

Sarkis Sirmabekian [SBN 278588]
SIRMABEKIAN LAW FIRM, PC
2600 W Olive Ave, Suite 549
Burbank, California 91505
Telephone: (818) 473-5003
Facsimile: (818) 476-5619
Email: contact@slawla.com

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Attorney for Plaintiff and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JULIO CESAR ONTIVEROS CHAMU, an
individual;

Plaintiff,

vs.

TEQUILA JACK'S, INC., a California Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case Number: **24STCV22332**

CLASS-ACTION COMPLAINT FOR:

1. Violation of Private Attorney General Act ("PAGA");
2. Failure to Pay Minimum Wage (Class Claim; Cal. Lab. Code §§ 1182.12, 1194, 1197 & 1198, *et seq.*);
3. Failure to Pay Overtime Compensation (Class Claim; Cal. Lab. Code §§ 1198 & 510, *et seq.*);
4. Failure to Pay Meal Period Compensation (Class Claim; Cal. Lab. Code §§ 226.7, 512(a) & 1198 *et seq.*);
5. Failure to Pay Rest Period Compensation (Class Claim; Cal. Lab. Code §§ 226.7 & 1198 *et seq.*);
6. Failure to Furnish Accurate Wage and Hour Statements (Class Claim; Cal. Lab. Code § 226);
7. Failure to Maintain Accurate Payroll Records (Class Claim; Cal. Lab. Code §§ 226(a), 1174(d) and 1198, *et seq.*);
8. Failure to Pay Wages Upon Discharge (Class Claim; Cal. Lab. Code §§ 201 & 202, *et seq.*);
9. Failure to Indemnify (Class Claim; Cal. Lab. Code § 2802); and
10. Unfair Competition (Class Claim;

Business and Professions Code § 17200 *et seq.*);

**(UNLIMITED CIVIL)
(DEMAND EXCEEDS \$35,000)**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff JULIO CESAR ONTIVEROS CHAMU (“Plaintiff”), individually, on behalf of himself and all others similarly situated (“Class Members”), hereby complains against Defendants TEQUILA JACK'S, INC. and DOES 1 through 20, inclusive, (collectively “Defendants”) and each of them, and alleges as follows:

NATURE OF THE ACTION

1. This is a class action complaint for wage and labor violations arising out of, among other things, failure to pay wages, pay overtime, and provide meal and rest breaks to its employees, etc.
2. As more fully set forth herein, Defendants failed to pay for all time worked every pay period, specifically including required minimum wages and daily overtime; failed to provide off-duty meal and rest periods to its employees in accordance with the California Labor Code §226.7 and applicable Industrial Wage Order; failed to pay its employees one hour of pay at their regular rate of compensation for each instance that Defendants failed to provide statutorily mandated rest periods and off-duty meal periods; unlawfully deducted business expenses from its employees’ paychecks; and for penalties arising from Defendants issuing to its employees inaccurate wage statements.
3. Plaintiff seeks to represent the following Class: all current and former California employees of Defendant TEQUILA JACK'S, INC. employed in California, at any time beginning four (4) years prior to the filing of the Complaint through the date notice is mailed to the Class (the “Class period”), and who worked as an employee for Defendants.

JURISDICTION

4. This class action is brought pursuant to California Code of Civil Procedure section 382. The monetary damages, penalties, and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. This Court has jurisdiction

1 over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which
2 this action is brought do not specify any other basis for jurisdiction.

3 5. This Court has personal jurisdiction over Defendants because Defendants engaged in wrongful
4 conduct in the State of California, which caused harm to Plaintiff in this state.

5 6. Venue is proper in this Court, because Defendants employ persons in this county, employed
6 Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this
7 action occurred in this county. Cal. Civ. Proc. Code § 395.

8 **PARTIES**

9 7. Plaintiff JULIO CESAR ONTIVEROS CHAMU is an individual and a resident of the County
10 of Los Angeles and citizen of the State of California.

11 8. Plaintiff is informed and believes, and based thereon alleges that Defendant TEQUILA JACK'S,
12 INC. is a California Corporation, organized and existing to do business under the laws of the State of
13 California, with its principal place of business located in Long Beach, California.

14 9. Plaintiff is informed and believes, and based thereon alleges that at all times herein mentioned
15 Defendants and DOES 1 through 20, are and were individuals, sole proprietorships, corporations,
16 business entities, persons, and partnerships, licensed to do business and/or actually doing business in
17 the State of California.

18 10. Plaintiff is unaware of the true names and capacities, whether informed and believes and thereon
19 alleges that at all times herein mentioned Defendants and DOES 1 through 20, are and were individual,
20 corporate, associate, or otherwise, of the Defendants sued as DOES 1 through 20, inclusive. They are
21 unknown to Plaintiff and therefore Plaintiff issues them by such fictitious names. Plaintiff will amend
22 this complaint to allege their true names and capacities when they become known to Plaintiff. Plaintiff
23 is informed and believes, and based thereon alleges, that DOES 1 through 20, inclusive, are indebted
24 to Plaintiff as hereinafter alleged, and that Plaintiff's rights against such fictitiously named Defendants
25 arise from such indebtedness.

26 11. Plaintiff is informed and believes, and based thereon alleges that each Defendant sued in this
27 action, including each Defendant sued by the fictitious names DOES 1 through 20, inclusive, is
28 responsible and liable in some manner for the occurrences, controversies and damages alleged below.

12. All references to “Defendants,” “Defendants,” “company,” “company’s,” “employer” or any similar language, whether singular or plural, shall mean “Defendants, and each of them” when used throughout this complaint.

13. At all times herein mentioned, Defendants participated in the doing of the acts and omissions herein alleged, were acting within the purpose, course and scope of said agency and/or employment to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, managing agents, servants, employees, alter-egos, co-conspirators, joint-venturers, partners, successors in interest and predecessors in interest of each of the other Defendants.

14. At all times herein mentioned, Defendants were acting within the purpose, course and scope of said agency and/or employment so as to invoke vicarious liability and *respondeat superior* liability among other theories of liability to hold Defendants liable and responsible for the injuries and damages to Plaintiff.

15. At all times herein mentioned, Defendants were members of and engaged in a joint venture, partnership and common enterprise, and acting within the purpose, course and scope of, and in pursuit of, said joint venture, partnership and common enterprise.

16. At all times herein mentioned, the acts and omissions of various Defendants contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged.

17. At all times herein mentioned, Defendants, including Defendants’ managing agents, officers and directors, had advanced knowledge of and/or ratified each and every act or omission complained throughout this complaint. At all times relevant herein, Defendants and/or their managing agents, officers or directors committed and/or participated in the wrongful acts and omissions complained of throughout this complaint or ratified such acts and omissions. At all times herein mentioned, the Defendants aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

18. Plaintiff is informed and believes, and based thereon alleges that there exists such a unity of interest and ownership between Defendants that the individuality and separateness of Defendants have ceased to exist.

1 19. The business affairs of Defendants are, and at all times relevant hereto were, so mixed and
2 intermingled that the same cannot reasonably be segregated, and the same are in inextricable confusion.

3 20. The recognition of the separate existence of any Defendants would not promote injustice, in
4 that it would permit that Defendants to wrongfully insulate itself from liability to Plaintiff.

5 21. Under California law, Defendants are jointly and severally liable as employers for the violations
6 alleged herein because they have each exercised sufficient control over the wages, hours, working
7 conditions, and employment status of Plaintiff and class members. Each Defendant had the power to
8 hire and fire Plaintiff and class members, supervised and controlled their work schedule and/or
9 conditions of employment, determined their rate of pay, and maintained their employment records.
10 Defendants suffered or permitted Plaintiff and class members to work and/or "engaged" Plaintiff and
11 class members so as to create a common law employment relationship. As joint employers of Plaintiff
12 and class members, Defendants are jointly and severally liable for the civil penalties and all other relief
13 available to Plaintiff and class members under the law.

14 22. Plaintiff is informed and believes, and thereon alleges, that at all relevant times, Defendants, and
15 each of them, have acted as joint employers with respect to Plaintiff and class members because
16 Defendants have:

- 17 a. jointly exercised meaningful control over the work performed by Plaintiff and class members;
- 18 b. jointly exercised meaningful control over Plaintiff and class members' wages, hours, and
19 working conditions, including the quantity, quality standards, speed, scheduling, and operative
20 details of the tasks performed by Plaintiff and class members;
- 21 c. jointly required that Plaintiff and class members perform work which is an integral part of
22 Defendants' businesses; and
- 23 d. jointly exercised control over Plaintiff and class members as a matter of economic reality in that
24 Plaintiff and class members were dependent on Defendants, who shared the power to set the
25 wages of Plaintiff and class members and determine their working conditions, and who jointly
26 reaped the benefits from the underpayment of their wages and noncompliance with other
27 statutory provisions governing their employment.

28 23. Plaintiff is informed and believes, and further alleges, that at all relevant times there has existed

1 a unity of interest and ownership between Defendants such that any individuality and separateness
2 between the entities has ceased.

3 24. Defendants are therefore alter-egos of each other.

4 25. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the
5 corporate privilege, and would promote injustice by protecting Defendants from liability for the
6 wrongful acts committed by it.

7 26. Plaintiff further alleges, upon information and belief, that Defendants are alter egos of each
8 other.

9 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

10 27. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons
11 similarly situated, and thus seeks class certification under California Code of Civil Procedure section
12 382.

13 28. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized
14 by California law.

15 29. Plaintiff's proposed class consists of and is defined as follows:

16 "All persons who are or were employed by Defendants as non- exempt, hourly-paid
17 employees in California within four years prior to the filing of this complaint until the
18 date of trial ("Class")."

19 30. Plaintiff's proposed subclass consists of and is defined as follows:

20 "All persons who are or were employed by Defendants as non- exempt, hourly-paid
21 employees in California within one year prior to the filing of this complaint until the
22 date of trial ("Subclass")."

23 31. Members of the Class and Subclass will hereinafter be referred to as "class members."

24 32. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses
25 as appropriate based on further investigation, discovery, and specific theories of liability.

26 33. This action has been brought and may be properly maintained as a class action pursuant to the
27 provisions of Code of Civil Procedure § 382 (hereinafter "§ 382") and other applicable law.

28 34. **Numerosity of the Class:** Pursuant to § 382, members of the Class are so numerous that their

individual joinder is impracticable. Plaintiff estimates, on information and belief, that there are three (3) current and/or former aggrieved employees of Defendants employed in California during the Class period. The precise number of Class members and their addresses are unknown to Plaintiff or will be known to Plaintiff through discovery. Class members may be notified of the pendency of this action by mail, electronic mail, the Internet, or published notice.

35. **Existence of Predominance of Common Questions of Fact and Law:** Pursuant to § 382, common questions of law and fact exist as to all members of the Class. These questions predominate over any questions affecting only individual Class members. These common legal and factual questions include:

- a. Whether Plaintiff and each member of the Class were not paid minimum wage for each hour worked or part thereof during which they were required to perform acts at the direction and for the benefit of Defendants;
- b. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff for the total hours worked during the Class period;
- c. Whether Defendants violated Labor Code § 2267.7 and/or § 512 and engaged in a pattern or practice of failing to provide timely, off-duty thirty (30) minute meal periods to Plaintiff and members of the Class during the Class period;
- d. Whether Defendants engaged in a pattern or practice of impeding Plaintiff and the members of the Class during the Class period from taking statutory off-duty thirty (30) minute meal periods on a timely basis;
- e. Whether Defendants engaged in a pattern or practice of failing to properly compensate Plaintiff and the members of the Class during the Class period for missed, untimely or on-duty meal periods as required by California law;
- f. Whether Defendants violated the applicable California Industrial Welfare Commission by failing to provide Plaintiff and the members of the Class with timely off-duty thirty (30) minute meal periods;
- g. Whether Defendants engaged in unfair practice and violated California Business and Professions Code §17200 by failing to provide Plaintiff and the members of the Class who

1 worked as employees in California during the Class period with their statutory off-duty meal
2 periods on a timely basis;

3 h. Whether Defendants violated Labor Code § 226(a) by issuing inaccurate itemized wage
4 statements to Plaintiff and members of the Class that failed to include payments for missed,
5 untimely, and/or on-duty meal periods among wages earned throughout the Class period;

6 i. Whether Defendants violated Labor Code § 226 by issuing inaccurate itemized wage statements
7 to Plaintiff and members of the Class to the detriment of Plaintiffs and the Class;

8 j. Whether Defendants failed to provide ten (10) minute, uninterrupted rest periods as
9 contemplated by California law for work periods in excess of four (4) hours or every major
10 fraction thereof;

11 k. Whether Defendants engaged in a pattern or practice of failing to properly compensate Plaintiff
12 and the members of the Class during the Class period for failing to provide ten (10) minute,
13 uninterrupted rest periods as contemplated by California law for work periods in excess of four
14 (4) hours;

15 l. Whether Defendants violated Labor Code §§ 218.5, 204, 1197, and 1198 due to failure to
16 compensate Plaintiff and the Class for those acts Defendants required Plaintiff and members of
17 the Class to perform for the benefit of Defendants; and

18 m. The nature and extent of class-wide injury and the measure of damages for the injury.

19 36. **Typicality:** Plaintiff's claims are typical of the claim of the members of the subclasses they
20 represent to the same unlawful business practices as other employees employed by Defendants during
21 the liability period. Plaintiff and the members of the sub classes they represent sustained the same types
22 of damages and losses. Plaintiff is qualified to, and will, fairly and adequately protect the interests of
23 each class member with whom they have a well- defined community of interest, and Plaintiff's claims
24 (or defenses, if any are typical of all class members as demonstrated herein).

25 37. **Adequacy:** Plaintiff is an adequate representative of the Class he seeks to represent because his
26 interests do not conflict with the interests of the class members Plaintiff seeks to represent. Plaintiff has
27 retained counsel competent and experienced in complex class action litigation and Plaintiff intends to
28 prosecute this action vigorously. The interests of members of each Class will be fairly and adequately

1 be protected by Plaintiff and his counsel. Plaintiff is qualified to, and will, fairly and adequately protect
2 the interests of each class member with whom he has a well-defined community of interest and
3 typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make
4 known to the Court any relationship, conflicts or differences with any class member. Plaintiff's
5 attorneys, the proposed class counsel, are versed in the rules governing class action discovery,
6 certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will
7 continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the
8 prosecution of this action for the substantial benefit of each class member.

9 **38. Superiority and Substantial Benefit:** The class action is superior to other available means for
10 the fair and efficient adjudication of Plaintiff and the Class members' claims. The damages suffered by
11 each individual Class member may be limited. Damages of such magnitude are small given the burden
12 and expense of individual prosecution of the complex and extensive litigation necessitated by
13 Defendants conduct. Further, it would be virtually impossible for the Class members to redress the
14 wrongs done to them on an individual basis. Even if members of the Class members themselves could
15 afford such individual litigation, the court system could not. Individualized litigation increases the delay
16 and expense to all parties and the court system, due to the complex legal and factual issues of the case.
17 By contrast, the class action device presents far fewer management difficulties, and provides the
18 benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

19 **39. Public Policy Considerations:** Public Policy considerations violate employment and labor laws
20 every day. Current employees are often afraid to assert their rights out of fear of direct or indirect
21 retaliation. Former employees are fearful of bringing actions because they believe their former
22 employers might damage their future endeavors through negative references and/or other means. Class
23 actions provide the class members who are not named in the complaint with a type of anonymity that
24 allows for the vindication of their rights while simultaneously protecting their privacy.

25 **40.** The Class should also be certified because:

- 26 a. The prosecution of separate actions by individual members of the Class would create a risk of
27 inconsistent or varying adjudications with respect to individual Class members which would
28 establish incompatible standards of conduct for Defendants;

- 1 b. The prosecution of separate actions by individual members of the Class would create a risk of
2 adjudication with respect to them, which would, as a practical matter, be dispositive of the
3 interests of the other Class members not parties to the adjudications, or substantially impair or
4 impede their ability to protect their interests; and
- 5 c. Defendants have acted to refuse to act on grounds generally applicable to the Class, and/or the
6 general public, thereby making appropriate final and injunctive relief with respect to the Classes
7 as a whole

8 **GENERAL FACTS AND ALLEGATIONS**

9 41. This is an action brought by Plaintiff JULIO CESAR ONTIVEROS CHAMU ("Plaintiff")
10 pursuant to California statutory, decisional, and regulatory laws. Plaintiff was an employee of
11 Defendants. Plaintiff was at all times relevant to this complaint, employed by Defendants.

12 42. At all relevant times set forth herein, Defendants, jointly and severally, employed Plaintiff and
13 other persons as hourly-paid or non-exempt employees within the State of California, including the
14 County of Los Angeles.

15 43. Plaintiff is informed, believes and thereon alleges that Defendant TEQUILA JACK'S INC. is a
16 restaurant company operating in California.

17 44. Plaintiff alleges that Defendants were in charge of managing, supervising, and controlling
18 Plaintiff's and other employees' wages, work hours, pay, and work conditions, along with managing
19 the day-to-day operations for the business. Therefore, Defendants controlled Plaintiff's (and other
20 aggrieved employees') employment.

21 45. Defendants employed Plaintiff as a cook and prep between approximately August 2015 and
22 approximately September 20, 2023.

23 46. Defendants failed to keep track of Plaintiff's and other employees' actual hours worked.
24 Employees' pay was rounded and inaccurate. This is in violation of the "Records" section of Wage
25 Order 5 and other wage orders.

26 47. Meal and rest breaks violations based on business necessities. Plaintiff was not afforded breaks.
27 And most others' breaks were often short, late, interrupted, or nonexistent.

28 48. Defendants failed to provide Plaintiff's final pay upon separation.

1 49. Plaintiff alleges that California statutory, decisional, and regulatory laws prohibit the conduct
2 by Defendants herein alleged, and therefore Plaintiff has an entitlement to monetary relief on the basis
3 that Defendants violated such statutes, decisional law, and regulations.

4 50. Plaintiff alleges that Defendants failed to compensate Plaintiff for all hours worked, missed,
5 short, late, and/or interrupted meal periods and/or rest breaks.

6 51. Defendants had the authority to hire and terminate Plaintiff, to set work rules and conditions
7 governing Plaintiff's employment, and to supervise her daily employment activities.

8 52. Defendants directly hired and paid wages to Plaintiff.

9 53. Plaintiff alleges that at all relevant times, Defendants were each an "employer" of Plaintiff
10 within the meaning of all applicable California state laws and statutes.

11 54. At all times herein mentioned, Defendants ratified each and every act or omission complained
12 herein.

13 **Wage and Hour Allegations:**

14 55. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a
15 uniform policy of wage abuse against their hourly-paid or non-exempt employees within the State of
16 California. This uniform policy involved, inter alia, failing to pay them for all hours worked, missed,
17 short, late, and/or interrupted meal periods, rest breaks, etc. in violation of California law.

18 56. Plaintiff is informed and believes, and based thereon alleges, that at all material times set forth
19 herein, Defendants were advised by skilled lawyers and other professionals, employees, and advisors
20 knowledgeable about California and federal labor and wage law and employment and personnel
21 practices, and about the requirements of California and federal law.

22 57. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
23 have known that Plaintiff was entitled to receive certain wages for overtime compensation and that
24 Plaintiff was not receiving wages for overtime compensation.

25 58. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to provide
26 Plaintiff the required rest and meal periods during the relevant time period as required under the
27 Industrial Welfare Commission Wage Orders and thus Plaintiff was entitled to any and all applicable
28 penalties.

1 59. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
2 have known that Plaintiff was entitled to receive all meal periods or payment of one additional hour of
3 pay at Plaintiff's regular rate of pay when a meal period was missed, and Plaintiff did not receive all
4 meal periods or payment of one additional hour of pay at Plaintiff's regular rate of pay when a meal
5 period was missed.

6 60. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
7 have known that Plaintiff was entitled to receive all rest periods or payment of one additional hour of
8 pay at Plaintiff's regular rate of pay when a rest period was missed, and Plaintiff did not receive all rest
9 periods or payment of one additional hour of pay at Plaintiff's regular rate of pay when a rest period
10 was missed.

11 61. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
12 have known that Plaintiff was entitled to receive all wages owed to him upon discharge or resignation,
13 including overtime, minimum wages, meal and rest period premiums, and Plaintiff did not, in fact,
14 receive all such wages owed to him at the time of his discharge or resignation.

15 62. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
16 have known that Plaintiff was entitled to receive all wages owed to him during his employment.
17 Plaintiff did not receive payment of all wages, including overtime and minimum wages and meal and
18 rest period premiums, within any time permissible under California Labor Code section 204.

19 63. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
20 have known that Plaintiff was entitled to receive complete and accurate wage statements in accordance
21 with California law, however Plaintiff did not receive complete and accurate wage statements from
22 Defendants. The deficiencies included, inter alia, the failure to include the total number of hours worked
23 by Plaintiff.

24 64. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
25 have known that Defendants had to keep complete and accurate payroll records for Plaintiff in
26 accordance with California law, but, in fact, did not keep complete and accurate payroll records.

27 65. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
28 have known that they had a duty to compensate Plaintiff pursuant to California law, and that Defendant

1 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to
2 do so, and falsely represented to Plaintiff that Plaintiff was properly denied wages, all in order to
3 increase Defendant's profits.

4 66. Plaintiff alleges that during the time of his employment, these Defendants acted negligently,
5 recklessly, and/or intentionally to routinely deprive Plaintiff of statutorily mandated rest breaks during
6 work shifts of four (4) hours or greater. Defendants also intentionally failed to compensate Plaintiff for
7 those missed rest breaks over the entire period of her employment with Defendants.

8 67. Plaintiff was not properly compensated for his overtime hours and Defendants failed to keep
9 accurate records of Plaintiff's overtime hours and compensation.

10 68. Defendants, and each of them, violated other provisions of the laws of the State of California,
11 including Employment Laws and Regulations which provide for a civil penalty to be assessed and
12 collected by the California Labor and Workforce Development Agency or its various departments,
13 divisions, commissions, boards, agencies, or employees.

14 69. In addition to any other remedies which may be available at law or equity, or as may otherwise
15 asserted herein, Plaintiff seeks payment of overtime wages and other compensation owed to him, plus
16 all benefits required pursuant to the laws of the State of California, including Employment Laws and
17 Regulations, based on the sums withheld from Plaintiff. Plaintiff also seeks recovery of penalties,
18 attorney's fees, and costs as provided by statute.

19 70. Plaintiff seeks restitution and disgorgement of all sums wrongfully obtained by Defendants
20 through their unfair business practices in violation of California Business & Professions Code Section
21 17200 et seq., to prevent Defendants from benefitting from their ongoing unfair practices, and which
22 sums recovered under the Unfair Competition Act and Unfair Businesses Act are equitable in nature
23 and are not to be considered damages. Plaintiff is also entitled to costs, attorney's fees, interest and
24 penalties as provided for by the California Labor Code and California Business & Professions Code.

25 71. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit
26 the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or her] under
27 this article."

28 72. WHEREFORE, Plaintiff requests relief as hereinafter provided.

1 **PRIVATE ATTORNEY GENERAL ACT OF 2004 (“PAGA”)**

2 **(Cal. Lab. Code section 2698 et seq.)**

3 73. In 2003, California’s Legislature declared that, “staffing levels for state labor law enforcement
4 agencies have, in general, declined over the last decade and are likely to fail to keep up with the growth
5 of the labor market in the future. It is therefore in the public interest to provide that civil penalties for
6 violations of the Labor Code may also be assessed and collected by aggrieved employees acting as
7 private attorneys general, while also ensuring that state labor law enforcement agencies’ enforcement
8 actions have primacy over any private enforcement efforts undertaken pursuant to this act.” *Dunlap v.*
9 *Superior Court* (2006) 142 Cal.App.4th 330, 337-338, citing Stats. 2003. Ch. 906 § 1.

10 74. In response, California’s Legislature passed the Private Attorney General Act of 2004
11 (“PAGA”), which “was adopted to empower aggrieved employees, acting as private attorneys general,
12 to seek civil penalties for Labor Code violations, penalties which previously could be assessed only by
13 state agencies.” *Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330, 336. “Thus, PAGA empowers
14 or deputizes an aggrieved employee to sue for civil penalties ‘on behalf of himself or herself and other
15 current or former employees’ as an alternative to enforcement by the LWDA.” *Id.* At 337 citing to Cal.
16 Lab. Code 2699(a). Class action requirements do not apply to representative actions brought by one
17 employee on behalf of other current or former employees under the PAGA. *Arias v. Superior Court*
18 (2009) 46 Cal. 4th 969, 984.

19 75. Prior to bringing the action, the aggrieved employee shall give written notice by certified mail
20 to the Labor and Workforce Development Agency and the employer of the specific provisions of this
21 code alleged to have been violated, including the facts and theories to support the alleged violation.
22 *Cal. Lab. Code* 2699.3 (c)(1). The agency shall notify the employer and the aggrieved employee or
23 representative by certified mail that it does not intend to investigate the alleged violation within 60
24 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of
25 that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given
26 pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section
27 2699.

28 76. The aggrieved employee is entitled to keep 25% of the civil penalties recovered in the PAGA

1 action and the remaining 75% goes to the Labor and Workforce Development Agency. *Cal. Lab. Code*
2 2699(i).

3 77. On December 8, 2023, Plaintiff JULIO CESAR ONTIVEROS CHAMU filed and served its
4 PAGA Notice Letter, and gave written notice by certified mail to the Labor and Workforce
5 Development Agency (“LWDA”) and the employers (Defendants), of the specific conditions of the
6 codes alleged to have been violated, including the facts and theories to support the alleged violations.
7 Attached hereto as “**EXHIBIT A**”, is a true and correct copy of Plaintiff’s written PAGA Notice Letter.

8 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**

9 **(Violation of the Private Attorneys General Act, California Labor Code § 2698 *et seq.*)**

10 78. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

11 79. Plaintiff seeks civil penalties for the above acts, which violate the California Labor Code, under
12 the Private Attorneys General Act (“PAGA”), Cal. Labor Code § 2698 *et seq.*

13 80. Plaintiff is “aggrieved employees” under PAGA, as he was employed by Defendants during the
14 applicable statutory period and suffered one or more of the Labor Code violations set forth herein.
15 Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and former aggrieved
16 employees of Defendants, the civil penalties provided by PAGA, plus reasonable attorneys’ fees and
17 costs.

18 81. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by
19 PAGA and the *California Supreme Court in Arias v. Superior Court*, (2009) 46 Cal.4th 969. Therefore,
20 class certification of the PAGA claims is not required.

21 82. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor Code
22 provisions:

- 23 a. failure to provide prompt payment of wages to employees upon termination and resignation
24 in violation of Labor Code § 201, 202, 203;
- 25 b. failure to provide itemized wage statements to employees in violation of Labor Code §§
26 226(a), 1174, and 1174.5;
- 27 c. failure to provide meal and rest periods in violation of all applicable IWC wage orders and
28 Labor Code §§ 1174 and 1174.5;

- d. failure to pay overtime wages in violation of all applicable IWC wage orders and Labor Code §§ 510, 558, 1194;
- e. failure to provide unpaid balance of full amount of overtime compensation in violation of Labor Code section 1194 and 2698 *et seq.*;
- f. failure to pay minimum wage in violation of all applicable IWC wage orders and Labor Code §§ 1182.12, 1194, and 1197;
- g. Violation of Labor Code section 1199 (a) and (c) and 2699.5 *et seq.*;
- h. failure to reimburse employees for all reasonably necessary expenditures and losses incurred by employees in direct consequence of the discharge of their duties and other work-related expenses, in violation of Labor Code section 2802;
- i. failure to provide itemized wage statements to employees in violation of Labor Code section 226(a); and
- j. Violation of Labor Code 226.8 by misclassifying its employees as independent contractors;
- k. Violation of Labor Code section 204 for Payment of wages; frequency;
- l. Violations of California Labor Code sections 201; 202; 203; 226 *et seq.*; 226.8; 432.5; 450; 226.7; 510, 558, 512; 1174; 1174.5; 2802; and all applicable IWC wage orders.

83. On December 8, 2023, Plaintiff JULIO CESAR ONTIVEROS CHAMU filed and served its PAGA Notice Letter, and gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and the employers (Defendants), of the specific conditions of the codes alleged to have been violated, including the facts and theories to support the alleged violations.

Attached hereto as “**EXHIBIT A**”, is a true and correct copy of Plaintiff’s written PAGA Notice Letter.

84. The LWDA did not provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65) calendar days of the postmark date of the notice sent by Plaintiff. *See* Cal. Labor Code section 2699.3(a)(2)(A).

85. With respect to violations of Labor Code section 226(a), Labor Code section 226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code section 226(a).

1 86. With respect to violations of Labor Code sections 510, 512, Labor Code section 558 imposes a
2 civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations
3 for each unpaid employee for each pay period for which the employee was underpaid in addition to an
4 amount sufficient to recover underpaid wages, and one hundred dollars (\$100) for subsequent violations
5 for each underpaid employee for each pay period for which the employee was underpaid in addition to
6 an amount sufficient to recover underpaid wages.

7 87. Moreover, Plaintiff seeks civil penalties in the amount of unpaid wages owed to aggrieved
8 employees pursuant to Labor Code section 558(a)(3).

9 88. With respect to violations of Labor Code section 1174, Labor Code section 1174.5 imposes a
10 civil penalty of \$500.

11 89. Labor Code section 2699 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay
12 period, per aggrieved employee for initial violations, and two hundred dollars (\$200) pay period, per
13 aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty
14 is not specifically provided, including Labor Code sections 226.7, 226.8, 1174, 1182.12, 1194, 1197,
15 1198, and 2802.

16 90. WHEREFORE, Plaintiff requests relief as hereafter provided.

17 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**

18 **Failure to Pay Minimum Wage**

19 **(Class Claim Against All Defendants; Cal. Lab. Code §§ 1182.12, 1194, 1197 & 1198 *et seq.*)**

20 91. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

21 92. Pursuant to Labor Code §§ 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or
22 permit a California employee to work without paying wages at the proper minimum wage for all time
23 worked.

24 93. At all times material hereto, “hours worked” included “the time during which an employee is
25 subject to the control of an employer, and includes all the time the employee is suffered or permitted to
26 work, whether or not required to do so.”

27 94. As a direct and proximate result of Defendants’ failure to pay Plaintiff and the Plaintiff Class
28 the minimum wage, Plaintiff and the Plaintiff Class have been damaged in the amount of unpaid

1 minimum wages. Pursuant to Labor Code §§ 1194 and 1194.2, Plaintiff and the Plaintiff Class are
2 entitled to recover the full amount of unpaid minimum wages, liquidated damages in an equal amount,
3 interest and attorney's fees, all in a total amount subject to proof at time of trial. In addition, insofar as
4 the failure of Defendants to pay the minimum wage was willful, Plaintiff and the Plaintiff Class who no
5 longer work for Defendants are entitled to waiting time penalties pursuant to Labor Code § 200 *et seq.*
6 95. The aforementioned acts by Defendants were intentional, with the intention on the part of the
7 Defendants to deprive Plaintiff and the Plaintiff Class of their property and/or legal rights and causing
8 injury to them. As a result of Defendants failure to compensate Plaintiff at the minimum wage, pursuant
9 to Labor Code § 1197.1, Plaintiff is entitled to civil penalties from Defendants of \$50 for each underpaid
10 employee for each pay period for which the employee is underpaid, for the initial violation; and \$100
11 for each underpaid employee for each pay period for which the employee is underpaid, for each
12 subsequent violation.

13 96. WHEREFORE, Plaintiff and the Plaintiff Class request relief as hereinafter provided.

14 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS**

15 **Failure to Pay Overtime Compensation**

16 **(Class Claim Against All Defendants; Cal. Lab. Code §§ 1198 & 510, *et seq.*)**

17 97. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

18 98. Pursuant to Industrial Welfare Commission Order 9-2001, and Labor Code §§ 200, 226, and
19 1198, at all times relevant hereto, Defendants were required to compensate Plaintiff for all overtime,
20 which is calculated at one and one-half (1½) times the regular rate of pay for hours worked in excess of
21 eight (8) hours per day and/or forty (40) hours per week.

22 99. Pursuant to Industrial Welfare Commission Order 9-2001, and Labor Code §§ 200, 226, and
23 1198, as of January 1, 1998, Defendants were required to compensate Plaintiff for all overtime, which
24 is calculated as one and one-half (1½) times the regular rate of pay for hours worked in excess of forty
25 (40) hours per week, and after the first eight (8) hours on the seventh consecutive work day.

26 100. Pursuant to Labor Code §§ 200, 226, 500, 510, and 1198, Defendants were required to
27 compensate Plaintiff for all overtime, which is calculated at one and one-half (1½) times the regular rate
28 of pay for hours worked in excess of eight (8) hours per day.

1 101. Plaintiff and the Plaintiff Class were non-exempt employees entitled to the protections of
2 California Labor Code §§ 200, 226, 500, 510, and 1198. During the course of Plaintiff and the Plaintiff
3 Class' employment, Defendants failed to properly compensate them for overtime hours worked as
4 required under the aforementioned Labor Code sections.

5 102. Plaintiff and the Plaintiff Class are entitled to one and one half (1 1/2) times and /or double their
6 regular rate of pay for overtime work performed during the four (4) years preceding the filing of this
7 Complaint based on appropriate calculations of the total remuneration for each workweek.

8 103. In violation of state law, Defendants have knowingly and willfully refused to perform their
9 obligations to compensate Plaintiff and the Plaintiff Class for all wages earned and all hours worked.

10 104. As a direct result of aforementioned violations, Plaintiff and the Plaintiff Class have suffered,
11 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest
12 on such wages, and expenses and attorney's fees in seeking to compel Defendants to fully perform their
13 obligation under state law, all to their respective damage in amounts according to proof at time of trial,
14 but in amounts in excess of the jurisdiction of this Court.

15 105. Defendants' conduct described herein violates Labor Code §§ 200, 226, 500, 510 and 1198.
16 Therefore, pursuant to Labor Code § 200, 203, 218.5, 226, 558, and 1194, Plaintiff and the Plaintiff
17 Class are entitled to recover the unpaid balance of overtime compensation Defendants owe Plaintiff and
18 the Plaintiff Class civil penalties (including the penalties described in Labor Code § 558 and other
19 statutory penalties) plus interest penalties, attorney's fees, expenses, and costs of suit.

20 106. WHEREFORE, Plaintiff and the Plaintiff Class request relief as hereinafter provided.

21 **FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

22 **Failure to Provide Meal Periods**

23 **(Class Claim Against All Defendants; Cal. Lab. Code §§ 226.7, 512(a) & 1198 *et seq.*)**

24 107. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

25 108. At all times herein mentioned the Plaintiff and the Plaintiff Class, were non-exempt employees
26 and subject to the meal period provisions.

27 109. Defendants failed to allow Plaintiff and the Plaintiff Class to take 30-minute meal periods for
28 every 5 hours worked. Defendants denied them such breaks. Thus, Defendants sometimes deprived

1 employees of both their lunch period and the 30 minutes pay for the time when the employees were
2 working, when they should have been allowed to take their meal breaks.

3 110. Wages are due to employees for “all hours worked” and applicable laws, rules, orders,
4 requirements, and regulations. Plaintiff and the Plaintiff Class demand all applicable reimbursement
5 and penalties for their lost meal breaks, in addition to the one-hour’s compensation due under the wage
6 order. Further, Plaintiff and the Plaintiff Class demand reasonable attorney’s fees and costs of suit,
7 pursuant to Labor Code § 218.5.

8 111. Under California law, meal periods must be recorded unless all operations cease during the
9 scheduled meal periods. Defendants failed to record the meal periods. Plaintiff and the Plaintiff Class
10 are not only entitled to compensation for the lost meal periods, but to the extent that Defendants claim
11 that meal periods were taken which are not documented, Plaintiff and the Plaintiff Class also seek all
12 applicable penalties for Defendants’ failure to keep accurate time records and to issue Plaintiff and the
13 Plaintiff Class accurate earnings statements.

14 112. WHEREFORE, Plaintiff and the Plaintiff Class request relief as hereinafter provided.

15 **FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

16 **Failure to Provide Rest Periods**

17 **(Class Claim Against All Defendants; Cal. Lab. Code §§ 226.7 & 1198 *et seq.*)**

18 113. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

19 114. Defendants failed to allow Plaintiff and the Plaintiff Class to take rest periods during every four-
20 hour period worked. The law requires that non-exempt employees be allowed a 10-minute break during
21 every four-hour work period, or major fraction thereof. Defendants denied them such breaks.

22 115. In addition, Plaintiff and the Plaintiff Class are entitled to recover interest on the unpaid rest
23 period wages do to them. Further, they demand reasonable attorney’s fees and costs of suit, pursuant
24 to Labor Code § 218.5, plus all appropriate penalties for the wage and hour violations, in addition to the
25 one-hour’s compensation as premium pay as provided for by law.

26 116. Plaintiff and the Plaintiff Class are not only entitled to compensation for the lost rest periods,
27 but to the extent that Defendants claim that rest periods were taken which are not documented, they also
28 seek all applicable penalties for Defendants failure to keep accurate time records and to issue them

1 accurate earnings statements.

2 117. WHEREFORE, Plaintiff and the Plaintiff Class request relief as hereinafter provided.

3 **SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

4 **Failure to Furnish Accurate Wage and Hour Statements**

5 **(Class Claim Against All Defendants; Cal. Lab. Code § 226)**

6 118. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

7 119. At all relevant times herein, California Labor Code section 226(a) provides that every employer
8 shall furnish each of his or her employees an accurate and complete itemized wage statement in writing,
9 including, but not limited to, the name and address of the legal entity that is the employer, the inclusive
10 dates of the pay period, total hours worked, and all applicable rates of pay.

11 120. During the relevant time period, Defendants have knowingly and intentionally provided Plaintiff
12 and class members with uniform, incomplete, and inaccurate wage statements. Specifically, Defendants
13 violated sections 226(a)(1), 226(a)(5), 226(a)(8), and 226(a)(9). Because Plaintiff and class members
14 were forced to work during all or part of their meal periods or off-the-clock after their scheduled shifts
15 had ended, and because Defendants did not calculate Plaintiff and class members' regular rate of pay
16 correctly for purposes of paying overtime, Defendants did not list the correct amount of gross wages
17 earned by Plaintiff and class members in compliance with section 226(a)(1). For the same reasons,
18 Defendants failed to list the correct amount of net wages earned by Plaintiff and class members in
19 violation of section 226(a)(5). [L] [SEP]

20 121. Defendants also failed to correctly list all applicable hourly rates in effect during the pay period,
21 namely, correct overtime rates of pay and correct rates of pay for premium wages, as a result of
22 miscalculating the regular rate of pay, in violation of section 226(a)(9). [L] [SEP]

23 122. The wage statement deficiencies also include, among other things, failing to list total hours
24 worked by employees; failing to list the number of piece-rate units earned and any applicable piece rate
25 if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive
26 dates of the period for which employees were paid; failing to list the name of the employee and only
27 the last four digits of his or her social security number or an employee identification number other than
28 a social security number; failing to list the correct name of the legal entity that is the employer; and/or

1 failing to state all hours worked.

2 123. By causing Plaintiff and the Plaintiff Class to work without compensation, Defendants have
3 violated the requirement that the total hours worked and all wages earned is included in the wage
4 statement that must be provided to Plaintiff.

5 124. Plaintiff and the Plaintiff Class were damaged by these failures because, among other things,
6 these failures led them to believe that they were not entitled to be paid overtime, even though they were
7 so entitled and because these failures hindered them from determining the amounts of overtime wages
8 owed to them.

9 125. By virtue of Defendants knowing, intentional, and unlawful failure to provide accurate wage
10 statements, Plaintiff and the Plaintiff Class have suffered, and will continue to suffer, damages in
11 amounts, which will be ascertained according to proof at trial.

12 126. Plaintiff and class members are entitled to recover from Defendants the greater of their actual
13 damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an
14 aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

15 127. WHEREFORE, Plaintiff and the Plaintiff Class request relief as hereinafter provided.

16 **SEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

17 **Failure to Furnish Accurate Wage and Hour Statements**

18 **(Class Claim Against All Defendants; Cal. Lab. Code § 226)**

19 128. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

20 129. At all relevant times herein, California Labor Code section 226(a) provides that every employer
21 shall furnish each of his or her employees an accurate and complete itemized wage statement in writing,
22 including, but not limited to, the name and address of the legal entity that is the employer, the inclusive
23 dates of the pay period, total hours worked, and all applicable rates of pay.

24 130. During the relevant time period, Defendants have knowingly and intentionally provided Plaintiff
25 and class members with uniform, incomplete, and inaccurate wage statements. Specifically, Defendants
26 violated sections 226(a)(1), 226(a)(5), 226(a)(8), and 226(a)(9). Because Plaintiff and class members
27 were forced to work during all or part of their meal periods or off-the-clock after their scheduled shifts
28 had ended, and because Defendants did not calculate Plaintiff and class members' regular rate of pay

1 correctly for purposes of paying overtime, Defendants did not list the correct amount of gross wages
2 earned by Plaintiff and class members in compliance with section 226(a)(1). For the same reasons,
3 Defendants failed to list the correct amount of net wages earned by Plaintiff and class members in
4 violation of section 226(a)(5). [L] [SEP]

5 131. Defendants also failed to correctly list all applicable hourly rates in effect during the pay period,
6 namely, correct overtime rates of pay and correct rates of pay for premium wages, as a result of
7 miscalculating the regular rate of pay, in violation of section 226(a)(9). [L] [SEP]

8 132. The wage statement deficiencies also include, among other things, failing to list total hours
9 worked by employees; failing to list the number of piece-rate units earned and any applicable piece rate
10 if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive
11 dates of the period for which employees were paid; failing to list the name of the employee and only
12 the last four digits of his or her social security number or an employee identification number other than
13 a social security number; failing to list the correct name of the legal entity that is the employer; and/or
14 failing to state all hours worked.

15 133. By causing Plaintiff and the Plaintiff Class to work without compensation, Defendants have
16 violated the requirement that the total hours worked and all wages earned is included in the wage
17 statement that must be provided to Plaintiffs.

18 134. Plaintiff and the Plaintiff Class were damaged by these failures because, among other things,
19 these failures led him to believe that they were not entitled to be paid overtime, even though he was so
20 entitled and because these failures hindered him from determining the amounts of overtime wages owed
21 to him.

22 135. By virtue of Defendants knowing, intentional, and unlawful failure to provide accurate wage
23 statements, Plaintiff and the Plaintiff Class has suffered, and will continue to suffer, damages in
24 amounts, which will be ascertained according to proof at trial.

25 136. Plaintiff and class members are entitled to recover from Defendants the greater of their actual
26 damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an
27 aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

28 137. WHEREFORE, Plaintiff and the Plaintiff Class request relief as hereinafter provided.

1 **EIGHTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

2 **Failure to Pay Wages Upon Discharge**

3 **(Class Claim Against All Defendants; Cal. Lab. Code §§ 201 & 202, *et seq.*)**

4 138. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

5 139. Pursuant to California Labor Code § 201, upon former employee Plaintiff's termination date,
6 Defendants were required to pay Plaintiff and the Plaintiff Class all earned wages. At the time of former
7 employee Plaintiff's termination date, former employees, Plaintiff and the Plaintiff Class, had unpaid
8 wages. In violations of Labor Code § 201, Defendants failed to pay former employees, Plaintiff and the
9 Plaintiff Class, any amount of wages due and owing them, in amounts to be proven at the time of trial,
10 but not in excess of the jurisdiction of this Court.

11 140. Defendants' failure to pay former employees, Plaintiff and the Plaintiff Class, the wages due
12 and owing them was willful, and done with the wrongful and deliberate intention of injuring Plaintiff
13 and the Plaintiff Class, from improper motives amounting to malice, and in conscious disregard of
14 Plaintiff's rights. Plaintiff and the Plaintiff Class are thus entitled to recover nominal, actual,
15 compensatory, and liquidated damages in amounts according to proof at time of trial, but not in amounts
16 in excess of the jurisdiction of this Court.

17 141. Defendants willful failure to pay Plaintiff and the Plaintiff Class the wages due and owing them
18 constitutes violations of Labor Code §§ 201 and 203, which provides that an employee's wages will
19 continue as a penalty for up to thirty (30) days from the time the wages were due. Therefore, Plaintiff
20 and the Plaintiff Class are entitled to statutory penalties pursuant to Labor Code § 203.

21 142. WHEREFORE, Plaintiff and the Plaintiff Class request relief as hereinafter provided.

22 **NINTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

23 **Failure to Reimburse Business Expenses**

24 **(Class Claim Against All Defendants; Violation of California Labor Code § 2802 *et seq.*)**

25 143. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

26 144. *Labor Code* § 2802 (a) provides:

27 An employer shall indemnify his or her employee for all necessary expenditures or losses
28 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or

her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

145. Defendants did not reimburse Plaintiff and Plaintiff Class for these necessary expenditures, including but not limited to the cost of uniforms and work tools necessary to complete work for Defendants.

146. As a direct and proximate result of Defendants' willful failure to reimburse Plaintiff and Plaintiff Class, they have been injured in an amount to be proven at trial.

147. Plaintiff and Plaintiff Class are, therefore, entitled to recover reimbursement for these necessary expenditures, and to recover their costs, interests, attorneys' fees, and penalties permitted under California law.

TENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

Unfair Competition

(Class Claim Against All Defendants; Violation of Ca Bus. & Prof. Code §§ 17200 *et seq.*)

148. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

149. Defendants are a "person" as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

150. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

151. Defendants' activities, namely Defendants' company-wide practice and/or policy of not paying Plaintiff and class members all meal and rest period premium wages due to them under Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a "dual-purpose" remedy intended primarily to compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and class members as part of their employment with Defendants, and thus Defendants' practice and/or policy of denying these statutory benefits constitutes

1 an unfair business practice in violation of California Business & Professions Code sections 17200 *et*
2 *seq. (Id.)*

3 152. A violation of California Business & Professions Code sections 17200 *et seq.* may be predicated
4 on any unfair business practice. In the instant case, Defendants' policies and practices have violated the
5 spirit of California's meal and rest break laws and constitute acts against the public policy behind these
6 laws.

7 153. Pursuant to California Business & Professions Code sections 17200 *et seq.*, Plaintiff and class
8 members are entitled to restitution for the class-wide loss of the statutory benefits implemented by
9 section 226.7 withheld and retained by Defendants during a period that commences four years prior to
10 the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits
11 implemented by section 226.7 due to Plaintiff and class members; an award of attorneys' fees pursuant
12 to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

13 154. WHEREFORE, Plaintiff and the Plaintiff Class request relief as hereinafter provided.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against all Defendants as follows:

1. Certification of this action as a class action on behalf of each of the classes alleged in this complaint;
2. For general and special damages, according to proof, on all causes of action for which such damages are available, in an amount not less than \$500,000;
3. For additional compensatory damages for Plaintiff's emotional pain and suffering, in an amount to be proven at trial, in an amount not less than \$50,000;
4. That Defendants are found to have violated the above-referenced provisions of the Labor Code and IWC Wage Orders;
5. That Defendants' actions are found to be willful and/or in bad faith to the extent necessary under Sections 201, 202 and 203 of the Labor Code for failure to pay all compensation owed at the time of separation, as to Section 226 of the Labor Code for willful failure to provide the required accurate and itemized wage statements;
6. An award of statutory penalties because of Defendants' failure to provide Plaintiff with itemized wage statements that comply with the requirements of Labor Code § 226 and because of Defendants' failure to pay all wages due upon the date of his termination, subject to proof at trial;
7. For Statutory penalties under Labor Code Section 226.8;
8. For prejudgment interest at the legal rate pursuant to California Labor Code section 218.6 and other applicable sections;
9. For lost earnings;
10. For liquidated damages in an amount to be ascertained at trial;
11. For all other penalties as required by law;
12. For costs of suit incurred herein;
13. For declaratory and injunctive relief as requested herein;
14. For Labor Code penalties pursuant to Business & Professions Code § 17202;
15. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and (g);

- 1 16. For reasonable attorney's fees pursuant to California Labor Code section 218.5 and
2 other applicable sections;
3 17. An award for reasonable attorneys' fees and costs pursuant to California Labor Code
4 section 2699(g) and/or other applicable law; and
5 18. For such further relief as is appropriate in the interest of justice.

6
7 DATED: August 30, 2024

SIRMABEKIAN LAW FIRM, PC

8
9 By: 
10 Sarkis Sirmabekian, Esq.
11 Attorney for Plaintiff

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff and the Plaintiff Class hereby demand that this matter be tried before a jury under
14 California Code of Civil Procedure Section 631.

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16
17
18 DATED: August 30, 2024

SIRMABEKIAN LAW FIRM, PC

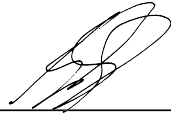
19 By: 
20 Sarkis Sirmabekian, Esq.
21 Attorney for Plaintiff
22
23
24
25
26
27
28

EXHIBIT A



SIRMABEKIAN
LAW FIRM

3435 Wilshire Blvd., Suite 1710
Los Angeles, CA 90010

6314 San Fernando Rd.
Glendale, CA 91201

T (818) 473-5003
F (818) 476-5619

sarkis@slawla.com
www.slawla.com

December 8, 2023

TEQUILA JACK'S, INC.
407 Shoreline Village Dr.
Long Beach, CA 90802

via U.S. Certified Mail

HENRY ATTINA
407 Shoreline Village Dr.
Long Beach, CA 90802

via U.S. Certified Mail

Labor and Workforce Development Agency
("LWDA")
Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

filed/served online at:
<http://www.dir.ca.gov>

**RE: JULIO CESAR ONTIVEROS CHAMU'S Notice of Labor Code Violations
Pursuant to California Labor Code Section 2699 *et seq.* ("PAGA")**

Dear Sir or Madam:

Please be advised that JULIO CESAR ONTIVEROS CHAMU (hereinafter "Plaintiff") has retained the Sirmabekian Law Firm, PC to represent him and other aggrieved employees for various California Labor Code violations including wage and hour claims against TEQUILA JACK'S INC. and HENRY ATTINA (hereafter referred to as "Employer," "Defendants," or "You" and/or referred to with "Your" and "Yours", and "EMPLOYER" or "DEFENDANTS").

EMPLOYER is hereby on notice that Plaintiff seeks compensation and all other available relief. Pursuant to the procedures specified in California Labor Code *Section* 2699.3, Plaintiff claims that EMPLOYER has violated, and/or caused to be violated, several Labor Code provisions, and is therefore liable for civil penalties under California Labor Code § 2698 *et seq.*

The scope of this PAGA letter is intended to include Plaintiff and all other aggrieved employees of all positions against whom the below labor law violations have been committed. The scope includes each employee of each employer named above, whether or not such employee was also employed by any of the remaining employers. Plaintiff and other aggrieved employees engaged in working as a cook and other positions for Defendants.

Defendant TEQUILA JACK'S INC. is a restaurant company operating in California. Individual Defendant HENRY ATTINA is an owner/operator, officer, and/or managing agent of the business and is liable jointly and severally for damages pursuant to Labor Code §558.1.

Plaintiff alleges that Defendants were in charge of managing, supervising, and controlling Plaintiff's and other employees' wages, work hours, pay, and work conditions, along with managing the day-to-day operations of the business. Therefore, Defendants controlled the employment of Plaintiff and other aggrieved employees.

Defendants employed Plaintiff as a cook and prep between approximately August 2015 and approximately September 20, 2023. Below are facts supporting allegations of Defendants' labor code violations against Plaintiff and other employees:

- Defendants failed to keep track of Plaintiff's and other employees' actual hours worked. Employees' pay was rounded and inaccurate. This is in violation of the "Records" section of Wage Order 5 and other wage orders.
- Meal and rest breaks violations based on business necessities. Plaintiff was not afforded breaks. And most others' breaks were often short, late, interrupted, or nonexistent.
- Defendants failed to provide Plaintiff's final pay upon separation.
- Defendants violated these and other labor laws as described throughout this letter.

The term "aggrieved employees" is broadly defined as all employees of either Defendant, regardless of exempt or non-exempt status, and regardless of whether such employee was also employed by the remaining Defendants. All employees are included in this definition, including positions other than that of Plaintiff.

EMPLOYER deprived Plaintiff and other aggrieved employees of certain protections of the Industrial Welfare Commission Orders, including overtime pay, minimum wage, meal and rest periods, and sick pay and failure to reimburse under Labor Code 2802, among numerous other California Labor Code violations. Many other aggrieved employees were also treated as exempt from those protections.

Plaintiff and other aggrieved employees primarily engage(d) in duties that failed to meet the requirements of the various exemptions. They lacked the requisite discretion and independent judgment required by the labor code and the IWC Orders (without limitation) to qualify as exempt from various labor law protections. By misclassifying aggrieved employees, EMPLOYER deprived them of many protections.

Unlawful Failure to Pay Overtime

EMPLOYER fails to maintain a policy that compensates Plaintiff and other employees for all hours worked, including overtime. Specifically, EMPLOYER only pays employees for the majority of time that they spend at work. Many employees, including Plaintiff, routinely worked work over eight (8) hours per day and/or forty (40) hours per week but are not paid one and one-half their regular rate of pay for overtime work. As a result of violations of California Labor Code §§ 510, 1194, and applicable Industrial Welfare Commission Wage Orders for failure to pay overtime, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Provide Unpaid Balance of Full Amount of Overtime Compensation

As described above, EMPLOYER has required employees to work hours in excess of eight hours in a day and forty hours in a week as a result of working their regular shifts, but EMPLOYER has not paid these employees overtime compensation. Here, Defendants failed to keep track of Plaintiff's and other employees' actual hours worked. Employees' pay was rounded and inaccurate. This is in violation of the "Records" section of Wage Order 5 and other wage orders. As a result, Plaintiff and other employees have been denied "the unpaid balance of the full amount of this ... overtime compensation" as required by California Labor Code § 1194, and EMPLOYER is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Unlawful Failure to Pay Minimum Wage

EMPLOYER has failed to maintain a policy that compensates Plaintiff and other employees an amount equal to or greater than the minimum wage for all hours worked, as required by California Labor Code §§ 1194, 1197, 1197.1 and applicable Industrial Welfare Commission Wage Orders. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation. EMPLOYER did not compensate Plaintiff and other employees for time spent working off the clock. Here, Defendants failed to keep track of Plaintiff's and other employees' actual hours worked. Employees' pay was rounded and inaccurate. This is in violation of the "Records" section of Wage Order 2, 4, 5, 16, 17 and other wage orders. As a result of violations of California Labor Code §§ 1194, 1197, 1197.1 and applicable Industrial Welfare Commission Wage Orders, for failure to pay minimum wage, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558, 1197.1, and 2698 *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods

EMPLOYER has failed to maintain a policy that provides Plaintiff and other employees with off-duty meal periods as required by California law. Plaintiff and similarly situated employees regularly worked in excess of five (5) hours a day without being provided at least half-hour meal periods in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512, and applicable Industrial Welfare Commission Wage Orders. EMPLOYER failed to pay Plaintiff and other employees the premium compensation mandated by Labor Code § 226.7(b) for these missed meal periods. They would be required to work through their meal breaks, or take short meal breaks, and no premium compensation was provided. Many employees, including Plaintiff, were forced to skip or take untimely breaks without appropriate compensation. Here, Defendants afforded employees no compliant meal and rest breaks. As a result of violations of California Labor Code §§ 226.7 and 512 and applicable Industrial Welfare Commission Wage Orders, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods

EMPLOYER has failed to maintain a policy that provides Plaintiff and other employees with off-duty rest periods as required by California law. Plaintiff and other employees regularly worked in excess of 3.5 hours or major fraction thereof during work

days without being provided at least a ten-minute rest period in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512 and applicable Wage Orders. EMPLOYER failed to pay Plaintiff and other employees the premium compensation mandated by Labor Code § 226.7(b) for these missed rest periods. Many employees, including Plaintiff, were forced to skip or take untimely rest breaks without appropriate compensation. Here, Defendants afforded employees no compliant meal and rest breaks. As a result of violations of California Labor Code §§ 226.7, 512 and applicable Industrial Welfare Commission Wage Orders, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Reimburse Expenses

EMPLOYER has failed to indemnify Plaintiff and other employees for all necessary expenditures or losses incurred by Plaintiff. Here, Defendants failed to reimburse their employees for reasonable business expenses. California Labor Code § 2802 requires the employer to indemnify employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge their duties. As a result of violations of California Labor Code § 2802, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558, 2802 and 2698 *et seq.*

Unlawful Failure to Furnish Wage Statements

EMPLOYER has violated California Labor Code § 226(a) by willfully failing to furnish Plaintiff and other employees with required wage statement information. As a result of violations of California Labor Code § 226(a), EMPLOYER is liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of her or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of her or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Here, Defendants' wage statements were inaccurate. Further, Defendants unfair

rounding of employees' hours resulted in an underpayment of wages to their employees. As a result of violations of California Labor Code § 226(a), EMPLOYER is liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Unlawful Failure to Keep Accurate Payroll Records of Daily Hours Worked

EMPLOYER has failed to keep payroll records showing total hours worked and wages paid to Plaintiff and other employees. Under California Labor Code § 1174(d), employers must keep "payroll records showing the hours worked daily by and the wages paid to ... employees". Because EMPLOYER did not keep complete and accurate time records reflecting hours worked for Plaintiff and other employees, including, but not limited to, beginning work prior to the start of their shifts, working after the end of their shifts, and missed/short/late rest and meal breaks, it is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.* Section 6 or 7 of the applicable wage order requires the recording of this time. EMPLOYER would not keep track of action time. Instead, Defendants unfairly rounded employees' hours, which resulted in underpayment of wages to their employees. To the extent that EMPLOYER's failure to keep accurate payroll records was willful, it is liable for civil penalties under California Labor Code § 1174.5.

Unlawful Violation of California Labor Code § 1199

Under California Labor Code §§ 1199(a) and (c) and 2699.5 *et seq.*, an employer who "requires or causes any employee to work for longer hours than those fixed" or "violates or refuses or neglects to comply with any provision of" the Labor Code regarding employees' wages, hours, and working conditions, is subject to PAGA penalties. As described above, EMPLOYER has required Plaintiff and other employees to work hours in excess of eight (8) in a day and forty (40) in a week (thereby violating § 1199(a)), failed to provide adequate rest and meal breaks, failed to pay minimum wage and has violated numerous provisions of the Labor Code pertaining to employee wages and hours (thereby violating § 1199(b)). Accordingly, EMPLOYER is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Misclassification of Employees

It unlawful for any person or employer to willfully misclassify an individual as an independent contractor. Cal. Lab. Code § 226.8(a)(1). This permits Plaintiff to recover a civil penalty from five thousand dollars (\$5,000) to twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code § 226.8(b)-(c). Here, Defendants misclassified Plaintiff and others as independent contractors, sometimes paying them outside of payroll or partially in cash. Defendants paid certain employees in cash and outside of payroll, as independent contractors, thereby depriving employees of wage statements and other labor law protections. As such, Defendants violated California Labor Code § 226.8 and numerous other Labor Code sections. Plaintiff and others were always employees as evidenced by the following facts: Plaintiff's position required her to work for EMPLOYER, among many other duties which were directly related to the services provided by EMPLOYER. EMPLOYER supplied the instrumentalities, tools, and the place for the employees to do their work (all work was done under EMPLOYER's supervision; the employees' investment in the equipment or materials required were limited or non-existent; no special skills were required of the employees; the employees' services were to be performed for a long period of time with a

high degree of permanence in the working relationship; and the parties believed they were maintaining an employer-employee relationship.).

Unlawful Failure to Pay Wages Due Upon Termination

EMPLOYER has violated California Labor Code § § 201 and 202 by willfully failing to pay all compensation due and owing to Plaintiff and other employees at the time employment was terminated, EMPLOYER willfully failed to pay Plaintiff and other employees who are no longer employed by it all compensation due upon termination of employment as required under California Labor Code §§ 201 and 202 including, but not limited to, missing wages due to inaccurate tracking of employees' time records and failing to properly track their hours works and premium pay for missed/short/late meal and rest breaks. Here, Defendants failed to provide Plaintiff's final pay upon separation. Plaintiff and other employees are now also entitled to recover up to thirty (30) days of wages due to EMPLOYER's "willful" failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code. Additionally, because EMPLOYER violated California Labor Code §§ 201, 201and 203 of the Labor Code, EMPLOYER is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Mandated Seating

Defendants were required to provide Plaintiff (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) with the seating required under the applicable Industrial Wage Order ("IWO"). In violation of the applicable IWO, Defendants have adopted and continue to adopt a custom and practice of failing to provide its current and former Employees with: 1) Suitable seating when the nature of the Employees' work reasonably permits use of seats and 2) Suitable seating in reasonable proximity to Employee's work areas for use by Employees when a) they are not engaged in active duty, b) their work requires standing and c) such seats would not interfere with the performance of their duties.

Conclusion

EMPLOYER has violated or has caused to be violated a number of California wage and hour laws. Plaintiff therefore intends to file civil claims for the aforementioned violations of the Labor Code and other law. Plaintiff requests the agency review this notice per PAGA's provisions.

Sincerely,

SIRMABEKIAN LAW FIRM, PC

A handwritten signature in black ink, appearing to read 'Sarkis Sirmabekian', with a stylized flourish at the end.

Sarkis Sirmabekian, Esq.