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ELECTRONICALLY

**FILED**

Superior Court of California,  
County of San Francisco

**07/19/2024**

**Clerk of the Court**

BY: AUSTIN LAM

Deputy Clerk

Attorneys for Plaintiff ALAN EDUARDO GARCIA ARGUETA

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 FOR THE COUNTY OF SAN FRANCISCO

**CGC-24-616576**

9 ALAN EDUARDO GARCIA ARGUETA, )

CASE NO.:

10 Plaintiff, )

**COMPLAINT FOR DAMAGES FOR:**

11 vs. )

1) **FAILURE TO COMPENSATE FOR  
ALL HOURS WORKED;**

12 LOCAL KITCHENS CALIFORNIA, LLC; )

2) **FAILURE TO PAY MINIMUM  
WAGES;**

13 JONATHAN GOLDSMITH; and DOES 1 )

3) **FAILURE TO PAY OVERTIME;**

14 to 25, inclusive, )

4) **FAILURE TO PROVIDE  
ACCURATE ITEMIZED WAGE  
STATEMENTS;**

15 Defendants. )

5) **FAILURE TO PAY WAGES OWED  
EVERY PAY PERIOD;**

6) **FAILURE TO PAY WAGES WHEN  
EMPLOYMENT ENDS;**

7) **FAILURE TO PROVIDE REST  
BREAKS;**

8) **FAILURE TO PROVIDE MEAL  
BREAKS;**

9) **FAILURE TO REIMBURSE  
BUSINESS EXPENSES;**

10) **PRIVATE ATTORNEYS GENERAL  
ACT ("PAGA")**

11) **VIOLATION OF BUSINESS AND  
PROFESSIONS CODE SECTION  
17200**

**JURY TRIAL DEMANDED**

COMES NOW Plaintiff, ALAN EDUARDO GARCIA ARGUETA (hereinafter  
"Plaintiff"), and alleges as follows:

**PARTIES, JURISDICTION, and VENUE**

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of San Francisco in this judicial district because Defendants LOCAL KITCHENS CALIFORNIA, LLC; JONATHAN GOLDSMITH; and DOES 1 to 25, inclusive (hereinafter collectively "LOCAL KITCHENS" or "Defendant(s)") do business in the County of San Francisco, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of San Francisco is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$35,000.

2. Plaintiff is a male resident of the State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant LOCAL KITCHENS CALIFORNIA, LLC is a California Limited Liability Company, doing business in the County of San Francisco, State of California, and which employed Plaintiff. Individual Defendant JONATHAN GOLDSMITH is a male resident of the County of San Francisco, State of California and the owner, director, and/or managing agent of LOCAL KITCHENS CALIFORNIA, LLC. JONATHAN GOLDSMITH is being included in this complaint pursuant to Labor Code section 558.1 in that he controlled the wages, hours, and/or working conditions of Plaintiff and other employees and was also involved in the wage and hour policies and practices.

4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE

1 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible  
2 for the conduct alleged herein. Upon discovering the true names and capacities of these  
3 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and  
4 capacities of these fictitiously named defendants.

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

#### 11 **GENERAL ALLEGATIONS**

12 6. Plaintiff started working at LOCAL KITCHENS on or around January 2024 as a  
13 cook. Plaintiff was classified as an hourly, non-exempt employee and may still technically be  
14 employed by LOCAL KITCHENS although his last day worked was March 28, 2024.  
15 Plaintiff's last rate of pay was \$21.50 per hour.  
16

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

9 8. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and  
10 other employees, it allows for suits broader than the specific violations the named  
11 employee experienced. Therefore, even if the employee did not personally experience the  
12 Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is  
13 Plaintiff’s position that Plaintiff can equivocally bring the following labor code violations on  
14 behalf of all other employees, including ALL hourly, non-exempt employees who worked for  
15 LOCAL KITCHENS anywhere in the state of California (at all different restaurant locations)  
16 during the relevant PAGA period.  
17

18 9. It is Plaintiff’s position that LOCAL KITCHENS has violated the following Labor Code  
19 Sections against Plaintiff and other similarly situated aggrieved employees, who include all non-  
20 exempt, hourly employees who worked for LOCAL KITCHENS at their various  
21 locations/restaurants in the State of California during the relevant PAGA period.  
22

23 10. LOCAL KITCHENS violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it  
24 failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked,  
25 including the statutory minimum wage for all hours worked and for “off the clock” work. This  
26 is so because LOCAL KITCHENS had a company policy wherein they would disproportionately  
27 round down the number of hours worked, resulting in “time shaving” and further resulting in  
28

1 aggrieved employees not being paid for all hours worked. In addition, and to the extent Plaintiff  
2 and other employees worked through meal periods while “off the clock”, the latter would be  
3 considered a minimum wage violation under California law. Moreover, LOCAL KITCHENS  
4 failed to provide its employees with proper and accurate reporting time pay.

5 11. Due to the above “off the clock” violations, LOCAL KITCHENS also violated Labor  
6 Code §510 because it failed to pay Plaintiff and other aggrieved employees overtime  
7 compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40  
8 hours per week throughout their employment. Plaintiff’s and other aggrieved employees’ actual  
9 work hours entitled them to overtime compensation, however, LOCAL KITCHENS did not  
10 compensate its hourly, non-exempt employees with the correct amount of overtime due to the  
11 “off the clock” work and time shaving as described above. Furthermore, LOCAL KITCHENS  
12 failed to include bonuses/incentive payments/sick pay in calculating employees’ regular rate of  
13 pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive and bonus  
14 payments were also not factored into employees’ regular rate for purposes of receiving meal and  
15 rest break premiums per the Ferra v. Loews case.

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18 12. LOCAL KITCHENS also violated Labor Code § 226.7 and the appropriate Industrial  
19 Welfare Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly  
20 situated aggrieved employees with 10-minute rest periods for every four hours of work, or  
21 majority portion thereof, throughout their employment. LOCAL KITCHENS did not completely  
22 relieve Plaintiff and others of all duty during said rest periods. LOCAL KITCHENS did not pay  
23 to Plaintiff and others one additional hour of pay at Plaintiff’s regular rate of compensation for  
24 each workday that one or more statutory rest periods was not provided. It was not part of the  
25 company policy for employees such as Plaintiff to take either one or two rest breaks per shift.  
26 The concept of rest breaks was not consistently implemented as it was not company policy. In  
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1 fact, Plaintiff was told by his manager that the County of San Mateo does not allow rest breaks.  
2 Moreover, it would not have been possible for employees such as Plaintiff to take such rest  
3 breaks due to being understaffed and due to a heavy workload, especially in the fast-paced  
4 restaurant industry. As such, the culture as well as the policies and procedures of LOCAL  
5 KITCHENS did not lend itself to the employees receiving consistent statutory rest breaks  
6 wherein, they were relieved of all work duties. The environment at LOCAL KITCHENS was  
7 not conducive to receiving multiple statutory rest breaks under California law and timely,  
8 statutory rest breaks were not authorized or enforced.  
9

10 13. LOCAL KITCHENS violated Labor Code §§ 512 and 226.7 and the appropriate  
11 Industrial Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-  
12 exempt employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal  
13 periods for every five (5) hours of work throughout their employment. LOCAL KITCHENS did  
14 not completely relieve Plaintiff and other employees of all duty during said meal  
15 periods. LOCAL KITCHENS did not pay to Plaintiff and its hourly, non-exempt employees one  
16 additional hour of pay at their regular rate of compensation for each workday that one or more  
17 statutory meal periods was not provided. Plaintiff and others did not always receive timely,  
18 uninterrupted meal breaks due to work obligations. Like the rest breaks, receiving a thirty-minute  
19 uninterrupted and timely meal break was not consistently part of the company culture and was  
20 not enforced by LOCAL KITCHENS. Consequently, it was the normal practice and custom of  
21 LOCAL KITCHENS not to authorize, permit, and enforce timely statutory meal periods. In fact,  
22 it was commonplace for the hourly employees to have their meal breaks interrupted by  
23 management personnel due to work duties and in dealing with customers and orders. If LOCAL  
24 KITCHENS had Plaintiff sign a meal period waiver, it would not be valid and enforceable since  
25 Plaintiff and others generally worked more than a 5-hour shift. If LOCAL KITCHENS had  
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1 Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through the  
2 meal periods, it would be invalid and unenforceable because the nature of Plaintiff's job does  
3 not and did not prevent him from taking a meal period and the company could have hired  
4 "breakers" to relieve Plaintiff of his job duties so that he can actually take a timely, uninterrupted  
5 meal period. Moreover, any such "on duty" meal period agreement did not allow for Plaintiff to  
6 revoke such an agreement even if it was signed. As such, Plaintiff and others did not always  
7 receive statutory, timely meal periods during their employment. To the extent that LOCAL  
8 KITCHENS argues that employees receive meal break premium pay for missed meal periods,  
9 that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for  
10 the violations themselves, irrespective of whether an employee received the premium payment  
11 for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the  
12 Court stated, "section 226.7 does not give employers a lawful choice between  
13 providing *either* meal and rest breaks *or* an additional hour of pay." See *Kirby v. Immoos Fire*  
14 *Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of  
15 pay does not excuse the violation; the employer has still committed a violation even if the remedy  
16 for the violation has been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL  
17 1110302 at \*4). As such, the work environment and culture at LOCAL KITCHENS was not  
18 conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover,  
19 any meal or rest break premiums paid were not compensated at the weighted average regular  
20 rate, inclusive of bonuses and/or incentive payments/sick pay as well as overtime compensation.  
21

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23  
24 14. Furthermore, during the relevant time period, and due to the above labor code violations,  
25 LOCAL KITCHENS failed to pay Plaintiff and other similarly situated aggrieved employees all  
26 wages due to them within any time period specified by California Labor Code section 204. Since  
27 Plaintiff was not compensated for his "off the clock" work and since Plaintiff did not receive  
28

1 meal and rest break premiums, Plaintiff would still be owed wages pursuant to Labor Code  
2 Section 204. Moreover, there was at least one occasion wherein Plaintiff received his paycheck  
3 late and after the 7<sup>th</sup> following day following the close of the applicable pay period. LOCAL  
4 KITCHENS was also in violation of California Labor Code section 226(a) by failing to include  
5 pertinent information on the wage statements, including but not limited to, the correct hourly  
6 rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net  
7 wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and  
8 end of the pay period, all employee identifying information, the correct and complete name and  
9 address of the legal employer, and reimbursement for business expenses, among others. As such,  
10 LOCAL KITCHENS did not provide Plaintiff and other similarly situated aggrieved employees  
11 with complete, accurate itemized wage statements.  
12

13 15. During the relevant time period, LOCAL KITCHENS also failed to keep accurate and  
14 complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff  
15 and others pursuant to California Labor Code sections 1174(d).  
16

17 16. LOCAL KITCHENS also violated Labor Code § 203 because it willfully failed to pay  
18 other similarly situated aggrieved employees earned and due wages upon separation of  
19 employment, either immediately upon involuntary termination, or within 72 hours of resignation.  
20 These earned but unpaid wages include compensation for all hours worked, including minimum  
21 wages, overtime compensation, and premium pay for missed meal and rest breaks.  
22

23 17. During the relevant time period, Plaintiff and other aggrieved employees incurred  
24 necessary, business-related expenses and costs that were not reimbursed by LOCAL  
25 KITCHENS. These costs include, but are not limited to, use of personal cell phones for work  
26 purposes and uniforms. In terms of the cell phones, Plaintiff had to use his cell phone to take  
27 photos of the order receipts. Moreover, Plaintiff had to download an application where it would  
28

1 delineate the tasks that he had to complete for work. Accordingly, LOCAL KITCHENS was in  
2 violation of California Labor Code sections 2800 and 2802.

3 18. Additionally, LOCAL KITCHENS violated Labor Code Section 351 and 353 by taking  
4 some of the tips meant for employees and also deducting the tips from employees' earned wages.  
5 LOCAL KITCHENS also deducted the credit card fee from employees' tips and did not timely  
6 provide the credit card and even cash tips to aggrieved employees. As such, aggrieved employees  
7 were not given accurate tips to which they were entitled.  
8

9 19. Furthermore, LOCAL KITCHENS did not provide proper and correct/accurate sick pay  
10 that was also delineated on employee pay stubs and also failed to provide proper sick leave in  
11 violation of Labor Code sections 233 and 246. Moreover, there were no suitable seating/rest  
12 break facilities for the employees pursuant to Wage Order no. 5-2001 as employees did not have  
13 designated break area.  
14

15 20. Furthermore, Plaintiff believes Defendants have also violated Labor Code Section 558  
16 and have engaged in business practices which violate Business and Professions Code Section  
17 17200.

18 **FIRST CAUSE OF ACTION**

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

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

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

23 21. Plaintiff re-alleges and incorporates by reference each and every allegation in  
24 paragraphs 1 through 20, inclusive, of this Complaint as though fully set forth herein.  
25

26 22. At all times relevant herein, Defendants were required to compensate its employees for  
27 all hours worked upon reporting for work at the appointed time stated by the employer  
28

1 pursuant to Industrial Welfare Commission Order 5-2001, California Code of  
2 Regulations, Title 8, Section 11050.

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

5 24. Under the aforementioned wage order and regulations, Plaintiff is to recover  
6 compensation for all hours worked but not paid by Defendants for the three (3) years  
7 preceding the filing of this Complaint.  
8

9 25. As a proximate result of the aforementioned violations, Plaintiff has been damaged in  
10 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of  
11 this Court.

12 26. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and  
13 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is  
14 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus  
15 reasonable attorney's fees and costs of suit.  
16

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

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY MINIMUM WAGES**

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

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

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26 28. Plaintiff re-alleges and incorporates by reference each and every allegation in  
27 paragraphs 1 through 27, inclusive, of this Complaint as though fully set forth herein.  
28

1       29. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer  
2 to suffer or permit a California employee to work without paying wages at the minimum wage  
3 rate for all hours worked as required by the applicable Industrial Welfare Commission  
4 (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of  
5 Regulations, Title 8, Section 11050, subdivision 4.

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

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

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

19       33. For all hours worked by Plaintiff for which he was paid less than the minimum wage  
20 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum  
21 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount  
22 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,  
23 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

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

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO PAY OVERTIME**

5 **(California Industrial Welfare Commission Order 5-2001, California Code of**  
6 **Regulations Title 8 Section 11050; California Labor Code Section 510)**

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

8  
9 35. Plaintiff re-alleges and incorporates by reference each and every allegation in  
10 paragraphs 1 through 34, inclusive, of this Complaint as though fully set forth herein.

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

19 37. Plaintiff was a non-exempt employee entitled to the protections of the California  
20 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations,  
21 Title 8, Section 11050.

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

24 39. Plaintiff was entitled to the above overtime premiums.

25 40. Defendants did not pay Plaintiff premium wages of at least one and one-half times  
26 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay  
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1 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past  
2 twelve (12) in a day.

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

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

7 43. Defendants know or should know the actual dates of overtime worked, the amount of  
8 overtime worked, and the amount of unpaid overtime due.

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

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

18 46. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
19 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
20 trial.  
21

#### 22 **FOURTH CAUSE OF ACTION**

#### 23 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

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

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

26 47. Plaintiff re-alleges and incorporates by reference each and every allegation in  
27 paragraphs 1 through 46, inclusive, of this Complaint as though fully set forth herein.  
28

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

3 49. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that  
4 accurately reflected all information required by Labor Code Section 226, including but not  
5 limited to, gross wages earned, including overtime, minimum wages, and premium pay for  
6 missed meal and rest breaks, net wages earned, total hours worked by the employee, and all  
7 deductions. Therefore, Defendants failed to maintain and provide accurate itemized wage  
8 statements to Plaintiff in accordance with California Labor Code Section 226(a).  
9

10 50. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the  
11 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation  
12 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay  
13 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and  
14 reasonable attorney's fees.  
15

16 51. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has  
17 sustained damages, including loss of earnings, in an amount to be established at trial. As a  
18 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,  
19 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs  
20 and attorney's fees pursuant to statute.  
21

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

25 **FIFTH CAUSE OF ACTION**

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

27 **(California Labor Code Section 204)**  
28

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

2           53. Plaintiff re-alleges and incorporates by reference each and every allegation in  
3 paragraphs 1 through 52, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

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

20                                   **SIXTH CAUSE OF ACTION**

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

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

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

24           59. Plaintiff re-alleges and incorporates by reference each and every allegation in  
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1 paragraphs 1 through 58, inclusive, of this Complaint as though fully set forth herein.

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

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

7 62. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,  
8 without abatement or reduction, any wages of an employee whose employment ends, the wages  
9 of the employee shall continue as a penalty from the due date at the same rate until paid or until  
10 an action is commenced; however, the wages shall not continue for more than 30 days for  
11 failure to pay an employee owed wages.  
12

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

15 64. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
16 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
17 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately  
18 preceding the filing of this lawsuit.  
19

20 65. Under this cause of action, Plaintiff also prays for attorney's fees and costs under  
21 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set  
22 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.  
23

24 66. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
25 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
26 trial.  
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**SEVENTH CAUSE OF ACTION**

**FAILURE TO GIVE REST BREAKS**

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

67. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 66, inclusive, of this Complaint as though fully set forth herein.

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

- a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which provides that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each workday that the rest period is not provided;
- c. Title 8 of the California Code of Regulations sections 11050(20)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- d. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial

1 Welfare Commission, the employer shall pay the employee one (1) additional hour  
2 of pay at employee's regular rate of compensation for each work day that the rest  
3 period is not provided.

4 69. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute  
5 rest break after every four (4) hours of work or major fraction thereof, as required by California  
6 law.

7 70. Under this cause of action, Plaintiff prays for wages due to him under the statutes,  
8 regulations, and wage orders alleged in this cause of action along with any allowable interest,  
9 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for  
10 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.  
11

12 71. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's  
13 fees as well as interest under Labor Code section 218.6.

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

18 **EIGHTH CAUSE OF ACTION**

19 **FAILURE TO GIVE MEAL BREAKS**

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

21 73. Plaintiff re-alleges and incorporates by reference each and every allegation in  
22 paragraphs 1 through 72, inclusive, of this Complaint as though fully set forth herein.  
23

24 74. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 25 a. California Labor Code section 512(a), which requires that employees be given a 30-  
26 minute uninterrupted meal break after five (5) hours of work, and a second  
27 uninterrupted meal break after ten (10) hours of work;  
28

- 1 b. California Labor Code section 226.7, which states that (a) no employer shall require  
2 any employee to work during any meal period mandated by an applicable order of  
3 the Industrial Welfare Commission, and (b) if any employer fails to provide an  
4 employee a meal period in accordance with an applicable order of the Industrial  
5 Welfare Commission, the employer shall pay the employee one (1) additional hour  
6 of pay at the employee's regular rate of compensation for each workday that the  
7 meal period is not provided;  
8  
9 c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified  
10 under Title 8 of the California Code of Regulations Section 11050, which states that  
11 if an employer fails to provide an employee a meal period in accordance with the  
12 applicable provisions of the Wage Order, the employer shall pay the employee one  
13 (1) hour of pay at the employee's regular rate of compensation for each workday  
14 that the meal period is not provided;  
15  
16 d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as  
17 codified under Title 8 of the California Code of Regulations Section 11050, which  
18 requires an employer to maintain records documenting its employees' meal periods;  
19  
20 e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as  
21 codified under California Code of Regulations Section 11050, which penalizes the  
22 employer \$50.00 for each initial violation, per employee, of any provision of the  
23 Wage Order, and \$100.00 for each additional violation thereafter per employee; and  
24  
25 f. California Labor Code section 1171 and 1173, which have given the California  
26 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5)  
as enforceable law.

27 75. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks  
28

1 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to  
2 take a second relieved meal break after ten (10) hours of work, as required by California law.  
3 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.  
4 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that  
5 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and  
6 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work  
7 duty. California Labor Code section 226.7 provides that employers may not require their  
8 employees to work through their meal periods. California Labor Code section 226.7 and  
9 California Code of Regulations section 11050 requires that if the employer fails to provide the  
10 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour  
11 of pay for each work day that the meal period is not given.  
12

13 76. Under this cause of action, Plaintiff prays for wages due to him under the statutes,  
14 regulations, and wage orders alleged in this cause of action along with any allowable interest,  
15 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for  
16 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.  
17

18 77. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's  
19 fees as well as interest under Labor Code section 218.6.

20 78. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
21 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
22 trial.  
23

#### 24 **NINTH CAUSE OF ACTION**

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

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

27 79. Plaintiff re-alleges and incorporates by reference each and every allegation in  
28

1 paragraphs 1 through 78, inclusive, of this Complaint as though fully set forth herein.

2 80. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her  
3 employee for all necessary expenditures or losses incurred by the employee in direct  
4 consequence of the discharge of his or her duties.”

5 81. Beginning at least 3 years prior to the filing of this complaint, in order to discharge  
6 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course  
7 of completing his job duties, which were not reimbursed by Defendant. These costs include,  
8 but are not limited to, use of personal cell phones for work purposes and uniforms. In terms of  
9 the cell phones, Plaintiff had to use his cell phone to take photos of the order receipts.  
10 Moreover, Plaintiff had to download an application where it would delineate the tasks that he  
11 had to complete for work.  
12

13 82. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest  
14 and attorney’s fees and costs, under Labor Code section 2802.  
15

### 16 **TENTH CAUSE OF ACTION**

#### 17 **PRIVATE ATTORNEYS GENERAL ACT**

18 **Representative Claim for PAGA penalties under California Labor Code sections 201,**  
19 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 1174,**  
20 **1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802 and IWC Wage Order 5-2001)**

21 **(Plaintiff against LOCAL KITCHENS CALIFORNIA, LLC and all DOE defendants)**

22 83. Plaintiff re-alleges and incorporates by reference each and every allegation in  
23 paragraphs 1 through 82, inclusive, of this Complaint as though fully set forth herein.

24 84. Plaintiff has complied with the procedures for bringing suit specified in California  
25 Labor Code § 2699.3. By letter dated April 19, 2024, Plaintiff gave written notice by certified  
26 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the  
27 specific provisions of the California Labor Code alleged to have been violated, including the  
28 facts and theories to support the alleged violations.

85. Pursuant to California Labor code section 2699.3, no response was received from

1 the LWDA within 65 days of the postmark date of the above-alleged letter.

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

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

12 88. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged  
13 violator and had one or more of the alleged violations committed against him, and therefore is  
14 properly suited to represent the interests of other current and former employees, including all  
15 current and former hourly, non-exempt employees who worked for LOCAL KITCHENS at any  
16 and all locations in the State of California during the applicable PAGA Period.

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

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

24 91. California Labor Code section 2699 et seq. imposes penalties upon culpable  
25 Defendants for violating the Labor Code.

26 92. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by  
27 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not  
28 seeking individual penalties/victim specific relief or underpaid wages for himself or other  
employees under this specific PAGA cause of action.

1 93. Specifically, Plaintiff seeks penalties under California Labor Code  
2 section 2699, for the following:

3 Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226,  
4 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197.1, 1198,  
5 2800, 2802, and any other Labor Codes/Industrial Welfare Commission Order (No. 5)  
6 violated based on the facts alleged in this Complaint.

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

11 **ELEVENTH CAUSE OF ACTION**

12 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

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

14 **(Plaintiff against LOCAL KITCHENS CALIFORNIA, LLC and all DOE defendants)**

15 95. Plaintiff re-alleges and incorporates by reference each and every allegation in  
16 paragraphs 1 through 94, inclusive, of this Complaint as though fully set forth herein.

17 96. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants  
18 constitutes unfair and unlawful business practices under California Business and Professions  
19 Code Section 17200, et seq.

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

23 98. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to  
24 reasonable attorneys' fees and costs of said suit as specifically provided in California Code of  
25 Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et  
26  
27  
28

1 seq.

2 99. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to  
3 multiple damages as specifically provided in California Business and Professions Code section  
4 17200 et seq.

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

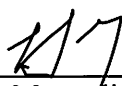
8 **PRAYER FOR RELIEF**

- 9
- 10 1. For compensatory damages including lost past and future wages, overtime,  
11 commissions, and all other sums of money, together with interest on said amounts, and  
12 any other economic injury to Plaintiff, according to proof;
  - 13 2. For special and consequential damages to the extent allowed by law;
  - 14 3. For restitution and disgorgement for all unfair business practices by corporate  
15 Defendants against Plaintiff in an amount according to proof;
  - 16 4. For an order enjoining corporate Defendants from further unfair and unlawful business  
17 practices in violation of Business and Professions Code section 17200, et seq.;
  - 18 5. For damages and penalties against Defendants under Labor Code sections 204, 210,  
19 226 for Plaintiff in an amount subject to proof at trial;
  - 20 6. For damages and penalties pursuant to Labor Code section 203 against Defendants in  
21 an amount subject to proof at trial;
  - 22 7. For one hour of wages due to Plaintiff for each work period of more than five (5) hours  
23 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period.
  - 24 8. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half  
25 (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
  - 26 9. For maximum civil penalties available under the Labor Code and applicable Wage Order  
27 against Defendant as described more particularly in the Complaint and Representative  
28 PAGA claim/action;

- 1 10. For all remedies available to Plaintiff under the applicable Wage Order and the  
2 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,  
3 liquidated damages, damages, penalties, and waiting time penalties according to proof  
4 to the extent permitted by law;  
5 11. For the imposition of civil penalties and/or statutory penalties;  
6 12. Reasonable attorney's fees where available by law, including but not limited to,  
7 pursuant to the California Labor Code, including section 2698, and/or other  
8 applicable laws; and  
9 13. Costs and expenses of suit incurred herein;  
10 14. For all interest as allowed by law;  
11 15. For such other and further relief as the Court deems just and proper.

12 DATED: July 18, 2024

MESSRELIAN LAW INC.

13  
14 By  \_\_\_\_\_

15 Harout Messrelian, Esq.  
16 Attorneys for Plaintiff Alan Eduardo Garcia  
17 Argueta

18 **DEMAND FOR JURY TRIAL**

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

20  
21 DATED: July 18, 2024

MESSRELIAN LAW INC.

22  
23 By  \_\_\_\_\_

24 Harout Messrelian, Esq.  
25 Attorneys for Plaintiff Alan Eduardo Garcia  
26 Argueta  
27  
28