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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA

ORLANDO PEREZ AVALOS,

Plaintiff,

vs.

MAC PARK BBQ LLC; FAZLOLAH  
POURSOHI; and DOES 1 to 25, inclusive,

Defendants.

CASE NO.: 23CV425880

COMPLAINT FOR DAMAGES FOR:

- 1) FAILURE TO COMPENSATE FOR ALL HOURS WORKED;
- 2) FAILURE TO PAY MINIMUM WAGES;
- 3) FAILURE TO PAY OVERTIME;
- 4) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;
- 5) FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;
- 6) FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;
- 7) FAILURE TO PROVIDE REST BREAKS;
- 8) FAILURE TO PROVIDE MEAL BREAKS;
- 9) FAILURE TO REIMBURSE BUSINESS EXPENSES;
- 10) PRIVATE ATTORNEYS GENERAL ACT ("PAGA")
- 11) VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

JURY TRIAL DEMANDED

COMES NOW Plaintiff, ORLANDO PEREZ AVALOS (hereinafter "Plaintiff"), and alleges as follows:

**PARTIES, JURISDICTION, and VENUE**

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Santa Clara in this judicial district because Defendants MAC PARK BBQ LLC; FAZLOLAH POURSOHI; and DOES 1 to 25, inclusive (hereinafter collectively "MAC PARK" or "Defendant(s)") do business in the County of Santa Clara, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Santa Clara is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the County of Santa Clara, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant MAC PARK BBQ LLC is a California corporation, doing business in the County of Santa Clara, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant FAZLOLAH POURSOHI is a male resident of the State of California, and the owner, managing agent, and/or director MAC PARK BBQ LLC is being included in this lawsuit pursuant to Labor Code Section 558.1 as he controlled the hours, wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees. Defendants MAC PARK BBQ LLC and FAZLOLAH POURSOHI are collectively referred to herein as "Defendant(s)" (unless otherwise noted) or "MAC PARK".

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible

1 for the conduct alleged herein. Upon discovering the true names and capacities of these  
2 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and  
3 capacities of these fictitiously named defendants.

4 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of  
5 that information and belief, alleges that at all times herein mentioned, each of the remaining  
6 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and  
7 under the authority of their agency, employment, or representative capacity, with the consent of  
8 his/her codefendants.  
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#### 10 **GENERAL ALLEGATIONS**

11 7. Plaintiff started working at MAC PARK since the company took over on or around  
12 2021 as a bartender. Plaintiff was classified as an hourly, non-exempt employee and his latest  
13 rate of pay was \$20.00 per hour. Plaintiff's employment ended on or around August 2023.

14 8. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),  
15 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas  
16 Security Services USA, Inc., an onsite security provider. After about a year of employment,  
17 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff  
18 specifically alleged violations to the Labor Code requiring immediate payment of wages upon  
19 termination of employment and weekly payment of wages to temporary employees. The trial  
20 court determined Huff was not a temporary employee, and therefore, lacked standing to bring  
21 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court  
22 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue  
23 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not  
24 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the  
25 PAGA representative to sue for violations that the representative has personally suffered. The  
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1 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves  
2 and others. The statute also states that an “aggrieved employee” is “any person who was  
3 employed by the alleged violator and against whom one or more of the alleged violations was  
4 committed.” Because at least one of the violations that Huff had alleged had affected him  
5 personally, the Court of Appeal denied Securitas’ motion.

6 9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and  
7 other employees, it allows for suits broader than the specific violations the named  
8 employee experienced. Therefore, even if the employee did not personally experience the  
9 Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is  
10 Plaintiff’s position that Plaintiff can equivocally bring the following labor code violations on  
11 behalf of all other employees, including ALL hourly, non-exempt employees, irrespective of  
12 job title or job duties.

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14 10. It is Plaintiff’s position that MAC PARK has violated the following Labor Code Sections  
15 against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt,  
16 hourly employees who worked for MAC PARK at their various locations in the State of  
17 California during the relevant PAGA period.

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19 11. MAC PARK violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to  
20 pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including  
21 the statutory minimum wage for all hours worked and for “off the clock” work. This is so because  
22 MAC PARK had a company policy wherein they would disproportionately round down the  
23 number of hours worked, resulting in “time shaving” and further resulting in aggrieved  
24 employees not being paid for all hours worked. Furthermore, and to the extent that aggrieved  
25 employees worked through their meal periods while “off the clock”, they were not compensated  
26 for all hours worked, which would be akin to a minimum wage violation. In addition, aggrieved  
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1 employees conducted work tasks while “off the clock”, including before clocking in as well as  
2 clean up duties once their shift was over and while they were already clocked out.

3 12. Due to the above “off the clock” violations, MAC PARK also violated Labor Code §510  
4 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even  
5 though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week  
6 throughout their employment. Plaintiff’s and other aggrieved employees’ actual work hours  
7 entitled them to overtime compensation, however, MAC PARK did not compensate its hourly,  
8 non-exempt employees with the correct amount of overtime due to the “off the clock” work and  
9 time shaving as described above. Furthermore, MAC PARK failed to include bonuses/incentive  
10 payments in calculating employees’ regular rate of pay for use in deciphering the correct  
11 overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into  
12 employees’ regular rate for purposes of receiving meal and rest break premiums per the Ferra v.  
13 Loews case.  
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15 13. MAC PARK also violated Labor Code § 226.7 and the appropriate Industrial Welfare  
16 Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated  
17 aggrieved employees with 10-minute rest periods for every four hours of work, or majority  
18 portion thereof, throughout their employment. MAC PARK did not completely relieve Plaintiff  
19 and others of all duty during said rest periods. MAC PARK did not pay to Plaintiff and others  
20 one additional hour of pay at Plaintiff’s regular rate of compensation for each workday that one  
21 or more statutory rest periods was not provided. It was not part of the company policy for  
22 employees such as Plaintiff to take at least one rest break per shift. In fact, Plaintiff and others  
23 did not take any rest breaks at all. The concept of rest breaks was not implemented as it was not  
24 company policy. Moreover, it would not have been possible for employees such as Plaintiff to  
25 take such rest breaks due to being understaffed (only bartender working) and due to a heavy  
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workload, especially in the fast-paced restaurant industry. Plaintiff was not able to leave the bar area unattended for 10 minutes since there was no one else to cover him. As such, the culture as well as the policies and procedures of MAC PARK did not lend itself to the employees receiving consistent statutory rest breaks wherein they were relieved of all work duties. The environment at MAC PARK was not conducive to receiving multiple statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

14. MAC PARK violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. MAC PARK did not completely relieve Plaintiff and other employees of all duty during said meal periods. MAC PARK did not pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. The hourly, non-exempt employees would often not be able to receive any meal breaks, much less meal periods before the 5<sup>th</sup> hour worked that were actually uninterrupted. The latter was due to the workload and due to being in a fast-paced restaurant environment. Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal break was not part of the company culture and was not enforced by MAC PARK. Consequently, it was the normal practice and custom of MAC PARK not to authorize, permit, and enforce timely statutory meal periods. If MAC PARK had Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff and others generally worked more than a 6-hour shift. Even if Plaintiff and others worked less than a 6-hour shift, they always worked more than a 5-hour shift and did not sign a meal period waiver. If MAC PARK had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it would be invalid and unenforceable because

1 the nature of Plaintiff's job does not and did not prevent him from taking a meal period and the  
2 company could have hired "breakers" to relieve Plaintiff of his job duties so that he can actually  
3 take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement  
4 did not allow for Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff  
5 and others did not always receive statutory, timely meal periods during their employment. To  
6 the extent that MAC PARK argues that employees receive meal break premium pay for missed  
7 meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA  
8 penalties are for the violations themselves, irrespective of whether an employee received the  
9 premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire*  
10 *Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice  
11 between providing *either* meal and rest breaks *or* an additional hour of pay." See *Kirby v.*  
12 *Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the  
13 extra hour of pay does not excuse the violation; the employer has still committed a violation even  
14 if the remedy for the violation has been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016,  
15 2016 WL 1110302 at \*4). As such, the work environment and culture at MAC PARK was not  
16 conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover,  
17 any meal or rest break premiums paid were not compensated at the weighted average regular  
18 rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

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21 15. Furthermore, during the relevant time period, and due to the above labor code violations,  
22 MAC PARK failed to pay Plaintiff and other similarly situated aggrieved employees all wages  
23 due to them within any time period specified by California Labor Code section 204. MAC PARK  
24 was also in violation of California Labor Code section 226(a) by failing to include pertinent  
25 information on the wage statements, including but not limited to, the correct hourly rate, all hours  
26 worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned,  
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1 premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay  
2 period, all employee identifying information, the correct and complete name and address of the  
3 legal employer, and reimbursement for business expenses, among others. As such, MAC PARK  
4 did not provide Plaintiff and other similarly situated aggrieved employees with complete,  
5 accurate itemized wage statements.

6 16. During the relevant time period, MAC PARK also failed to keep accurate and complete  
7 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and  
8 others pursuant to California Labor Code sections 1174(d).

9 17. MAC PARK also violated Labor Code § 203 because it willfully failed to pay Plaintiff  
10 and other similarly situated aggrieved employees earned and due wages upon separation of  
11 employment, either immediately upon involuntary termination, or within 72 hours of resignation.  
12 These earned but unpaid wages include compensation for all hours worked, including minimum  
13 wages, overtime compensation, and premium pay for missed meal and rest breaks.

14 18. During the relevant time period, Plaintiff and other aggrieved employees incurred  
15 necessary, business-related expenses and costs that were not reimbursed by MAC PARK. These  
16 costs include, but are not limited to, uniforms in that Plaintiff and others had to purchase articles  
17 of clothing for their uniforms, including having to purchase non-slip shoes. Accordingly, MAC  
18 PARK was in violation of California Labor Code sections 2800 and 2802. Additionally, MAC  
19 PARK violated Labor Code Section 351 and 353 by taking some of the tips meant for employees  
20 and also deducting the tips from Plaintiff and others' earned wages. In fact, Plaintiff's manager  
21 took half of the tips that were meant for Plaintiff in contravention of California law. MAC PARK  
22 also deducted the credit card fee from Plaintiff's and others' tips and did not timely provide the  
23 credit card and even cash tips to Plaintiff and other similarly situated aggrieved employees. As  
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1 such, Plaintiff and the other similarly situated employees were not given accurate tips to which  
2 they were entitled.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

5 **(California Industrial Welfare Commission Order 5-2001, California Code of**  
6 **Regulations Title 8 Section 11050, and California Labor Code Section 1198)**

7 **(Plaintiff against all named defendants and all DOE defendants)**

8 19. Plaintiff re-alleges and incorporates by reference each and every allegation in  
9 paragraphs 1 through 18, inclusive, of this Complaint as though fully set forth herein.

10 20. At all times relevant herein, Defendants were required to compensate its employees for  
11 all hours worked upon reporting for work at the appointed time stated by the employer  
12 pursuant to Industrial Welfare Commission Order 5-2001, California Code of  
13 Regulations, Title 8, Section 11050.

14 21. For the three (3) years preceding filing of this action, Defendants failed to compensate  
15 Plaintiff for all hours worked.

16 22. Under the aforementioned wage order and regulations, Plaintiff is to recover  
17 compensation for all hours worked but not paid by Defendants for the three (3) years  
18 preceding the filing of this Complaint.

19 23. As a proximate result of the aforementioned violations, Plaintiff has been damaged in  
20 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of  
21 this Court.

22 24. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and  
23 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is  
24 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus  
25 reasonable attorney's fees and costs of suit.

26 25. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
27 along with any allowable interest, penalties, attorney's fees, and costs which will equal an  
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1 amount known to Plaintiff once he has obtained all of his payroll records from  
2 Defendants.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

5 **(California Labor Code Sections 1194, 1194.2, 1197)**

6 **(Plaintiff against all named defendants and all DOE defendants)**

7 26. Plaintiff re-alleges and incorporates by reference each and every allegation in  
8 paragraphs 1 through 25, inclusive, of this Complaint as though fully set forth herein.  
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10 27. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer  
11 to suffer or permit a California employee to work without paying wages at the minimum wage  
12 rate for all hours worked as required by the applicable Industrial Welfare Commission  
13 (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of  
14 Regulations, Title 8, Section 11050, subdivision 4.

15 28. Pursuant to IWC Wage Order no. 5-2001, subdivision 2(K)/(H), at all relevant  
16 times, "hours worked" included "the time during which an employee is subject to the control of  
17 an employer, and includes all the time the employee is suffered or permitted to work, whether  
18 or not required to do so..."

19 29. During his employment, Plaintiff was regularly required as a matter of uniform  
20 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff  
21 was paid less than the minimum wage rate by Defendants for hours worked in violation of  
22 California Labor Code Section 1197 and the applicable California Industrial Wage  
23 Commission wage order(s).

24 30. Plaintiff was, at all relevant times, under the control of Defendants and suffered or  
25 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately  
26 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants  
27 to believe that their acts or omissions were not contrary to California law.

28 31. For all hours worked by Plaintiff for which he was paid less than the minimum wage

1 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum  
2 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount  
3 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,  
4 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

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

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME**

10 **(California Industrial Welfare Commission Order 5-2001, California Code of**  
11 **Regulations Title 8 Section 11050; California Labor Code Section 510)**  
12 **(Plaintiff against all named defendants and all DOE defendants)**

13 33. Plaintiff re-alleges and incorporates by reference each and every allegation in  
14 paragraphs 1 through 32, inclusive, of this Complaint as though fully set forth herein.

15 34. Pursuant to Industrial Welfare Commission Order No. 5-2001, Cal. Code of  
16 Regs., Title 8, Section 11050, for the period of Plaintiff's employment, Defendants were  
17 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)  
18 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours  
19 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)  
20 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a  
21 week.

22 35. Plaintiff was a non-exempt employee entitled to the protections of the California  
23 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations,  
24 Title 8, Section 11050.

25 36. Plaintiff worked more than eight (8) hours in a single workday, twelve (12) hours in a  
26 single workday or forty (40) hours in a single workweek on numerous occasions.

27 37. Plaintiff was entitled to the above overtime premiums.  
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1 38. Defendants did not pay Plaintiff premium wages of at least one and one-half times  
2 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay  
3 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past  
4 twelve (12) in a day.

5 39. Defendants did not pay Plaintiff premium wages of at least one and one-half times  
6 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

7 40. Plaintiff worked at least one pay period in which he was not properly paid overtime  
8 within the three (3) years prior to the initiation of this lawsuit.

9 41. Defendants know or should know the actual dates of overtime worked, the amount of  
10 overtime worked, and the amount of unpaid overtime due.

11 42. As a proximate result of Defendants' violations, Plaintiff has been damaged in an  
12 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this  
13 Court.

14 43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of  
15 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the  
16 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus  
17 reasonable attorney's fees and costs of suit.

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

21 **FOURTH CAUSE OF ACTION**

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

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

24 **(Plaintiff against all named defendants and all DOE defendants)**

25 45. Plaintiff re-alleges and incorporates by reference each and every allegation in  
26 paragraphs 1 through 44, inclusive, of this Complaint as though fully set forth herein.

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

2 47. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that  
3 accurately reflected all information required by Labor Code Section 226, including but not  
4 limited to, gross wages earned, including overtime, minimum wages, and premium pay for  
5 missed meal and rest breaks, net wages earned, total hours worked by the employee, and all  
6 deductions. Therefore, Defendants failed to maintain and provide accurate itemized wage  
7 statements to Plaintiff in accordance with California Labor Code Section 226(a).

8 48. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the  
9 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation  
10 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay  
11 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and  
12 reasonable attorney's fees.

13 49. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has  
14 sustained damages, including loss of earnings, in an amount to be established at trial. As a  
15 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,  
16 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs  
17 and attorney's fees pursuant to statute.

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

21 **FIFTH CAUSE OF ACTION**

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

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

24 **(Plaintiff against all named defendants and all DOE defendants)**

25 51. Plaintiff re-alleges and incorporates by reference each and every allegation in  
26 paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.

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

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

4 54. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is  
5 informed, believes, and thereon alleges, that all times relevant during the liability period,  
6 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,  
7 including overtime hours, the minimum wage, and premium pay for missed meal and rest  
8 breaks.

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

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

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17 **SIXTH CAUSE OF ACTION**

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

19 **(California Labor Code Sections 201, 203)**

20 **(Plaintiff against all named defendants and all DOE defendants)**

21 57. Plaintiff re-alleges and incorporates by reference each and every allegation in  
22 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.

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

25 59. Pursuant to California Labor Code Section 202, when an employee resigns, the  
26 employer must pay all compensation due and owing within 72 hours of resignation, or on the  
27 employee's last day of work, if the employee gives more than 72 hours notice of resignation.  
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1 60. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,  
2 without abatement or reduction, any wages of an employee whose employment ends, the wages  
3 of the employee shall continue as a penalty from the due date at the same rate until paid or until  
4 an action is commenced; however, the wages shall not continue for more than 30 days for  
5 failure to pay an employee owed wages.

6 61. After Plaintiff's employment with Defendants ended, Defendants willfully refused and  
7 continue to refuse to pay his unpaid wages as required by Labor Code Section 203.

8 62. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
9 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
10 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately  
11 preceding the filing of this lawsuit.

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

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

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO GIVE REST BREAKS**

20 **(Plaintiff against all named defendants and all DOE defendants)**

21 65. Plaintiff re-alleges and incorporates by reference each and every allegation in  
22 paragraphs 1 through 64, inclusive, of this Complaint as though fully set forth herein.

23 66. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 24 a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which  
25 provides that every employer shall authorize and permit all employees to take rest  
26 periods, which insofar as practicable shall be in the middle of each work period.

27 The authorized rest period time shall be based on the total hours worked daily at the  
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1 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

2 b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which  
3 provides that if an employer fails to provide an employee a rest period in  
4 accordance with the applicable provisions of this order, the employer shall pay the  
5 employee one (1) hour of pay at employee's regular rate of compensation for each  
6 workday that the rest period is not provided;

7 c. Title 8 of the California Code of Regulations sections 11050(20)(A), which  
8 penalizes the employer \$50.00 for each initial violation, per employee, of any  
9 provision of the Wage Order, and \$100.00 for each additional violation thereafter  
10 per employee; and

11 d. California Labor Code section 226.7, which states that (a) no employer shall require  
12 any employee to work during any rest period mandated by an applicable order of  
13 the Industrial Welfare Commission, and (b) if an employer fails to provide an  
14 employee a rest period in accordance with an applicable order of the Industrial  
15 Welfare Commission, the employer shall pay the employee one (1) additional hour  
16 of pay at employee's regular rate of compensation for each work day that the rest  
17 period is not provided.  
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20 67. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute  
21 rest break after every four (4) hours of work or major fraction thereof, as required by California  
22 law.

23 68. Under this cause of action, Plaintiff prays for wages due to him under the statutes,  
24 regulations, and wage orders alleged in this cause of action along with any allowable interest,  
25 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for  
26 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.  
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1 69. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's  
2 fees as well as interest under Labor Code section 218.6.

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

6 **EIGHTH CAUSE OF ACTION**

7 **FAILURE TO GIVE MEAL BREAKS**

8 **(Plaintiff against all named defendants and all DOE defendants)**

9 71. Plaintiff re-alleges and incorporates by reference each and every allegation in  
10 paragraphs 1 through 70, inclusive, of this Complaint as though fully set forth herein.

11 72. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 12
- 13 a. California Labor Code section 512(a), which requires that employees be given a 30-  
14 minute uninterrupted meal break after five (5) hours of work, and a second  
15 uninterrupted meal break after ten (10) hours of work;
- 16 b. California Labor Code section 226.7, which states that (a) no employer shall require  
17 any employee to work during any meal period mandated by an applicable order of  
18 the Industrial Welfare Commission, and (b) if any employer fails to provide an  
19 employee a meal period in accordance with an applicable order of the Industrial  
20 Welfare Commission, the employer shall pay the employee one (1) additional hour  
21 of pay at the employee's regular rate of compensation for each workday that the  
22 meal period is not provided;
- 23 c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified  
24 under Title 8 of the California Code of Regulations Section 11050, which states that  
25 if an employer fails to provide an employee a meal period in accordance with the  
26 applicable provisions of the Wage Order, the employer shall pay the employee one  
27  
28

(1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;

- d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11050, which requires an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as codified under California Code of Regulations Section 11050, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5) as enforceable law.

73. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order No. 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty. California Labor Code section 226.7 provides that employers may not require their employees to work through their meal periods. California Labor Code section 226.7 and California Code of Regulations section 11050 requires that if the employer fails to provide the employee with an uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each work day that the meal period is not given.

1 74. Under this cause of action, Plaintiff prays for wages due to him under the statutes,  
2 regulations, and wage orders alleged in this cause of action along with any allowable interest,  
3 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for  
4 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

5 75. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's  
6 fees as well as interest under Labor Code section 218.6.

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

### 10 **NINTH CAUSE OF ACTION**

#### 11 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

12 **(Plaintiff against All Named Defendants and all DOE defendants)**

13 77. Plaintiff re-alleges and incorporates by reference each and every allegation in  
14 paragraphs 1 through 76, inclusive, of this Complaint as though fully set forth herein.

15 78. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her  
16 employee for all necessary expenditures or losses incurred by the employee in direct  
17 consequence of the discharge of his or her duties."

18 79. Beginning at least 3 years prior to the filing of this complaint, in order to discharge  
19 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course  
20 of completing his job duties, which were not reimbursed by Defendant. These expenses  
21 include, but are not limited to, uniforms in that Plaintiff and others had to purchase articles of  
22 clothing for their uniforms, including having to purchase non-slip shoes.

23 80. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest  
24 and attorney's fees and costs, under Labor Code section 2802.

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**Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802)**

**(Plaintiff against All Named Defendants and all DOE defendants)**

81. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 80, inclusive, of this Complaint as though fully set forth herein.

82. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated February 17, 2023, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

83. Pursuant to California Labor code section 2699.3, no response was received from the LWDA within 65 days of the postmark date of the above-alleged letter.

84. Plaintiff therefore has exhausted all administrative remedies required of him under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

85. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in California Labor Code section 2699.3.

86. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged violator and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of other current and former employees, including all current and former hourly, non-exempt employees who worked for MAC PARK in the State of California during the applicable PAGA Period.

1 87. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties  
2 under California Labor Code sections 2698 and 2699 because of Defendants' violations of  
3 numerous provisions of the California Labor Code as alleged in this Complaint.

4 88. Plaintiff therefore has exhausted all administrative remedies required of him under  
5 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute  
6 this cause of action and pursue penalties in a representative action for Defendants' violations of  
7 the Labor Code.

8 89. California Labor Code section 2699 et seq. imposes penalties upon culpable  
9 Defendants for violating the Labor Code.

10 90. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by  
11 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not  
12 seeking individual penalties/victim specific relief or underpaid wages for himself or other  
13 employees under this specific PAGA cause of action. Plaintiff has separate causes of action in  
14 this Complaint for individual wages but is not seeking wages through the PAGA action.

15 91. Specifically, Plaintiff seeks penalties under California Labor Code  
16 section 2699, for the following:

17 Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226,  
18 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802, and any  
19 other Labor Codes/Industrial Welfare Commission Order (No. 5) violated based on the facts  
20 alleged in this Complaint.

21 92. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,  
22 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees  
23 as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional  
24 limits of this Court.

## 25 **ELEVENTH CAUSE OF ACTION**

### 26 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

27 **(California Business and Professions Code Section 17200)**

28 **(Plaintiff against MAC PARK BBQ LLC and all DOE defendants)**

1 93. Plaintiff re-alleges and incorporates by reference each and every allegation in  
2 paragraphs 1 through 92, inclusive, of this Complaint as though fully set forth herein.

3 94. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants  
4 constitutes unfair and unlawful business practices under California Business and Professions  
5 Code Section 17200, et seq.

6 95. Defendant's violations of the California labor laws and the Labor Code  
7 constitutes a business practice because it was done repeatedly over a significant period of time  
8 in a systematic manner that was detrimental to Plaintiff and other employees.

9 96. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to  
10 reasonable attorneys' fees and costs of said suit as specifically provided in California Code of  
11 Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et  
12 seq.

13 97. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to  
14 multiple damages as specifically provided in California Business and Professions Code section  
15 17200 et seq.

16 98. For the four years preceding the filing of this action, Plaintiff requests  
17 restitution of all monies and profits to be disgorged from Defendants in an amount according to  
18 proof at time of trial, but in excess of the jurisdiction of this Court.

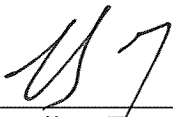
19 **PRAYER FOR RELIEF**

- 20
- 21 1. For compensatory damages including lost past wages, overtime, commissions, and all  
22 other sums of money, including employment benefits, together with interest on said  
23 amounts, and any other economic injury to Plaintiff, according to proof;
  - 24 2. For special and consequential damages to the extent allowed by law;
  - 25 3. For restitution and disgorgement for all unfair business practices by corporate  
26 Defendants against Plaintiff in an amount according to proof;
  - 27 4. For an order enjoining corporate Defendants from further unfair and unlawful business  
28 practices in violation of Business and Professions Code section 17200, et seq.;

5. For damages and penalties against Defendants under Labor Code section 226 for Plaintiff in an amount subject to proof at trial;
6. For damages and penalties pursuant to Labor Code section 203 against Defendants in an amount subject to proof at trial;
7. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period.
8. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
9. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendant as described more particularly in the Complaint and Representative PAGA claim/action;
10. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;
11. For the imposition of civil penalties and/or statutory penalties;
12. Reasonable attorney's fees where available by law, including but not limited to, pursuant to the California Labor Code, including section 2698, and/or other applicable laws; and
13. Costs and expenses of suit incurred herein;
14. For all interest as allowed by law;
15. For such other and further relief as the Court deems just and proper.

DATED: November 15, 2023

MESSRELIAN LAW INC.

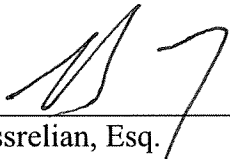
By   
Harout Messrelian, Esq.  
Attorneys for Plaintiff Orlando Perez Avalos

**DEMAND FOR JURY TRIAL**

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

DATED: November 15, 2023

MESSRELIAN LAW INC.

By   
Harout Messrelian, Esq.  
Attorneys for Plaintiff Orlando Perez Avalos