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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

SAUL VASQUEZ, individually and on behalf of similarly situated former and current aggrieved employees, Plaintiff, v. SOUTHLAND TRANSIT, INC., and DOES 1 to 50, Defendants.	Case No.: 24STCV06877 Hon. Kristin S. Escalante, Dept. 24 Action Filed: 03/19/2024 **FIRST AMENDED COMPLAINT FOR DAMAGES, PENALTIES AND OTHER RELIEF:** 1. Failure to Pay Overtime 2. Failure to Pay Minimum Wages 3. Meal Period Violations 4. Rest Break Violations 5. Failure to Pay Vested Vacation Benefits 6. Sick and Covid Period/Benefits Violations 7. Failure to Maintain Employee Records 8. Unreimbursed Business Expenses 9. Release of Claims for Wage Violations 10. Reporting Time Violations 11. Untimely Payment of Wages 12. Failure to Timely Pay Wages at Separation 13. Wage Statements Violations 14. Misclassification 15. Failure to Pay Regular Rate of Pay 16. Unfair Business Practices 17. Violation of Labor Laws Giving Rise to an Action Under the PAGA <u>Case Management Conference: 7/16/2024</u>

INTRODUCTORY ALLEGATIONS

1. Plaintiff is Saul Vasquez ("Plaintiff" and/or "Mr. Vasquez"). At all times here, Mr. Vasquez was a resident of the County of Los Angeles, State of California.

2. From on or about October of 2013 through on or about April of 2023, Mr. Vasquez was hired by the Employer, to work as a non-exempt, hourly wage employee in the State of California. He performed various job duties, which included driving a bus, helping and assisting customers to and from wheelchairs. Mr. Vasquez would drive the bus from El Monte to El Puente, and do 6 or 7 rounds a day. The Employer's principal place of business and mailing address is 3650 Rockwell Avenue, El Monte, CA 91731. On or about March 25, 2023, Mr. Vasquez was involved in an automobile accident while driving the shuttle bus during the course of his employment with Employer. Mr. Vasquez was injured as a result and the Employer terminated Mr. Vasquez' employment as a result on or about April 5, 2023. The Employer only paid the partial wages of Mr. Vasquez after the termination, requiring Mr. Vasquez to report to work, without pay, to obtain his last paycheck. Based on information and belief, dating back at least four years, and continuing to the present time, the Employer has engaged in the following employment practices in violation of California employment laws.

3. The gravamen of this action is multiple illegal employment practices giving rise to the following:

    a. Causes of action for multiple violations of various wage/hour and related laws which deprived Mr. Vasquez of employment benefits and rights mandated under California law.

4. Plaintiff brings this action against Defendants SOUTHLAND TRANSIT, INC., and DOES 1 through 50, and Defendants' parent companies, subsidiaries, successors, owners, officers, directors, and managing agents (also referred to as "Defendants" or "Employer"). Defendants are in the transportation business (including but not limited to trucking, shuttles, buses, ADA paratransit, etc.) in the State of California and have employed/jointly employed Employees (including Mr. Vasquez) to perform work and services in furtherance of their business/joint enterprise. Plaintiff will seek to hold all owners, directors, officers and managing

agents of his Employer personally liable for violations under Labor Code § 558 and/or Labor Code § 558.1. Defendants were authorized to do business in the State of California.

5. Defendant business entities were the alter-egos of each and every other entity, and at all times herein mentioned, has existed, a unity of interest and ownership between said entities and individuals such that any separateness between them ceased to exist in that said individuals and other entities have completely controlled, dominated, managed, and operated the business entities and have intermingled the assets of each to suit convenience. As well, said entities were, mere shells, instrumentalities, and conduits through which the other above-referenced entities/individuals carried out their business while exercising complete control and dominance of the business such that individuality or separateness did not truly exist.

6. The Employer and its parent companies, subsidiaries, successors, owners, officers, directors, and/or managing agents have been engaged in a joint enterprise. Moreover, said persons/individuals are joint employers for the following reasons: 1) They indirectly exercised control over the wages, hours or working conditions of employees; 2) They had knowledge (either personally or through officers, directors and/or managing agents) of the work employees were doing for them while supposedly being employed by another entity/individual and failed to prevent the work from occurring; and 3) Said entities retained or assumed a general right of control over hiring, direction, supervision, discipline, discharge, and relevant day-to-day aspects of the workplace behavior of employees.

7. Each of the above-referenced Defendants had authority to set Employer's policies, procedures, and practices as well as the authority to hire, transfer, promote, assign, reward, discipline employees or to effectively recommend said actions. Defendants also had responsibility to act on employee grievances and/or to effectively recommend actions on employee grievances. Defendants also had the authority and/or responsibility to direct Plaintiff's daily work activities. The exercise of said authority and responsibility by the above-referenced individual Defendants required the use of their independent judgment.

8. At all times herein and for prior years, Defendants either employed individuals in California and/or were involved in managing businesses and/or employees in California.

During those years, Defendants were provided with notifications from various governmental agencies as well as various publications advising them of the requirements of the employment laws referenced here. Accordingly, Defendants knew the obligations owed to employees/joint employees under California law. As such, Defendants' failures to comply with the applicable Labor Code sections, Industrial Wage Orders, regulations, and local laws as described here were done willfully, intentionally and with knowledge of their illegality. Despite said knowledge, said Defendants deliberately approved, established and/or implemented company-wide policies, procedures and/or practices they knew violated California law as set forth here and did so for the purpose of maximizing the profits of and/or their own personal gain (monetary or otherwise) to the illegal detriment of employees, including Mr. Vasquez.

9. Additionally, Defendants knew it was necessary to possess, and Defendants did possess, a certain level of knowledge and skill in order to comply with the labor and employment laws applicable to their area of business. Said knowledge was vastly superior to that of Defendants' employees. Moreover, Defendants' employees depended on Defendants to know, record and/or track certain information to ensure California labor laws were followed. Such things include the dates and times worked by employees, when wages were owed to employees, the number of rest and meal breaks, when rest and meal breaks were required to be provided, the information required to be accurately reported on employee wage statements, when employees should be paid their final wages, etc.

10. The facts linking the fictitiously designated Defendants with the causes of action alleged herein and/or the true names and capacities, whether individual, corporate, partnership, or otherwise of Defendants, DOES 1 through 50, are unknown to Plaintiff(s) at this time, who therefore sue said Defendants by such fictitious names and will seek to amend this First Amended Complaint to show their true names and/or capacities when ascertained.

11. There is no legally recognized exemption or exception which excused Defendants; therefore, Defendants were without legal justification or excuse for failing to comply with laws.

FIRST CAUSE OF ACTION – FAILURE TO PAY OVERTIME WAGES, BY PLAINTIFF SAUL VASQUEZ AGAINST ALL DEFENDANTS

12. Plaintiff incorporates paragraphs 1 through 11 of this First Amended Complaint.

13. Pursuant to Labor Code § 510 and the applicable Industrial Wage Orders, Defendants were required to pay Plaintiff as well as other non-exempt employees overtime pay as follows:

a. For works in excess of 8 hours in one workday, no less than one and one-half times the employee's regular rate of pay for all hours worked in excess of 8 hours up to and including 12 hours in one workday.

b. For work in excess of 12 hours in one workday, no less than twice the employee's regular rate of pay.

c. For work in excess of 40 hours in any one workweek, no less than one and one-half times the employee's regular rate of pay for all hours in excess of 40 hours.

14. At all times during the statute of limitations period applicable to this cause of action, Defendants, and each of them, willfully, knowingly, and intentionally failed to calculate and compensate Mr. Vasquez the overtime wages per Labor Code § 510 and/or applicable Industrial Wage Order. Specifically, Defendants unfairly rounded Mr. Vasquez's work hours and/or otherwise failed to include all the time Mr. Vasquez worked in calculating the wages that were owed for each pay period. Thereby, Plaintiff was denied overtime wages.

15. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

SECOND CAUSE OF ACTION – FAILURE TO PAY MINIMUM WAGES, BY PLAINTIFF SAUL VASQUEZ AGAINST ALL DEFENDANTS

16. Plaintiff incorporates paragraphs 1 through 11 of this First Amended Complaint.

17. At all times herein, pursuant to Labor Code § 1182.12, applicable Industrial Wage Orders, and local ordinances, Defendants were required to pay Mr. Vasquez and their other non-exempt employees at least the minimum hourly wage.

18. Defendants willfully, knowingly, and intentionally failed to calculate and compensate Mr. Vasquez the minimum wages for all the hours worked, including, but not limited to, off the

clock work, rounded time, and the time required to clock in/out for rest and/or meal breaks, etc. Said violations also include non-compliance with the local wage ordinances in place at all times relevant here.

19. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

THIRD CAUSE OF ACTION -- FAILURE TO PROVIDE MEAL PERIODS OR PREMIUM PAY, BY PLAINTIFF SAUL VASQUEZ AGAINST ALL DEFENDANTS

20. Plaintiff incorporates paragraphs 1 through 11 of this First Amended Complaint.

21. At all times herein, pursuant to Labor Code § 512 and the applicable Wage Orders, an employer may not employ an employee to work more than a five hours per day without providing the employee with a thirty-minute meal break within the first five hours.

22. Labor Code § 512 and the applicable Wage Order further provide that an employer may not employ an employee for a work period of more than ten hours per day without providing the employee with a second meal period of not less than 30 minutes. California law also requires that for a meal period to qualify as a valid meal period under the law, the meal period must be timely, off-duty, unrestricted, and uninterrupted.

23. Defendants either deprived Mr. Vasquez of taking the meal period(s) required each workday, required Plaintiff to take his meal periods after the fifth hour of work, restricted his meal periods, and/or interrupted his meal periods. As a result, Defendants were required by Labor Code § 226.7 and/or the applicable IWC Wage Orders to pay Plaintiff "premium pay," i.e., one (1) hour of pay at their regular rate of pay for each workday.

24. For the period that Mr. Vasquez was employed by Defendants, Defendants failed to provide meal periods and also failed to pay Plaintiff the premium pay.

25. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

FOURTH CAUSE OF ACTION – FAILURE TO PROVIDE REST PERIODS OR PREMIUM PAY, BY PLAINTIFF SAUL VASQUEZ AGAINST ALL DEFENDANTS

26. Plaintiff incorporates paragraphs 1 through 11 of this First Amended Complaint.

27. At all times herein, pursuant to the California Labor Code, the applicable Industrial Wage Order, and/or applicable regulation, employers must authorize and permit employees to take paid rest periods at the rate of 10 minutes net rest time per four hours or major fraction thereof (unless the total work time is less than 3 ½ hours). So far as practical, the mandatory rest breaks must be provided in the middle of each work period of the workday. And, the rest break must be paid, timely, off-duty, unrestricted, and uninterrupted.

28. Mr. Vasquez regularly worked more than 6 hours a day, entitling him to two 10-minute rest breaks -- one in the middle of his first work period of each workday and one in the middle of his second work period during each workday.

29. In violation of California law, Defendants either 1) deprived Mr. Vasquez of taking the rest periods required under California law, 2) required him to take his rest breaks too early or too late (even though it was practical for Plaintiff to take his rest breaks in the middle of each work period), 3) restricted the rest breaks and/or 4) interrupted the rest breaks.

30. In violation of Labor Code § 226.7, Defendants also failed to pay Mr. Vasquez one (1) hour of pay at his regular rate of pay for each workday that a rest break was not provided, was provided too early or too late, was on-duty, was restricted, and/or was interrupted.

31. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

FIFTH CAUSE OF ACTION – FAILURE TO PAY VESTED VACATION BENEFITS, BY PLAINTIFF SAUL VASQUEZ AGAINST ALL DEFENDANTS

32. Plaintiff incorporates paragraphs 1 through 11 of this First Amended Complaint.

33. As required by Labor Code § 227.3, unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation

time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.

34. Defendants have violated and continue to violate Labor Code § 227.3 by failing to pay Plaintiff his vested vacation time at the time of his separation from Defendants.

35. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

SIXTH CAUSE OF ACTION – FAILURE TO PROVIDE/PERMIT ACCRUED SICK TIME & COVID BENEFITS, BY PLAINTIFF SAUL VASQUEZ AGAINST ALL DEFENDANTS

37. Plaintiff hereby incorporates paragraphs 1 through 11 of this First Amended Complaint.

38. Pursuant to Labor Code §246, employers in California are required to provide employees with sick leave time that accrues at the rates mandated or other applicable law. An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date as set forth in the Code, whichever is later, subject to the use and accrual limitations set forth. Defendants are also required to notify employees of the amount of their accrued sick leave either in their wage statements or in a separate writing with the employee's payment of wages.

39. Pursuant to Labor Code § 233, employers are also required to permit employees to use accumulated sick time for any of the reasons specified in Labor Code § 246.5 including the following: diagnosis, care, or treatment of an existing health condition of (or preventive care for) an employee or an employee's family member. Labor Code § 246.5 specifically prohibits an employer from denying employees the right to use accrued sick days or attempting to exercise their right to use accrued sick days.

40. Pursuant to Labor Code § 246 as well, an employer may lend paid sick days to an employee in advance of accrual, at the employer's discretion and with proper documentation. Defendants were also duty bound to provide Mr. Vasquez with written notice that sets forth the

amount of paid sick leave available, or paid time off leave Defendants provided in lieu of sick leave, for use on either Mr. Vasquez's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the Plaintiff's payment of wages.

41. Furthermore, a covered employee, who is considered full-time or who worked or was scheduled to work an average of at least 40 hours per week in the two weeks before the leave is taken, is entitled to up to 80 hours of medical leave, comprised of 40 hours of COVID-19 Supplemental Paid Sick Leave and an additional 40 hours if the covered employee or the qualifying family member tests positive for COVID-19.

42. Defendants failed to confer Code compliant sick leave and Covid benefits to Plaintiff.

43. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

SEVENTH CAUSE OF ACTION – FOR FAILURE TO MAINTAIN AND/OR PRODUCE EMPLOYEE RECORDS, BY PLAINTIFF SAUL VASQUEZ AGAISNT ALL DEFENDANTS

44. Plaintiff incorporates paragraphs 1 through 11 of this First Amended Complaint.

45. Defendants have failed and continue to fail record keeping practices in compliance with Labor Code Sections 1174 (c) and (d), which in pertinent part provide: "(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors. (d) Keep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by, and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."

46. It became evident after review of the records and relevant data that record keeping practices were lawfully deficient for computation of wages, premium and overtime wages, regular rate of pay adjustments, PTO benefits, and reporting requirements for the wage statements.

47. Defendants' wage statements do not accurately set forth all the hourly rates in effect to the pay period and/or the accurate corresponding number of hours worked at each hourly rate by Employees. The aggrieved employees were affected by said violations and none were provided the opportunity to examine their respective records at all times relevant here.

48. Defendants have not produced the employee records of Plaintiff in accordance with Labor Code §§ 226, 432 and 1198.5 and applicable Industrial Wage Orders.

49. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

EIGHTH CAUSE OF ACTION – FOR FAILURE TO REIMBURSE ALL BUSINESS EXPENSES, BY PLAINTIFF SAUL VASQUEZ AGAINST ALL DEFENDANTS

50. Plaintiff incorporates paragraphs 1 through 11 of this First Amended Complaint.

51. Labor Code § 2800 provides, in pertinent part, "[a]n employer shall in all cases indemnify the employee for losses caused by the employer's want of ordinary care." Labor Code § 2802 provides, in pertinent part, "[a]n employer shall indemnify the employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of him of his duties…"

52. Defendants required Plaintiff to incur certain expenses during the course and scope of his work for Defendants. Defendants have failed to reimburse Plaintiff for said business related expenses under California law. Further, Employers have required to pay fees and/or costs related to pre-employment/employment medical or physical examinations related to employment with Employers.

53. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

NINTH CAUSE OF ACTION – FOR RELEASE OF CLAIMS FOR WAGE VIOLATIONS, BY PLAINTIFF SAUL VASQUEZ AGAINST ALL DEFENDANTS

54. Plaintiff incorporates paragraph 1 – 52, except for paragraphs 12, 15, 16, 19, 20, 25, 26, 31, 32, 35, 37, 43, 44, 49, 50, and 53 of this First Amended Complaint.

55. California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee."

56. The Employer required Mr. Vasquez and other aggrieved employees to release their claims for unpaid wages, penalties, and other claims as a condition to receiving their paychecks. That practice is in violation of California Labor Code § 206.5. As such, Mr. Vasquez is entitled to penalties, attorney's fees, costs, and interest, per Labor Code §§ 2699(a), (f)-(g).

57. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

TENTH CAUSE OF ACTION – FOR REPORTING TIME VIOLATIONS BY PLAINTIFF SAUL VASQUEZ AGAINST ALL DEFENDANTS

58. Plaintiff incorporates paragraphs 1 through 11 of this First Amended Complaint.

59. No employer may employ an employee prohibited by the applicable IWC wage orders. California Labor Code section 1198 further requires that ". . . the standard conditions of labor fixed by the commission shall be the . . .standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

60. California Code of Regulations, Title 8, section 11160(5)(A) provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage."

61. Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11160(5), because they failed to pay Mr. Vasquez reporting time

pay when he reported to work.

62. Mr. Vasquez is entitled to recover damages, civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g), and as set forth in the Prayer for "Individual Causes of Action for Labor Law Violations."

ELEVENTH CAUSE OF ACTION – FAILURE TO PAY WAGES/ TIMELY PAY WAGES FOR ALL TIME WORKED, BY PLAINTIFF SAUL VASQUEZ AGAINST ALL DEFENDANTS

63. Plaintiff incorporates paragraphs 1 through 61, except for paragraphs 12, 15, 16, 19, 20, 25, 26, 31, 32, 35, 37, 43, 44, 49, 50, 53, 54, 57, and 58 of this First Amended Complaint.

64. Pursuant to Labor Code § 200, wages in California include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. Wages under Labor Code § 200 also include vested benefits such as premium pay for missed, untimely, on-duty, restricted and/or interrupted meal periods and/or rest breaks. All non-exempt employees must be paid all earned wages within the timeframes set forth in Labor Code § 204.

65. Defendants willfully, knowingly, and intentionally failed to pay Mr. Vasquez for all time worked whether or not reported for travel time between job locations and for unfairly rounded punch-in/out times. Defendants also illegally required Mr. Vasquez to clock out for rest and/or meal breaks that were legally required to be paid by Defendants and failed to pay for missed, untimely, short, on-duty, interrupted or restricted meal and/or rest breaks.

66. Since such wages were not paid, said wages were also not paid in accordance with the time frames set forth in Labor Code § 204.

67. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

TWELFTH CAUSE OF ACTION FOR FAILURE TO TMELY PAY WAGES OWED AT TIME OF SEPARATION, BY PLAINTIFF SAUL VASQUEZ AGAINST ALL DEFENDANTS

68. Plaintiff incorporates paragraphs 1 through 66, except for paragraphs 12, 15, 16, 19, 20, 25,

26, 31, 32, 35, 37, 43, 44, 49, 50, 53, 54, 57, 58, 62, and 63 of this First Amended Complaint.

69. Pursuant to Labor Code § 201, employers are required to immediately pay employees all wages due at the time employees are discharged. Additionally, pursuant to Labor Code § 202, if an employee gives at least 72-hours previous notice of their intent to quit/retire, the employer is required to pay the employee all wages due the time the employee quits/retires. Pursuant to Labor Code § 202, if an employee does not give 72-hours previous notice of their intention to quit/retire, the employer is required to pay the employee all wages due to the employee within 72-hours of the time the employee leaves employment.

70. In violation of Labor Code §§ 201-202, Mr. Vasquez was not timely paid all wages due at the time of her separation from Defendants even though said Defendants knew such payment was owed in accordance with Labor Code §§ 201-202. Plaintiff was not paid the overtime, regular time, minimum, premium, and reporting time wages. Also, Mr. Vasquez was not paid vacation and accrued sick and Covid benefits that were owed at the time of the separation of Mr. Vasquez from Defendants. Defendants thereby willfully violated Labor Code §§ 201-202 and the applicable IWC Wage Order(s).

71. Because Mr. Vasquez was not paid all the wages owed in accordance with the time frames set forth in Labor Code §§ 201-202, pursuant to Labor Code § 203, Defendants were required to pay Plaintiff his regular wages from the due date thereof at the same rate until paid, up to a maximum of thirty (30) days of pay.

72. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

THIRTEENTH CAUSE OF ACTION – FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS, BY PLAINTIFF SAUL VASQUEZ AGAINST ALL DEFENDANTS

73. Plaintiff incorporates paragraphs 1 through 71, except for paragraphs 12, 15, 16, 19, 20, 25, 26, 31, 32, 35, 37, 43, 44, 49, 50, 53, 54, 57, 58, 62, 63, 67, and 68 of this First Amended Complaint.

74. At all times herein, pursuant to Labor Code § 226(a), each time an employer pays wages to

an employee, the Employer is required to furnish the employee with an "accurate itemized statement in writing" that itemizes the following: 1) gross wages earned; 2) total hours worked; 3) the number of piece-rate units earned and the applicable piece rates; 4) all deductions; 5) net wages earned; 6) the inclusive dates for which the employee is being paid; 7) name of the employee and only the last 4 digits of his/her social security number or employee I.D. number; 8) the name and address of the legal entity of the employer; and 9) all hourly rates in effect to the pay period and hours worked at each hourly rate.

75. Defendants violated Labor Code §226(a) by not providing Mr. Vasquez with Code compliant wage statements at all times relevant here.

76. As a result, Plaintiff was not reasonably able to promptly and easily determine the information intended to be communicated to Mr. Vasquez by the Employer. A reasonable person would also have been unable to readily discern the above information without reference to other documents or information.

77. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

FOURTEENTH CAUSE OF ACTION – MISCLASSIFICATION OF PLAINTIFF AS INDEPENDENT CONTRACTORS/EXEMPT EMPLOYEES, BY SAUL VASQUEZ AGAINST ALL DEFENDANTS

78. Plaintiff incorporates paragraphs 1 through 76, except for paragraphs 12, 15, 16, 19, 20, 25, 79. 26, 31, 32, 35, 37, 43, 44, 49, 50, 53, 54, 57, 58, 63, 67, 68, 72, and 73 of this First Amended Complaint.

80. At all times that Plaintiffs worked at Defendants, they were employees/joint employees of Defendants for the following reasons:

a. They were under the control and direction of Defendants. On a daily basis, Defendants directed the specific worked that they performed, when it would be performed, how it would be performed, and for how long it would be performed. Additionally, the kind of work performed by said employees was the kind of work usually done under the direction of a supervisor rather than as a specialist without a supervisor.

b. The work that Plaintiffs performed at Defendants was within the usual course of Defendants' businesses; and

c. During the time that Plaintiffs performed work at Defendants, they were not customarily engaged in an independently established trade, occupation, or business of the same nature as the work that they performed at the restaurant.

81. At all times that Plaintiffs provided work at Defendants, they were non-exempt employees of Defendants for the following reasons:

a. They were either not paid a salary or the salary they were paid was not at least twice the minimum wage for full-time employment.

b. Their primary duties did not consist of administrative, executive, or professional tasks.

c. Their job duties did not involve the use of discretion or independent judgment.

d. Other reasons are set forth in the applicable Industrial Wage Orders.

82. Based on the above and pursuant to California law, at all times herein, Plaintiffs were non-exempt employee rather than exempt employees of Defendants.

83. At different times during the time that Plaintiffs were employed by Defendants, they were misclassified as independent contractors and exempt employees. Misclassifying Plaintiffs as independent contractors and/or exempt employees was done willfully by Defendants for the purpose of maximizing the business profits of Defendants and to the illegal detriment of said employees. This was accomplished by depriving said employees of employment benefits that employers owe to employees/non-exempt employees (but not independent contractors/exempt employees) under California law including the following: Employer contributions to federal and state tax accounts (including Social Security), sick leave benefits, medical benefits, reimbursement of business expenses under Labor Code §2802, overtime wages, legally compliant rest breaks and meal periods, workers' compensation benefits, legally compliant and accurate wage statements, etc.

84. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law V for Labor Law Violations."

FIFTEENTH CAUSE OF ACTION -- FAILURE TO PAY REGULAR RATE OF PAY, BY SAUL VASQUEZ AGAINST ALL DEFENDANTS

85. Plaintiff incorporates paragraphs 1 through 83, except for paragraphs 12, 15, 16, 19, 20, 25, 26, 31, 32, 35, 37, 43, 44, 49, 50, 53, 54, 57, 58, 62, 63, 67, 68, 72, 73, 77, and 78 of this First Amended Complaint.

86. Defendants have failed and continue to fail to take into consideration the "regular rate of pay," encompassing all nondiscretionary payments, not just hourly wages, in their computation of premium pay for non-compliant meal, rest or recovery period under Labor Code Section 226.7(c) and Ferra v. Loews Hollywood Hotel, LLC (2021) 11 Cal5th 858.

87. Defendants have also failed and continues to fail to take into consideration the regular rate of pay in their computation of overtime pay pursuant to Labor Code Section 510(a). Mr. Vasquez received non-discretionary bonuses at all times relevant here and was denied the appropriate adjustments to the wages based on the requisite regular rate analysis.

88. Plaintiff is entitled to recover the damages, penalties, awards, and other remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

SIXTEENTH CAUSE OF ACTION -- UNFAIR BUSINESS PRACTICES, BY PLAINTIFF SAUL VASQUEZ AGAINST ALL DEFENDANTS

89. Plaintiff incorporates paragraphs 1 through 87, except for paragraphs 12, 15, 16, 19, 20, 25, 26, 31, 32, 35, 37, 43, 44, 49, 50, 53, 54, 57, 58, 62, 63, 67, 68, 72, 73, 77, 78, 84, and 85 of this First Amended Complaint.

90. Business and Professions Code §17200 provides as applicable ". . . [U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice ...."

91. Business and Professions Code §17205 provides that unless otherwise expressly provided, the remedies or penalties provided for unfair competition "are cumulative to each other and to the remedies or penalties available under all other laws of this state."

92. Business and Professions Code §17204 provides that an action for any relief from unfair competition may be prosecuted by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition.

93. Defendants have engaged in unlawful business acts or practices, including those set forth in the preceding paragraphs of the Complaint, and, thereby, have wrongfully deprived Plaintiff from the minimum working standards and conditions under the California Labor Code, the Code of Regulations and/or applicable IWC Wage Order(s), as set forth herein.

94. Defendants have also engaged in unfair business practices in California by practicing, employing, and utilizing the employment practices outlined in the preceding paragraphs, which have been incorporated for this Cause of Action.

95. Defendants' use of such illegal and unfair practices constitutes an unfair business practice, unfair competition and provides an unfair advantage over Defendants' competitors who comply with the above-referenced employment laws and regulations.

96. Defendants have engaged in said unlawful and unfair business practices on a continuous basis for many years up until the present time. As a result, Plaintiff has suffered injury in fact and has lost money and/or property as described herein.

97. Defendants are required to pay restitution to restore any and all monies withheld, acquired and/or converted, and the court is requested to issue an injunction prohibiting Defendants from engaging in the foregoing conduct, and as necessary, appoint a receiver.

98. Plaintiff is entitled in addition to an award of attorneys' fees and costs of suit on this cause of action pursuant to Code of Civil Procedure §1021.5.

99. Plaintiff is entitled to penalties, awards, fees, costs, interest, and other remedies set forth in the Prayer for Damages - "Unfair Business Practices Cause of Action."

SEVENTEENTH CAUSE OF ACTION -- VIOLATION OF LABOR LAWS GIVING RISE TO AN ACTION PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT (PAGA) -- BY SAUL VASQUEZ ON BEHALF OF HIMSELF AND OTHER CURRENT AND FORMER AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS

100. Plaintiff incorporates paragraphs 1 through 87, except for paragraphs 12, 15, 16, 19, 20, 25, 26, 31, 32, 35, 37, 43, 44, 49, 50, 53, 54, 57, 58, 62, 63, 67, 68, 72, 73, 77, 78, 84, and 85 of this First Amended Complaint.

101. Plaintiff brings this cause of action pursuant to the Private Attorneys General Act (Labor Code §2699) on behalf of himself and all aggrieved employees as described as follows: All current and former employees of Defendants who were either 1) classified as non-exempt employees or 2) should have been classified as non-exempt employees who worked for Defendants at any time during the following time period: One year before the date that the PAGA Notice Letter was filed with the LWDA to the present and continuing until the unlawful employment practices are stopped or a judgment is obtained.

102. Plaintiff has exhausted all statutory prerequisites to filing a Private Attorneys General Action in this matter by providing written notice to the Labor and Workforce Development Agency on March 19, 2024, that Defendants had violated and were continuing to violate provisions of the California Labor Code. Pursuant to the PAGA, said filing and submission through the LWDA portal resulted in a tolling of the applicable statute of limitation(s).

103. At least sixty-five days has passed since Plaintiff provided written notice (by online submission to the Labor and Workforce Development Agency and by certified mail to Defendants) that Defendants had violated and continued to violate provisions of the California Labor Code. Plaintiff has not received notice from the LWDA that it intends to prosecute an action against Defendants. Therefore, as statutorily permitted by Labor Code § 2699.3, Plaintiff has the right to commence a Private Attorneys General Action (PAGA) pursuant to Labor Code § 2699.

104. As applicable under California law, as to all the Counts set forth below for PAGA violations, Plaintiff and the rest of the aggrieved employees (on behalf of the LWDA, themselves, and/or other aggrieved employees) are entitled to recover the penalties, awards, attorneys' fees, costs, interest, and other remedies set forth in the Prayer for Damages, Awards and Other Relief under the section entitled "PAGA Cause of Action."

COUNT ONE – FAILURE TO PAY OVERTIME

105. Plaintiff incorporates paragraphs 1 – 11 and 13 – 14 of this First Amended Complaint.

COUNT TWO – FAILURE TO PAY MINIMUM WAGES

106. Plaintiff incorporates paragraphs 1 – 11 and 17 – 18 of this First Amended Complaint.

COUNT THREE – FAILURE TO PROVIDE MEAL BREAKS/PREMIUM PAY

107. Plaintiff incorporates paragraphs 1 – 11 and 21 – 24 of this First Amended Complaint.

COUNT FOUR – FAILURE TO PROVIDE REST BREAKS/PREMIUM PAY

108. Plaintiff incorporates paragraphs 1 – 11 and 27 – 30 of this First Amended Complaint.

COUNT FIVE – FAILURE TO PAY VESTED VACATION BENEFITS

109. Plaintiff incorporates paragraphs 1 – 11 and 33 – 34 of this First Amended Complaint.

COUNT SIX – FAILURE TO PROVIDE/
PAY FOR ACCRUED SICK LEAVE TIME &/OR COVID BENEFITS

110. Plaintiff incorporates paragraphs 1 – 11 and paragraph 38 – 42 of this First Amended Complaint.

COUNT SEVEN – FAILURE TO MAINTAIN AND/OR
PRODUCE EMPLOYEE RECORDS

111. Plaintiff incorporates paragraphs 1 – 11 and paragraph 45 – 48 of this First Amended Complaint.

COUNT EIGHT – FAILURE TO REIUMBURSE ALL BUSINESS EXPENSES

112. Plaintiff incorporates paragraphs 1 – 11 and paragraph 51 – 52 of this First Amended Complaint.

COUNT NINE – RELEASE OF CLAIMS FOR WAGES DUE VIOLATIONS

113. Plaintiff incorporates paragraphs 1 – 11 and paragraph 55 – 56 of this First Amended Complaint.

COUNT TEN – FAILURE TO PAY REPORTING TIME

114. Plaintiff incorporates paragraphs 1 – 11 and paragraph 59 – 61 of this First Amended Complaint.

COUNT ELEVEN – FAILURE TO PAY WAGES/
TIMELY PAY WAGES FOR ALL TIME WORKED

115. Plaintiff incorporates paragraphs 63 – 66 of this First Amended Complaint.

COUNT TWELVE – FAILURE TO TIMELY PAY WAGES
OWED AT TIME OF SEPARATION

116. Plaintiff incorporates paragraphs 68 – 71 of this First Amended Complaint.

COUNT THIRTEEN – FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

117. Plaintiff incorporates paragraphs 73 – 76 of this First Amended Complaint.

COUNT FOURTEEN – MISCLASSIFICATION OF PLAINTIFF AS INDEPENDENT CONTRACTORS/EMEMPT EMPLOYEES

118. Plaintiff incorporates paragraphs 78 – 83 of this First Amended Complaint.

COUNT FIFTEEN – FAILURE TO PAY REGULAR RATE OF PAY

119. Plaintiff incorporates paragraphs 85 – 87 of this First Amended Complaint.

COUNT SIXTEEN – FAILURE TO PROVIDE HEAT RECOVERY PERIOD

120. Plaintiff incorporates paragraphs 1 – 11 of this First Amended Complaint.

121. At all times herein, pursuant to the applicable Industrial Wage Order (IWO), the Defendants were required to provide Plaintiff (and the other aggrieved employees encompassed by Plaintiffs' PAGA Notice Letter) with a recovery period. A recovery period means a cooldown period afforded an employee to prevent heat illness. The applicable General Industry Safety Order provides that "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling." Cal. Code of Reg., Title 8, § 3395(d)(1).

122. Defendants failed to provide Plaintiff (and the other aggrieved employees encompassed by the Plaintiff's PAGA Notice Letter) with the legally required Heat Recovery Period as set forth above.

COUNT SEVENTEEN – RELEASE OF CLAIMS FOR WAGES DUE VIOLATIONS

123. Plaintiff incorporates paragraphs 1 – 11 of this First Amended Complaint.

124. California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee."

125. Defendants required Plaintiff and aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks. That practice is in violation of California Labor Code section 206.5. As such, Plaintiff and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f)-(g).

COUNT EIGHTEEN – FAILURE TO PROVIDE SEATING

126. Plaintiff incorporates paragraphs 1 – 11 of this First Amended Complaint.

127. Pursuant to the applicable Industrial Wage Order (IWO), the Defendants were required to provide Plaintiff (and the other aggrieved employees) with seating as follows: 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.

128. Defendants failed to provide Plaintiff (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) with the legally required seating.

COUNT NINETEEN – FAILURE TO PAY FOR MEDICAL/PHYSICAL EXAMS

129. Plaintiff incorporates paragraphs 1 – 11 of this First Amended Complaint.

130. Labor Code § 222.5, requires Employers to pay fees and/or costs related to pre-employment/employment medical or physical examinations related to employment with Employers.

131. Defendants failed to pay for such medical/physical exams for Plaintiff (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter.)

PRAYER FOR DAMAGES, AWARDS AND OTHER RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them:

Individual Causes of Action for Labor Law Violations

1. Unpaid/underpaid wages (including but not limited to regular wages, overtime wages, reporting time wages, vacation and sick leave/Covid benefits, and/or minimum wages) owed to Plaintiff for $100,000 or in an amount as proven at the time of the trial.

2. All premium pay/wages owed to Plaintiff for untimely, missed, or interrupted meal periods and/or rest breaks for $75,000 or in an amount as proven at the time of the trial.

3. Continuing wages to the fullest extent under Labor Code § 203 in the amount of $5,000 or in an amount as proven at the time of the trial.

4. All statutory penalties under the Labor Code for an individual employee to recover from an employer for violation(s) of the Labor Code, applicable Industrial Wage Order(s) and/or applicable local laws/ordinances which were violated with respect to Plaintiff's employment as alleged herein, in the amount of $50,000 or in an amount as proven.

5. All liquidated damages in the amount of $20,000 or in an amount as proven.

6. All equitable relief permitted under California law, according to proof.

7. Attorney's fees to the fullest extent permitted under California law, according to proof.

8. Costs to the fullest extent permitted under California law.

9. Prejudgment and post-judgment interest and other relief under the law.

Unfair Business Practices Cause of Action

1. Full restitution of all monies pursuant to Bus. & Prof. Code § 17200, in the amount of $100,000 or in an amount as proven at the time of the trial.

2. A preliminary and permanent injunction prohibiting Defendants from engaging in the unlawful and/or unfair employment practices and appointment of a receiver.

3. Attorneys' fees and costs to the fullest extent permitted under California law.

4. Prejudgment and post-judgment interest and other relief under the law.

PAGA Cause of Action

On behalf of Plaintiff and all Other Aggrieved Employees

1. All civil penalties and/or other penalties and remedies recoverable under the PAGA for violations of the Labor Code, applicable Industrial Wage Order(s) and/or applicable regulation, local law/ordinance, in the amount of $5,000,000. Pursuant to Labor Code § 2699(f)(2), the civil penalty is $100 for each aggrieved employee per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation. To the extent required pursuant to Labor Code § 2699(i), the recovered civil

penalties shall be distributed seventy-five percent (75%) to the LWDA, and twenty-five percent (25%) distributed to Plaintiff and all aggrieved employees.

2. Attorneys' fees and/or costs to the full extent permitted under the PAGA, the Labor Code, the applicable Industrial Wage Order and/or other applicable California law.

3. Prejudgment and post-judgment interest and other relief under California law.

DATED: May 23, 2024 **MOORADIAN LAW, APC**

Zorik Mooradian

By: ____________________________
Zorik Mooradian
Attorneys for Plaintiff SAUL VASQUEZ

DEMAND FOR A JURY TRIAL

Plaintiff, SAUL VASQUEZ, hereby demands a jury trial in the within matter.

DATED: May 23, 2024 **MOORADIAN LAW, APC**

Zorik Mooradian

By: ____________________________
Zorik Mooradian,
Attorneys for Plaintiff SAUL VASQUEZ