintiffs do not know the true names or capacities, whether individual, partner, or
13 corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
14 defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
15 amend this lawsuit when such true names and capacities are discovered. Plaintiffs are informed,
16 and believe, and based thereon allege, that each of said fictitious defendants, whether individual,
17 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
18 and proximately caused Plaintiffs and the Classes (as defined in Paragraph 18) to be subject to
19 the unlawful employment practices, wrongs, injuries and damages complained of herein.

20 6. Plaintiffs are informed, and believe, and thereon allege, that at all times mentioned
21 herein, Defendants were and are the employers of Plaintiffs and all members of the Classes.

22 7. At all times herein mentioned, each of said Defendants participated in the doing
23 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
24 Defendants, and each of them, were the agents, servants, and employees of each and every one of
25 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
26 were acting within the course and scope of said agency and employment. Defendants, and each
27 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
28 omissions complained of herein.

1 8. At all times mentioned herein, Defendants, and each of them, were members of
2 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
3 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
4 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
5 members of the Classes.

6 **GENERAL FACTUAL ALLEGATIONS**

7 9. Plaintiff Ramirez Angeles, a former non-exempt employee, was employed by
8 Defendants from approximately 2012 through on or about May 10, 2023 at Defendants' Irvine
9 location. During her employment with Defendants, Plaintiff Ramirez held the position of Cocktail
10 Server.

11 10. Plaintiff Martinez commenced employment with Defendants in or around January
12 2019 at La Jolla and Irvine locations, and she remains currently employed. During her
13 employment with Defendants, Plaintiff Martinez held the position of cocktail waitress. Plaintiff
14 Martinez works approximately 3-4 days per week, and was generally scheduled to work from
15 approximately 4:00 p.m. to approximately 12:00 to 1:00 a.m.

16 11. While working for Defendants, Plaintiffs often worked in excess of eight hours
17 per workday and/or more than 40 hours per workweek, but did not receive overtime compensation
18 equal to one and one-half times her regular rate of pay for all such overtime hours. Specifically,
19 Plaintiffs received "Auto Gratuity," "Incentive Pay," "Miscellaneous Earnings" and/or other
20 forms of pay not excludable as a matter of law when calculating an employee's regular rate
21 (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay").
22 Despite Defendants' payment of Incentive Pay to Plaintiffs, Defendants failed to include all forms
23 of Incentive Pay when calculating Plaintiffs' regular rate of pay, thereby causing Plaintiff to be
24 underpaid all of her required and legally owed overtime wages.

25 12. Throughout Plaintiffs' employment with Defendants, Plaintiffs were not provided
26 all legally required meal periods due to Defendants' meal period policies/practices. During at
27 least a portion of the class period, upon information and belief, Defendants did not have an
28 Employee Handbook nor any other written meal period policies. Further, due to the work

demands imposed by Defendants, at times, Plaintiffs were unable to take meal periods altogether. Plaintiff Martinez would often not receive meal periods at all, and her manager/supervisor would get upset if attempted to take one. Further, Plaintiffs are informed and believe, and based thereon allege, that a manager or managers would alter the time records to insert meal periods which were not actually taken. These practices resulted in the failure by Defendants to provide lawful meal periods, and also resulted in the failure to pay wages (including minimum and overtime wages) to Plaintiffs and other non-exempt employees. Furthermore, on occasion, Plaintiffs would work a double shift in excess of 10.0 hours and Defendants failed to provide her and other employees working shifts in excess of 10.0 hours with the opportunity to take a second and timely meal period of at least 30 minutes in length as required by applicable law.

13. Although Plaintiffs were not provided with all legally-compliant meal periods to which they were entitled, Defendants failed to compensate Plaintiffs with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to their non-exempt employees.

14. In addition, throughout Plaintiffs' employment with Defendants, Plaintiffs were not authorized and permitted to take legally required rest periods due to Defendants' unlawful rest period policies and practices. Specifically, when Plaintiffs worked shifts in excess of 3.5 hours, they were never provided a paid rest period for every 4-hour period worked, or *major fraction thereof*, because: (i) there was a lack of coverage and/or (ii) the work demands that Defendants imposed on Plaintiffs. This practice resulted in the failure by Defendants to authorize and permit lawful rest periods to Plaintiffs and other non-exempt employees.

15. On those occasions when Plaintiffs were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, Defendants failed to compensate Plaintiffs with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief,

1 during at least a portion of the class period, Defendants maintained no payroll code or other
2 mechanism for paying rest period premiums when Defendants failed to provide a legally
3 compliant rest period.

4 16. As a result of Defendants' failure to pay all minimum and overtime wages, as well
5 as meal and rest period premium wages, Defendants maintained inaccurate payroll records and
6 issued inaccurate wage statements to Plaintiffs.

7 17. As a further result of Defendants' failure to pay all minimum and overtime wages,
8 as well as meal and rest period premium wages, Defendants failed to pay all wages owed to
9 Plaintiff Ramirez Angeles upon her separation of employment from Defendants.

10 **CLASS ACTION ALLEGATIONS**

11 18. **Class Definitions:** Plaintiffs bring this action on behalf of herself and the
12 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 13 a. The Minimum Wage Class consists of all of Defendants' current and former non-
14 exempt employees in California who were subjected to Defendants' timekeeping
15 policies/practices, during the four years immediately preceding the filing of the
16 lawsuit through the present.
- 17 b. The Overtime Class consists of all of Defendants' current and former non-exempt
18 employees in California who worked in excess of 8 hours in a work day and/or in
19 excess of 40 hours in a work week, were subjected to Defendants' timekeeping
20 policies and practices and/or received Incentive Pay during a pay period when
21 overtime was also worked, during the four years immediately preceding the filing
22 of the lawsuit through the present.
- 23 c. The Meal Period Class consists of all of Defendants' current and former non-
24 exempt employees who worked at least one shift in excess of 5.0 hours during the
25 four years immediately preceding the filing of the lawsuit through the present.
- 26 d. The Rest Period Class consists of all of Defendants' current and former non-
27 exempt employees who worked at least one shift in excess of 3.5 hours during the
28 four years immediately preceding the filing of the lawsuit through the present.

e. The Wage Statement Class consists of all members of the: (i) Minimum Wage Class, (ii) Overtime Class, (iii) Meal Period Class and/or (iv) Rest Period Class, during the one year immediately preceding the filing of the lawsuit through the present.

f. The Waiting Time Penalty Class consists of Defendants' formerly employed members of the: (i) Minimum Wage Class, (ii) Overtime Class, (iii) Meal Period Class, and/or (iv) Rest Period Class in California, during the three years immediately preceding the filing of the lawsuit through the present.

g. The UCL Class consists of members of the: (i) Minimum Wage Class; (ii) Overtime Class; (iii) Meal Period Class; (iv) Rest Period Class; (v) Wage Statement Class; and (vi) Waiting Time Penalty Class.

19. Plaintiffs reserve the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

20. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiffs at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

21. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

i. Whether Defendants' timekeeping policies and/or practices resulted in the failure to properly compensate members of the Overtime and Minimum Wage Classes for all hours actually worked;

ii. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 510 and 1194 by requiring overtime work and not paying for said

- 1 work according to the overtime laws of the State of California;
- 2 iii. Whether Defendants provided all legally compliant meal periods to members of
- 3 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 4 iv. Whether Defendants authorized and permitted all legally compliant rest periods to
- 5 members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 6 v. Whether Defendants furnished legally compliant wage statements to members of
- 7 the Wage Statement Class pursuant to Labor Code § 226;
- 8 vi. Whether Defendants' policies and/or practices for the timing and amount of
- 9 payment of final wages to members of the Waiting Time Class at the time of their
- 10 separation of employment were lawful; and
- 11 vii. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive
- 12 business practices by and through the wage and hour policies and practices
- 13 described above, and whether as a result Defendants owe the classes restitution.

14 22. **Predominance of Common Questions:** Common questions of law and fact

15 predominate over questions that affect only individual members of the Classes. The common

16 questions of law set forth above are numerous and substantial and stem from Defendants' policies

17 and/or practices applicable to each individual class member, such as Defendants' uniform

18 minimum wage payment, overtime wage payment, and meal and rest period policies/practices.

19 As such, the common questions predominate over individual questions concerning each

20 individual class member's showing as to their eligibility for recovery or as to the amount of their

21 damages.

22 23. **Typicality:** The claims of Plaintiffs are typical of the claims of the Classes because

23 Plaintiffs were/are employed by Defendants as non-exempt employees in California during the

24 statute(s) of limitations period applicable to each cause of action pled in the SAC. As alleged

25 herein, Plaintiffs, like the members of the Classes, were not provided all legally required

26 minimum and overtime wages, were not provided with all required meal periods, were not

27 authorized and permitted to take all required rest periods, did not receive meal and rest period

28 premium wages when they were not provided compliant meal and rest periods, were not provided

1 with accurate, itemized wage statements, and Plaintiff Ramirez Angeles was not paid all wages
2 upon termination of her employment.

3 24. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary
4 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
5 Plaintiffs' attorneys are ready, willing and able to fully and adequately represent the members of
6 the Classes and Plaintiffs. Plaintiffs' attorneys have prosecuted and defended numerous wage-
7 and-hour class actions in state and federal courts in the past and are committed to vigorously
8 prosecuting this action on behalf of the members of the Classes.

9 25. **Superiority:** The California Labor Code is broadly remedial in nature and serves
10 an important public interest in establishing minimum working conditions and standards in
11 California. These laws and labor standards protect the average working employee from
12 exploitation by employers who have the responsibility to follow the laws and who may seek to
13 take advantage of superior economic and bargaining power in setting onerous terms and
14 conditions of employment. The nature of this action and the format of laws available to Plaintiffs
15 and members of the Classes make the class action format a particularly efficient and appropriate
16 procedure to redress the violations alleged herein. If each employee were required to file an
17 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
18 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
19 their vastly superior financial and legal resources. Moreover, requiring each member of the
20 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
21 employees who would be disinclined to file an action against their former and/or current employer
22 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
23 employment. Further, the prosecution of separate actions by the individual class members, even
24 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
25 with respect to the individual class members against Defendants herein; and which would
26 establish potentially incompatible standards of conduct for Defendants; and/or legal
27 determinations with respect to individual class members which would, as a practical matter, be
28 dispositive of the interest of the other class members not parties to adjudications or which would

1 substantially impair or impede the ability of the class members to protect their interests. Further,
2 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
3 individual prosecution considering all of the concomitant costs and expenses attending thereto.
4 As such, the Classes identified in Paragraph 18 are maintainable as a Class under § 382 of the
5 Code of Civil Procedure.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY ALL MINIMUM WAGES OWED**

8 **(AGAINST ALL DEFENDANTS)**

9 26. Plaintiffs re-allege and incorporates by reference all previous paragraphs.

10 27. Wage Order 5, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
11 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
12 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
13 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
14 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
15 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
16 its pay practices to the requirements of the law by failing to pay Plaintiffs and members of the
17 Minimum Wage Class for all hours worked, including, but not limited to, all hours they were
18 subject to the control of Defendants and/or suffered or permitted to work under the California
19 Labor Code and Wage Order 5.

20 28. California Labor Code § 1198 makes unlawful the employment of an employee
21 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
22 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
23 those employees the unpaid balance of the unpaid wages as well as liquidated damages in an
24 amount equal to the wages due and interest thereon.

25 29. As a consequence of Defendants' non-payment of minimum wages, Plaintiffs and
26 members of the Minimum Wage Class seek penalties pursuant to Wage Order 5 § 20(A) and
27 California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and
28 Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2;
attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages

and/or penalties pursuant to California Labor Code § 558(a).

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES OWED

(AGAINST ALL DEFENDANTS)

30. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

31. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to all overtime wages and compensation for hours worked, and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

32. At all times relevant herein, Defendants were required to properly compensate non-exempt employees, including Plaintiffs and members of the Overtime Class, for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of eight hours per workday and/or in excess of forty hours of work in the workweek. Wage Order 5, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiffs to work overtime hours but did not compensate Plaintiffs or members of the Overtime Pay Class at one and one-half times their regular rate of pay for such hours.

33. Defendants’ policy/practice of requiring overtime work and not paying at the proper overtime rates for said work violates California Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198; and Wage Order 5.

34. The foregoing policies/practices alleged herein are unlawful and create entitlement to recovery by Plaintiffs and the members of the Overtime Class in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil penalties, attorneys’ fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 558, 1194, and 1198; and Code of Civil Procedure § 1021.5.

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THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(AGAINST ALL DEFENDANTS)

35. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

36. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiffs and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 5, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiffs and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

37. As a result, Defendants are responsible for paying premium compensation for meal period violations pursuant to Labor Code §§ 226.7, 512, and 558, and Wage Order 5, including interest thereon, statutory penalties, civil penalties, and costs of suit.

FOURTH CAUSE OF ACTION
FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
(AGAINST ALL DEFENDANTS)

38. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

39. Wage Order 5, § 12 and California Labor Code §§ 226.7, 516 and 558 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

40. As alleged herein, Defendants failed to authorize and permit Plaintiffs and members of the Rest Period Class to take all required rest periods.

41. The foregoing violations create an entitlement to recovery by Plaintiffs and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION
FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION

1 **(PLAINTIFF RAMIREZ AGAINST ALL DEFENDANTS)**

2 42. Plaintiffs Ramirez Angeles re-alleges and incorporates by reference all previous
3 paragraphs.

4 43. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
5 an employer to pay all wages immediately at the time of separation of employment in the event
6 the employer discharges the employee or the employee provides at least 72 hours of notice of
7 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
8 to quit, said employee's wages become due and payable not later than 72 hours upon said
9 employee's last date of employment.

10 44. Plaintiff Ramirez Angeles is informed and believes, and based thereon alleges, that
11 Defendants failed to timely pay Plaintiff Ramirez Angeles and members of the Waiting Time
12 Penalty Class all final wages due to them at their separation from employment, including, unpaid
13 minimum wages, overtime wages, and meal and rest period premium wages.

14 45. Further, Plaintiff Ramirez Angeles is informed and believes, and based thereon
15 alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff
16 Ramirez Angeles and members of the Waiting Time Penalty Class all earned wages at the end of
17 employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.

18 46. Defendants' failure to pay all final wages was willful within the meaning of Labor
19 Code § 203. Defendants' willful failure to timely pay Plaintiff Ramirez Angeles and the members
20 of the Waiting Time Penalty Class their earned wages upon separation from employment results
21 in a continued payment of wages up to thirty days from the time the wages were due.

22 47. Therefore, Plaintiff Ramirez Angeles and members of the Waiting Time Penalty
23 Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees
24 and costs of suit.

25 **SIXTH CAUSE OF ACTION**

26 **FAILURE TO ISSUE ACCURATE, ITEMIZED WAGE STATEMENTS**

27 **(AGAINST ALL DEFENDANTS)**

28 48. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

1 49. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiffs
3 and members of the Wage Statement Class with complete and accurate wage statements with
4 respect to their actual regular and overtime hours worked, total gross wages earned, and total net
5 wages earned, in violation of Labor Code § 226 *et seq.* In addition, the wage statements did not
6 include an accurate total of all hours worked.

7 50. Defendants' failures in furnishing Plaintiffs and members of the Wage Statement
8 Class with complete and accurate itemized wage statements resulted in actual injury, as said
9 failures led to, among other things, the non-payment of all earned overtime and minimum wages,
10 and meal and rest period premium wages, and deprived them of the information necessary to
11 identify the discrepancies in Defendants' reported data.

12 51. Defendants' failures create an entitlement to recovery by Plaintiffs and members
13 of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
14 Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and
15 costs of suit according to California Labor Code § 226 *et seq.*

16 **SEVENTH CAUSE OF ACTION**

17 **UNFAIR COMPETITION**

18 **(AGAINST ALL DEFENDANTS)**

19 52. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

20 53. Defendants have engaged and continue to engage in unfair and/or unlawful
21 business practices in California in violation of California Business and Professions Code § 17200
22 *et seq.*, by failing to properly pay all minimum and overtime wages, provide all required meal
23 periods and authorize and permit all required rest periods, or pay premium payments in lieu
24 thereof, and failing to pay all final wages owed to employees upon their separation from
25 employment with Defendants.

26 54. Defendants' utilization of these unfair and/or unlawful business practices deprived
27 Plaintiffs and continues to deprive members of the Classes of compensation to which they are
28 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
over Defendants' competitors who have been and/or are currently employing workers and

attempting to do so in honest compliance with applicable wage and hour laws.

55. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiffs for themselves and on behalf of the members of the Classes, seek full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

56. The acts complained of herein occurred within the last four years immediately preceding the filing of the lawsuit in this action.

57. Plaintiffs were compelled to retain the services of counsel to file this court action to protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs, which they are entitled to recover under Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

(AGAINST ALL DEFENDANTS)

58. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

59. Defendants have committed several Labor Code violations against Plaintiffs and other aggrieved employees. Plaintiffs, "aggrieved employees" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of themselves and other aggrieved employees, bring this representative action against Defendants to recover the civil penalties due to Plaintiffs, the other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor

Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Plaintiffs and other aggrieved employees all overtime compensation earned;
- b) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Plaintiffs and other aggrieved employees the statutory minimum wage for all hours worked;
- c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiffs and other aggrieved employees;
- d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit all legally required rest periods and failing to pay rest period premiums to Plaintiffs and other aggrieved employees;
- e) Defendants violated Labor Code § 226 by failing to furnish Plaintiffs and other aggrieved employees with accurate and compliant itemized wage statements;
- f) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to aggrieved employees;
- g) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Plaintiffs and other aggrieved employees; and
- h) Defendants violated Labor Code § 204 by failing to pay Plaintiffs and other aggrieved employees all earned wages at least twice during each calendar month.

60. On February 13, 2020, Plaintiffs notified Defendants via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’ violations of the California Labor Code and Plaintiffs’ intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 59 (a)-(h). Now that sixty-five days have passed from Plaintiffs notifying Defendants of these violations, Plaintiffs have exhausted their administrative

requirements for bringing a claim under the Labor Code Private Attorneys General Act with respect to these violations.

61. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs, which they are entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiffs pray for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiffs as representatives of the Classes;
3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 203;
9. Upon the Sixth Cause of Action, for statutory wage statement penalties pursuant to Labor Code § 226 *et seq.*;
10. Upon the Seventh Cause of Action, for restitution to Plaintiffs and members of the Class of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

1 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiffs, other
2 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
3 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
4 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
5 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
6 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for
7 each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3)
8 \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor
9 Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00
10 for each subsequent violation per employee per pay period for those violations of the Labor Code
11 for which no civil penalty is specifically provided, based on the Labor Code violations cited in
12 Paragraph 59 (a)-(h) above;

13 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor
14 Code § 218.6 and Civil Code §§ 3287 and 3289;

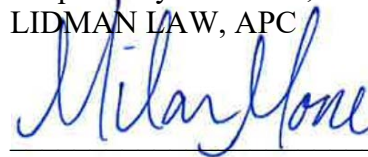
15 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
16 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

17 14. For such other and further relief the Court may deem just and proper.

18
19 Dated: December 15, 2023

Respectfully submitted,
LIDMAN LAW, APC

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21 By:



Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Attorneys for Plaintiffs
JUANA MARIA RAMIREZ ANGELES and
ANDREA MARTINEZ

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Dated: December 15, 2023

By:

Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Attorneys for Plaintiffs
JUANA MARIA RAMIREZ ANGELES and
ANDREA MARTINEZ

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2155 Campus Drive, Suite 150, El Segundo, California 90245.

On December 15, 2023, I served the foregoing document(s) described as:

1. SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested party(ies) as follows:

WESIERSKI & ZUREK LLP

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~~Attorneys for Defendants~~

MARCOS & JAVIERS, LLC dba JAVIER'S CANTINA & GRILL;
JAVIER'S-UTC, LLC

☒ (BY ELECTRONIC SERVICE) I caused a true and correct copy of the document(s) described above to be electronically served on counsel of record at the above-listed electronic service addresses by electronic transmission via One Legal.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 15, 2023, at El Segundo, California.



Dana Joudi