

BOYAMIAN LAW, INC.

Michael H. Boyamian (SBN 256107)
Alfred Movsesyan (SBN 278560)
550 North Brand Boulevard, Suite 1500
Glendale, California 91203-1922
Telephone: 818.547.5300
Facsimile: 818.547.5678
E-mail(s): michael@boyamianlaw.com
alfred@boyamianlaw.com

Electronically FILED by
Superior Court of California,
County of Los Angeles
6/20/2024 12:00 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By Y. Tarasyuk, Deputy Clerk

Attorneys for Plaintiff DIANA MENDEZ ROSALES,
an Individual, On Behalf of Herself, Other Aggrieved Employees,
and the General Public

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DIANA MENDEZ ROSALES, an
individual, on behalf of herself, all other
aggrieved employees, and the general
public,

Plaintiff,

vs.

DOWNEY RESTAURANT GROUP,
INC. d/b/a GAUCHO GRILL, a
California corporation; and DOES 1
through 100, inclusive,

Defendants.

CASE NO. **24STCV15350**

COMPLAINT FOR:

**1. CIVIL PENALTIES UNDER LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT OF
2004, LABOR CODE 2698, ET. SEQ**

1 Plaintiff DIANA MENDEZ ROSALES, an individual, hereby files this Complaint
2 (“Complaint”) against Defendant DOWNEY RESTAURANT GROUP INC. d/b/a GAUCHO GRILL,
3 a California corporation; and DOES 1 through 100, inclusive, (hereinafter collectively referred to as,
4 “Gaucho Grill” or “Defendants”). Plaintiff, in her representative capacity, is informed and believes
5 and on the basis of that information and belief alleges as follows:

6 **INTRODUCTION**

7 1. This representative lawsuit challenges Defendants’ employment practices with respect
8 to their non-exempt, hourly restaurant workers employed in the State of California (hereinafter
9 “Restaurant Employees” or “Aggrieved Employees”), based on Defendants’ policy and practice of
10 failing, among other things, to provide payment for all hours worked at the applicable legal rates,
11 legally compliant meal and rest breaks, earned wages, including overtime pay, failing to reimburse for
12 necessary business expenditures, for violations of reporting time pay, and failing to provide accurate
13 wage statements and waiting time penalties from April 17, 2023 to the present (“Relevant Time
14 Period”).

15 2. At all times relevant hereto, and with certain defined exceptions, Defendants’
16 compensation scheme did not fully compensate Plaintiff with at least minimum wages and/or
17 designated rates for all hours worked.

18 3. At all times relevant hereto, and with certain defined exceptions, Defendants’
19 compensation scheme did not fully compensate Plaintiff with overtime compensation for all overtime
20 hours worked.

21 4. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed
22 to provide Plaintiff with adequate off-duty meal periods and meal period compensation in violation of
23 Labor Code sections 226.7, 512, and 516 and IWC Wage Order No. 5, section 11.

24 5. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed
25 to provide Plaintiff with paid rest periods and rest period compensation in violation of Labor Code
26 sections 226.7 and 516 and IWC Wage Order No. 5, section 12.

27 6. At all times relevant hereto, and as a matter of policy and/or practice, Defendants’
28 knowingly and intentionally utilized a timekeeping system and/or compensation scheme, which failed

1 to compensate Plaintiff for all hours worked.

2 7. At all times relevant hereto, and as a matter of policy and/or practice, Defendants
3 knowingly and intentionally provided Plaintiff with wage statements that, among others, do not show
4 all wages earned, all hours worked, or all applicable rates.

5 8. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed
6 to maintain documentation of the actual hours worked each day by Plaintiff, all wages earned, and
7 meal breaks taken in violation of Labor Code sections 1174 and IWC Wage Order No. 5 section 11.

8 9. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed
9 to pay Plaintiff all wages due and owing upon termination of employment including, but not limited
10 to, payment of wages for missed meal and rest periods compensation.

11 10. In this case, Plaintiff seeks civil penalties established by Labor Code section 2699, the
12 Private Attorneys General Act ("PAGA"), against Defendants for their unlawful employment
13 practices.

14 **PARTIES**

15 ***Plaintiff Diana Mendez Rosales***

16 11. Plaintiff Diana Mendez Rosales is an individual over the age of eighteen (18) and is
17 now and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the
18 State of California. Plaintiff commenced her employment with Defendants in or around June of 2020
19 as a Cook. She works at Gaucho Grill as a Cook and performed other back of the house functions
20 during the Relevant Time Period. During her employment with Defendants, Ms. Rosales worked at
21 the Gaucho Grill restaurant in Buena Park, California located at 5980 Orangethorpe Avenue . Plaintiff,
22 like other similarly situated Restaurant Employees, was classified as a non-exempt, hourly employee
23 with eligibility for overtime pay. Throughout the majority of her employment with Gaucho Grill, Ms.
24 Rosales was scheduled to work eight (8) hours a day for five days a week, but would often would work
25 6 days a week. However, after reporting forged signatures on documents provided to her, Gaucho Grill
26 began to retaliate against Ms. Rosales by reducing her
27 hours to only work four days instead of five days and placed her on a suspension.

28 ///

1 ***Defendant Downey Restaurant Group, Inc.***

2 12. Plaintiff is informed and believes and based thereon alleges that Defendant Downey
3 Restaurant Group, Inc. is a California corporation and now and/or at all times mentioned in this
4 complaint, was licensed to do business, and actually doing business in the state of California as
5 Argentinian themed and inspired full-service restaurants. The collection of restaurants advertise
6 themselves as being part of the “Gaucho Grill” chain of restaurants operating and serving in or around
7 the greater Los Angeles area. (<https://www.gauchogrill.com>) All locations are registered as the same
8 business entity and therefore should be treated as a single enterprise by management. At all relevant
9 times, Gaucho Grill issued and maintained uniform, standardized scheduling and timekeeping
10 practices and procedures for all non-exempt, hourly paid employees in California, including Ms.
11 Rosales and other Aggrieved Employees, regardless of its location or position.

12 ***Does 1 through 100***

13 13. DOES 1 through 100 inclusive are now and/or at all times mentioned in this Complaint
14 were, licensed to do business and/or actually doing business in the State of California. Plaintiff does
15 not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through
16 100, inclusive and for that reason, DOES 1 through 100 are sued under such fictitious names pursuant
17 to California Code of Civil Procedure, section 474. Plaintiff will seek leave of court to amend this
18 Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 100
19 are believed to be business entities and individual owners or management who were also co-employers
20 of the Plaintiff and the other Aggrieved Employees.

21 ***All Defendants***

22 14. Plaintiff is informed and believes and based thereon alleges that at all times herein
23 mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint
24 venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within
25 the course and scope of said employment and/or agency; furthermore, that each and every Defendant
26 herein, while acting as a high corporate officer, director and/or managing agent, principal and/or
27 employer, expressly directed, consented to, approved, affirmed and ratified each and every action
28 taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the

1 matters referred to herein.

2 15. Plaintiff is informed and believes and based thereon alleges that at all times herein
3 mentioned, Defendants, and each of them, proximately caused Plaintiff, all others similarly situated
4 and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
5 damages alleged in this Complaint.

6 16. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
7 of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in
8 a joint venture, partnership, and common enterprise, and were acting within the course and scope of,
9 and in pursuit of said joint venture, partnership, and common enterprise and, as such were co-
10 employers of the Plaintiff and the other aggrieved employees.

11 17. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
12 of them, at all times mentioned in this Complaint, concurred with, contributed to, approved of, aided
13 and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every one
14 of the other Defendants in proximately causing the injuries and/or damages alleged in this Complaint.

15 **JURISDICTION AND VENUE**

16 18. This Court has jurisdiction over all causes of action herein pursuant to the California
17 Constitution, Article VI, § 10, Code of Civil Procedure § 410.10 and Business and Professions Code
18 § 17203. Venue is proper in this Court under Code of Civil Procedure §§ 395 and 395.5 because
19 Defendants operate in this County, Plaintiff resides in and/or worked in this county and the injuries
20 that are the subject of this lawsuit arose in this county.

21 **FACTUAL ALLEGATIONS**

22 ***Defendants' Failure to Provide Statutorily Compliant Meal and Rest Periods***

23 19. Plaintiff and Restaurant Employees are not provided with legally compliant meal
24 periods and rest breaks. Restaurant Employees of Gaucho Grill, including Plaintiff, typically work 8
25 hours per day. Defendants failed to schedule a meal period where Aggrieved Employees and Ms.
26 Rosales are relieved of all duty for a 30-minute period within the first five hours of their shift or pay
27 the premium compensation for the missed or late meal period. Upon information and belief,
28 Defendants' management team instructed Ms. Rosales and other Restaurant Employees to record their

1 meal breaks at the fifth hour, but then further directed to have the Restaurant Employees continue
2 working, without taking the mandated meal break. Consequently, no legitimate meal break is
3 effectively taken even though a meal break is being recorded. Gaucho Grill's de facto policy to violate
4 the actual policy constitutes a clear violation of California labor laws.

5 20. California law requires that an employer provides an employee who works more than
6 five hours a meal break that is no less than 30 minutes in duration. 8 CCR 11050(11)(A). Unless an
7 employee is relieved of all duty during the 30-minute meal period, the meal period is considered an
8 on-duty meal period and counted as time worked. *Id.* However, an on-duty meal period is permitted
9 only when the nature of the work prevents an employee from being relieved of all duty and the parties
10 agree in writing to an on-the-job paid meal period. *Id.* If an employer fails to provide an employee a
11 lawful meal period, the employer must pay the employee one hour of pay for each violation. 8 CCR
12 11050(11)(D). Additionally, California law mandates that an employer must "authorize and permit"
13 an employee to take a duty-free rest period not less than 10 minutes in duration for every four hours
14 of work. 8 CCR 11050(12)(A). Violation of the rest break provisions requires the employer pay the
15 employee one hour of pay for each workday a rest period was not provided. 8 CCR 11050(12)(B).
16 Lastly, in California, the employer is required to keep records of all hours worked. Labor Code §
17 1174(d).

18 21. With respect to meal periods, Defendants furthermore engaged in in the manipulation
19 of time entries for Restaurants Employees, including Ms. Rosales. Specifically, Gaucho Grill
20 management accused Ms. Rosales of clocking out for her meal breaks beyond the fifth hour on three
21 separate occasions and presented Mr. Rosales with a signed acknowledgement form purportedly
22 acknowledging these infractions. Ms. Rosales, however, denied any knowledge of such violations and
23 asserted that she had not signed any acknowledgment form regarding these alleged incidents, further
24 asserting that her signature had been forged. Subsequently, Gaucho Grill retaliated against Ms. Rosales
25 for her complaints of the forged signature by suspending her from employment. Upon her return from
26 suspension, her working hours were arbitrarily reduced.

27 22. Likewise, Defendants do not provide Restaurant Employees with a second meal period
28 for shifts in excess of ten hours or pay the premium compensation for the missed second meal period.

1 Concerning the second meal period, there is no evidence that Ms. Rosales and Restaurant Employees
2 have agreed to waive their right to a second meal period with respect to shifts lasting more than 10
3 hours but less than 12 hours.

4 23. Accordingly, Plaintiff and Restaurant Employees regularly work more than five (5)
5 hours per day without receiving an adequate and timely off-duty meal period of at least thirty (30)
6 minutes during which they were relieved of all duties. Through the practice and policy of recording
7 an idealized meal break after the fact, and that time entry for that purported break is in exact duration
8 time and time again without the slightest deviation, appear to be illusory in nature. In Brinker
9 Restaurant Corp. v. Superior Court, 53 Cal. 4th 1004, 1040 (2012) the California Supreme Court cited
10 with approval California case law requiring an employer to affirmatively act to make a meal period
11 available where the employees are relieved of all duty. See Cicairos v. Summit Logistics, Inc., 133
12 Cal.App.4th 949, 962-963 (2006) (“[T]he defendant's obligation to provide the plaintiffs with an
13 adequate meal period is not satisfied by assuming that the meal periods were taken, because employers
14 have ‘an affirmative obligation to ensure that workers are actually relieved of all duty.’”; Brown v.
15 Fed. Express Corp., 249 F.R.D. 580, 585 (C.D. Cal.2008) (“It is an employer’s obligation to ensure
16 that its employees are free from its control for thirty minutes.”); accord Dilts v. Penske Logistics, LLC,
17 267 F.R.D. 625, 638 (S.D.Cal. 2010). An illusory meal period, where the employer effectively
18 prevents an employee from having an uninterrupted meal period, does not satisfy this requirement.
19 Cicairos, 133 Cal.App.4th at 962-963; Brown, 249 F.R.D. at 585; Dilts, 267 F.R.D. at 638. Thus,
20 purported meal breaks all uniform in nature without any deviation is illusory in nature and violative
21 of California law.

22 24. Gaucho Grill would also fail to provide legally compliant rest breaks to Plaintiff and
23 Restaurant Employees. With respect to rest breaks, Plaintiff and other similarly situated Restaurant
24 Employees are not provided any training about statutory breaks under California law, are not
25 scheduled to take rest breaks, and in fact, rest breaks are not made available to them. Restaurant
26 Employees, including Ms. Rosales, are not provided with a second rest period for shifts lasting six to
27 ten hours, or a third rest period for shifts in excess of ten hours. At a minimum, “an employer must
28 inform employees in a meaningful or consistent way that they could take rest breaks, [and] the

1 definition of any such rest breaks.” Godfrey v. Oakland Port Services Corp., 230 Cal.App.4th 1267,
2 1286 (2014).

3 25. Gaucho Grill places a greater concern over the press of work and anticipated foot traffic
4 at its restaurant locations rather than ensuring that Aggrieved Employees, including Plaintiff, receive
5 their statutorily-mandated and compliant rest periods. During the Relevant Time Period, Defendants’
6 managers have directed Restaurant Employees, including Ms. Rosales, to take a combined break at
7 the beginning of their shift so that during rush hours, the restaurant can maintain adequate coverage to
8 attend to the rush of patrons frequenting their restaurant locations. As a result of this practice, Gaucho
9 Grill violated California law which requires that an employer provide a rest period in the middle of
10 the “work period” before their lunch and a separate rest period in the middle of the “work period” after
11 their lunch break. Rodriguez v. E.M.E., Inc., 246 Cal.App.4th 1027, 1045 (2016). Because Gaucho
12 Grill failed to provide rest periods in compliance with the timing requirements of California law,
13 Defendants needed to pay Restaurant Employees, including Ms. Rosales, one hour of pay at their
14 regular rate of pay each day that they were only provided one combined break. Lab. Code § 226.7;
15 Wage Order No. 4, subd. 12(B).

16 26. The California Supreme Court in Brinker Restaurant Corp. v. Superior Ct., Cal. 4th
17 1004 (2012) mandated that “absent truly unusual circumstances” placing both rest breaks before the
18 meal break, and none after, would not comport with the wage order requirement that rest breaks
19 “insofar as practicable, shall be in the middle of each work period.” Id. at 1032, citing DLSE Opn.
20 Letter No. 2001.09.17 at p.4. In other words, “[a]s a general matter,” one rest break should fall on
21 either side of the meal break. Id. An employer violates the law by maintaining a policy that “fails to
22 give full effect” to the timing, duration, and relief from duty requirements of the Wage Order. Id. at
23 1032-1033. Such a defective policy or practice, by itself, establishes a substantive violation of the law.

24 27. More alarming is that during the Relevant Time Period when Gaucho Grill’s
25 management is made aware of meal and/or rest break violations, their response is to provide the
26 Restaurant Employee with additional time for their following break. However, permitting a longer
27 break in response to a meal and/or rest period violation is not a lawful option under California law.
28 The only obligation Gaucho Grill has under the circumstances is to pay a premium for the missed,

1 shortened, or late meal and/or rest break. See Thurman v. Bayshore Transit Management, Inc., 203
2 Cal. App. 4th 1112, 1145, 1152-54 (2012) (holding that “the language of section 558, subdivision (a),
3 is more reasonably construed as providing a civil penalty that consists of both the \$50 or \$100 penalty
4 amount and any underpaid wages, with the underpaid wages going entirely to the affected employee
5 or employees as an express exception to the general rule that civil penalties recovered in a PAGA
6 action are distributed 75 percent to the Labor and Workforce Development Agency (LWDA) and 25
7 percent to the aggrieved employees.”) (emphasis in original). In Kirby v. Immoos Fire Protection, Inc.,
8 53 Cal.4th 1244 (2012), the Cal. Supreme Court clarified that an employer does not have a lawful
9 “choice” between providing a meal period or paying a premium. Id. at 1257. But even if the premium
10 is paid, a violation still happened. See also Ruelas v. Costco, 2015 WL 1359326 (N.D. Cal. 2015)
11 (holding employees could recover both meal period premium and PAGA penalty).

12 ***Defendants’ Failure to Pay Minimum Wages, including Overtime Payment***

13 28. IWC Wage Order, number 5 defines “hours worked” to mean “the time during which
14 an employee is subject to the control of an employer and includes all the time the employee is suffered
15 or permitted to work, whether or not required to do so.”

16 29. Labor Code section 1182.12 and IWC Wage Order, number 5, section 4 formerly
17 provided that on and after January 1, 2021, the minimum wage shall be not less than fourteen dollars
18 (\$14.00) per hour.

19 30. Labor Code section 1182.12 and IWC Wage Order, number 5, section 4 provide that
20 on and after January 1, 2022, the minimum wage for all industries shall be not less than fifteen dollars
21 (\$15.00) per hour, that on and after January 1, 2023, the minimum wage for all industries shall be not
22 less than fifteen dollars and fifty cents (\$15.50) per hour.

23 31. Labor Code section 1194(a) provides in relevant part: “Notwithstanding any agreement
24 to work for a lesser wage, any employee receiving less than the legal minimum wage is entitled to
25 recover in a civil action the unpaid balance of the full amount of this minimum wage, including interest
26 thereon, reasonable attorney’s fees, and costs of suit.”

27 32. Labor Code section 1194.2(a) provides in relevant part: “In any action under Section
28 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum

1 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages
2 in an amount equal to the wages unlawfully unpaid and interest thereon.”

3 33. Labor Code section 1197 provides: “The minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
5 minimum so fixed is unlawful.”

6 34. Defendants’ Restaurant Employees, including Plaintiff, are categorized and classified
7 as non-exempt, hourly employees and must be paid for all hours worked. Hours worked include, but
8 are not limited to, all hours that an employee is permitted or suffered to work including, but not limited
9 to, off-the-clock work that an employer either knew or should have known that an employee was
10 performing.

11 35. Defendants’ implementation of a policy, procedure, and/or practice of deducting a half-
12 hour of pay from Plaintiff and Restaurant Employees to account for a supposed meal break results in
13 the widespread underpayment of wages. IWC Wage Order, number 5, which applied to Plaintiff’s
14 and Restaurant Employees’ employment with Defendants, defines “hours worked” to mean “the time
15 during which an employee is subject to the control of an employer, and includes all the time the
16 employee is suffered or permitted to work, whether or not required to do so.”

17 36. Labor Code Section 1194 further provides that an employee receiving less than the
18 legal overtime compensation is entitled to recover in a civil action the unpaid balance of the full
19 amount of this minimum wage or overtime compensation, including interest thereon, reasonable
20 attorney’s fees, and costs of suit.

21 37. Labor Code Section 510(a) states: “Any work in excess of eight hours in one workday
22 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
23 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
24 one-half times the regular rate of pay for an employee.” Labor Code Section 510(a) further states:
25 “Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
26 regular rate of pay for an employee.” Labor Code Section 510(a) further states: “[A]ny work in excess
27 of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice
28 the regular rate of pay of an employee.”

1 38. Throughout the Relevant Time Period, Wage Order No. 5-2001 provided for payment
2 of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all
3 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment
4 of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess
5 of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the
6 seventh (7th) day of work in any one workweek.

7 39. Plaintiff was classified as non-exempt by Defendants and was therefore entitled to
8 payment for all hours worked, including overtime compensation for all hours worked in excess of the
9 hours and time specified in the Wage Order, statutes and regulations identified herein.

10 40. Throughout the Relevant Time Period, Defendants did not maintain adequate records
11 of all wages earned, hours worked, and meal and rest breaks taken.

12 41. Accordingly, Defendants failed to properly record the actual hours worked by Plaintiff
13 and Aggrieved Employees and thus failed to pay minimum wages and overtime wages for the actual
14 amount of minimum and overtime hours worked.

15 ***Defendants' Failure to Provide Sick Time Pay***

16 42. Gaucho Grill also violated California's Healthy Workplaces, Healthy Families Act of
17 2014 by failing to provide employees with paid sick days pursuant to Labor Code section 246. Labor
18 Code §§ 246(a),(b), provides in relevant part: "[a]n employee who, on or after July 1, 2015, works in
19 California for the same employer for 30 or more days within a year from the commencement of
20 employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
21 worked, beginning at the commencement of employment." In addition, Labor Code § 246(l)(1)
22 provides that paid sick time for non-exempt employees must be "calculated in the same manner as the
23 regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the
24 employee actually works overtime in that workweek." Additionally, Labor Code § 246(l)(2) states that
25 the paid sick time must be "calculated by dividing the employee's total wages, not including overtime
26 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of
27 employment." Finally, Labor Code § 246(i) requires employers to "provide an employee with written
28 notice that sets forth the amount of paid sick leave available, or paid time off leave an employer

1 provides in lieu of sick leave, for use on either the employee's itemized wage statement described in
2 Section 226 or in a separate writing provided on the designated pay date with the employee's payment
3 of wages."

4 43. Ms. Rosales reported an injury to Gaucho Grill and requested time off due to her
5 inability to work because of her injuries. After providing the Company with proper medical
6 documentation of her restrictions and need for time off, Gaucho Grill's management informed Ms.
7 Rosales that she had accumulated 35 hours of paid sick time. Ms. Rosales agreed and took the days
8 off as requested. Subsequently, Ms. Rosales noticed on her next paycheck that there were two issues.
9 First, Mr. Rosales was not paid for her time off as agreed to, and second, the amount of sick time
10 available was 12 hours. This contradicted the 35 hours of sick time Gaucho Grill claimed Ms. Rosales
11 had. Upon information and belief, Gauch Grill's procedures and practices in the manner in which sick
12 time is accrued is contrary to what Labor Code section 246 states. Ms. Rosales worked 40 hours per
13 week for three years, maintaining a schedule of Monday through Friday from 6:00 a.m. to 2:30 p.m.,
14 to suggest she had only 12 hours of sick time simply is inaccurate.

15 44. Defendants failed to provide Plaintiff and Restaurant Employees with the appropriate
16 rate of pay for each sick pay hour used, did not receive all sick pay wages owed to them, thus leading
17 to the underpayment of wages.

18 ***Defendants' Failure to Provide Accurate, Itemized Wage Statements***

19 45. At all times relevant hereto, Labor Code section 226 and IWC Wage Order, number 5,
20 section 7 required employers to maintain adequate employment records and provide employees with
21 accurate itemized wage statements showing gross wages, total hours worked, all applicable hourly
22 rates worked during each pay period, the corresponding number of hours worked at each hourly rate,
23 and meal breaks taken.

24 46. Defendants' wage statements are facially non-compliant by virtue of the defective meal
25 and rest period and sick time usage and accrual policies and practices, the uncompensated work, the
26 unlawful timekeeping systems which does not accurately record the total hours worked by Aggrieved
27 Employees, including Plaintiff.

28 47. Wage statements provided to Plaintiff and the other Aggrieved Employees by

1 Defendants do not show all wages earned, all hours worked, or all applicable rates, in violation of the
2 Labor Code section 226, and IWC Wage Order number 5, section 7.

3 48. Moreover, Defendants did not maintain adequate records of all wages earned, hours
4 worked, and breaks taken.

5 ***Defendants' Failure to Pay All Wages Due at Termination of Employment***

6 49. At all times relevant hereto, Labor Code § 201 required an employer that discharges an
7 employee to pay compensation due and owing to said employee immediately upon discharge. Labor
8 Code Sections 202 requires an employer to pay an employee who quits any compensation due and
9 owing to said employee within seventy-two (72) hours of an employee's resignation. Labor Code
10 Section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge
11 or resignation, as required under Sections 201 and 202, then the employer is liable for waiting time
12 penalties in the form of continued compensation for up to thirty (30) work days.

13 50. Defendants willfully and knowingly failed to pay Restaurant Employees, upon
14 termination of employment, all accrued compensation including payment of minimum wage
15 compensation, missed meal and rest periods compensation and for time spent performing work off the
16 clock at Defendants' direction.

17 ***Exhaustion of Administrative Remedies***

18 51. Plaintiff has complied with the procedures for bringing suit specified in California
19 Labor Code Section 2699.3. By letter dated April 17, 2024, Plaintiff, on behalf of herself and the other
20 Aggrieved Employees, gave written notice by electronic mail and certified mail to the Labor and
21 Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the
22 California Labor Code alleged to have been violated, including the facts and theories to support the
23 alleged violations. Attached as **Exhibit "1"** is a true and correct copy of the referenced letter.

24 52. More than sixty-five (65) calendar days have passed since Plaintiff provided the
25 LWDA with written notice. To date, Plaintiff has not received any written notice nor been notified
26 from the LWDA that it does intend to investigate the violations of the California Labor Code alleged
27 herein.

28 ///

1 **FIRST CAUSE OF ACTION**

2 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

3 **(On Behalf of Plaintiff and the Other Aggrieved Employees Against All Defendants)**

4 53. Plaintiff incorporates by reference the allegations set forth above.

5 54. As set forth above, Plaintiff has complied with the procedures for bringing suit
6 specified in California Labor Code Section 2699.3. By letter dated April 17, 2024, Plaintiff, on behalf
7 of herself and the other aggrieved Restaurant Employees, gave written notice by certified mail to the
8 LWDA and to Defendants of the specific provisions of the California Labor Code alleged to have been
9 violated, including the facts and theories to support the alleged violations. More than sixty-five (65)
10 calendar days have passed since Plaintiff provided the LWDA with written notice. To date, Plaintiff
11 has not received any written notice nor been notified from the LWDA that it does intend to investigate
12 the violations of the California Labor Code alleged herein.

13 55. This action arises out of the allegedly unlawful labor practices of Defendants in
14 California. Through this private attorneys' general action, Plaintiff represents herself, and other
15 Aggrieved Employees of Defendants that were in California, against whom Defendants have allegedly
16 committed labor law violations alleged herein. As a result of the allegedly unlawful conduct described
17 herein, Plaintiff now seeks to recover civil penalties, attorneys' fees, and costs, pursuant to the Labor
18 Code Private Attorneys General Act of 2004, Labor Code Section 2698, *et seq.* Plaintiff is not suing
19 in her individual capacity, but solely under the Private Attorneys General Act, on behalf of the State
20 of California for all aggrieved employees, including herself.

21 56. Labor Code Section 1198 makes it unlawful for an employer to employ an employee
22 under conditions that violate the applicable Wage Order.

23 57. Plaintiff is informed and believes that throughout the Relevant Time Period,
24 Defendants have applied centrally devised policies and practices to Plaintiff and the other Aggrieved
25 Employees with respect to wages, hours, and working conditions.

26 **Failure to Pay Minimum Wages and Designated Rates**

27 58. At all relevant times, California Labor Code Sections 1194, 1197 and 1197.1 provide
28 that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees

1 and the payment of a wage less than the minimum so fixed is unlawful. Additionally, Code Section
2 1198 makes it unlawful for an employer to employ an employee under conditions that violate the
3 applicable Wage Order.

4 59. Where any statute or contract requires an employer to maintain the designated wage
5 scale, Labor Code Section 223 makes it unlawful for an employer to secretly pay a lower wage while
6 purporting to pay the wage designated by statute or by contract.

7 60. At all relevant times, Defendants maintained a policy and practice of requiring Plaintiff
8 and the other aggrieved employees to remain under Defendants' control without paying therefore,
9 which resulted in them earning less than the legal minimum wage in the State of California for all
10 hours worked. At all relevant times, Defendants maintained a policy and practice of requiring Plaintiff
11 and the other aggrieved employees to remain under Defendants' control, while purportedly on a meal
12 and rest break, and without paying therefor, which resulted in them earning less than the legal
13 minimum wage in the State of California for all hours worked.

14 61. Defendants' failure to pay Plaintiff and other Restaurant Employees minimum wages
15 and designated violates California Labor Code sections 223, 1182.12, 1194, and 1197. Plaintiff and
16 other Aggrieved Employees are entitled to recover civil penalties pursuant to sections 1197.1 and
17 2699(a), (f), and (g).

18 **Failure to Pay For Overtime Compensation**

19 62. Labor Code Section 1194 provides that an employee receiving less than the legal
20 overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount of
21 this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees,
22 and costs of suit.

23 63. Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday
24 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
25 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
26 one-half times the regular rate of pay for an employee." Labor Code Section 510(a) further states:
27 "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
28 regular rate of pay for an employee." Labor Code Section 510(a) further states: "[A]ny work in excess

1 of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice
2 the regular rate of pay of an employee.”

3 64. Throughout the Relevant Time Period, Wage Order No. 5-2001 provided for payment
4 of overtime wages equal to one and one-half (1 1/2) times an employee’s regular rate of pay for all
5 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment
6 of overtime wages equal to double the employee’s regular rate of pay for all hours worked in excess
7 of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the
8 seventh (7th) day of work in any one workweek.

9 65. Plaintiff and the other aggrieved employees were classified as non-exempt by
10 Defendants and were therefore entitled to overtime compensation for all hours worked in excess of the
11 hours and time specified in the Wage Order, statutes and regulations identified herein.

12 66. As a matter of policy and/or practice, Plaintiff and the other aggrieved employees were
13 frequently required to performed work during meal and rest breaks.

14 67. As a matter of policy and/or practice, Defendants directed Restaurant Employees to
15 work before the official start of their shifts and following the conclusion of the shift, and that
16 Defendants’ knowledge of work transpiring during day and night shifts, has resulted in Plaintiff and
17 other Aggrieved Employees not being compensated for all hours worked.

18 68. Accordingly, Defendants failed to properly record the actual hours worked by Plaintiff
19 and other Aggrieved Employees, and thus failed to pay overtime wages for the actual amount of
20 overtime hours worked.

21 **Failure to Provide Timely and Adequate Meal and Rest Breaks**

22 69. Labor Code Section 512 and Section 11 of the Wage Order impose an affirmative
23 obligation on employers to provide non-exempt employees with uninterrupted, duty-free, meal periods
24 of at least thirty (30) minutes for each work period of five (5) or more hours, and to provide them with
25 two uninterrupted, duty-free, meal periods of at least thirty (30) minutes for each work period of more
26 than ten (10) hours.

27 ///

28 ///

1 70. Labor Code Section 226.7 and Section 11 of the Wage Order prohibit employers from
2 requiring employees to work during required meal periods and require employers to pay non-exempt
3 employees an additional hour of premium wages on each workday that the employee is not provided
4 with a required meal period.

5 71. At relevant times during the applicable limitations period, Defendants failed to provide
6 Plaintiff and Aggrieved Employees with uninterrupted meal periods of at least thirty (30) minutes on
7 each day that they worked five (5) or more hours, as required by Labor Code Section 512 and the
8 Wage Order, as a result of duties and schedules that do not permit them to take all legally required
9 meal periods. Plaintiff is informed, believes, and thereon alleges that, at relevant times during the
10 applicable limitations period, Defendants maintained a policy or practice of not providing the other
11 Restaurant Employees with uninterrupted meal periods of at least thirty (30) minutes for each five
12 (5) hour work period, as required by Labor Code Section 512 and the Wage Order, as a result of duties
13 and schedules that do not permit them to take all legally required meal periods.

14 72. Section 12 of the Wage Order imposes an affirmative obligation on employers to permit
15 and authorize employees to take required rest periods at a rate of no less than ten (10) minutes of net
16 rest time for each four (4) hour work period, or major portion thereof, that must be in the middle of
17 each work period insofar as is practicable.

18 73. Labor Code Section 226.7 and Section 12 the Wage Order prohibit employers from
19 requiring employees to work during required rest periods and require employers to pay non-exempt
20 employees an additional hour of premium wages on each workday that the employee is not provided
21 with the required rest period.

22 74. At relevant times during the applicable limitations period, Defendants failed to provide
23 Plaintiff and Aggrieved Employees with a net rest period of at least ten (10) minutes for each four
24 (4) hour work period, or major portion thereof, as required by the Wage Order, as a result of duties
25 and schedules that do not permit Plaintiff and Aggrieved Employees to take all legally required rest
26 breaks.

27 ///

28 ///

1 75. Plaintiff is informed, believes, and thereon alleges that, at relevant times during the
2 applicable limitations period, Defendants maintained a policy or practice of not providing the other
3 aggrieved employees with net rest periods of a least ten (10) minutes for each four (4) hour work
4 period, or major portion thereof, as required by the Wage Order, as a result of duties and schedules
5 that do not permit them to take all legally required rest breaks.

6 76. Plaintiff is further informed, believes, and thereon alleges that Defendants rarely, if
7 ever, issues any compensation to Aggrieved Employees for missed, late or shortened meal and/or rest
8 breaks.

9 **Failure to Provide Sick Time Pay**

10 77. Labor Code §§ 246(a),(b), provides in relevant part: “[a]n employee who, on or after
11 July 1, 2015, works in California for the same employer for 30 or more days within a year from the
12 commencement of employment is entitled to paid sick days. . . at the rate of not less than one hour per
13 every 30 hours worked, beginning at the commencement of employment.” In addition, Labor Code §
14 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated in the same
15 manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether
16 or not the employee actually works overtime in that workweek.” Additionally, Labor Code § 246(l)(2)
17 states that the paid sick time must be “calculated by dividing the employee’s total wages, not including
18 overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
19 days of employment.” Finally, Labor Code § 246(i) requires employers to “provide an employee with
20 written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer
21 provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in
22 Section 226 or in a separate writing provided on the designated pay date with the employee’s payment
23 of wages.”

24 78. Plaintiff is informed and believes, and based thereon alleges that during the Relevant
25 Time Period, Defendants failed to provide, accurately account for, and timely pay, all wages, including
26 sick pay wages.

27 ///

28 ///

Failure to Provide and Maintain Compliant Wage Statements

79. Labor Code Section 1174 requires that every person employing labor in this state shall keep (1) a record showing the names and addresses of all employees employed and the ages of all minors; (2) 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; (3) such records in accordance with rules established for this purpose by the commission, but in any case, on file for not less than three years. This statute also prevents an employer from prohibiting an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned. Defendants have willfully failed to keep the records required by Section 1174.

80. Pursuant to California Labor Code Section 226(a), Plaintiff and the other aggrieved employees were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: (a) gross wages earned; (b) net wages earned; (c) all applicable hourly rates in effect during the pay period; and (d) the corresponding number of hours worked at each hourly rate by the employee.

81. Defendants failed to provide Plaintiff with accurate itemized statements in accordance with California Labor Code Section 226(a) by providing Plaintiff with wage statements with inaccurate entries for hours worked, corresponding rates of pay, and total wages earned as a result of the unlawful labor and payroll practices described herein.

82. Plaintiff is informed and believes and thereon alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing aggrieved employees with accurate itemized wage statements by providing them with wage statements with inaccurate entries for hours worked, corresponding rates of pay, total wages and deductions from wages earned as a result of the unlawful labor and payroll practices described herein.

83. Plaintiff is informed and believes and thereon alleges that Defendants' failure to provide her and the other aggrieved employees with accurate written wage statements is knowing and intentional.

1 84. Plaintiff is informed and believes and thereon alleges that Defendants had the ability to
2 provide her and the aggrieved employees with accurate wage statements, but intentionally provided
3 wage statements that they knew are not accurate.

4 85. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff
5 and the aggrieved employees have suffered an injury. Their legal rights to receive accurate wage
6 statements were violated and they were misled about the amount of wages they had actually earned
7 and were owed. In addition, the absence of accurate information on their wage statements prevented
8 immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical
9 computations to determine the amounts of wages owed, has caused difficulty and expense in
10 attempting to reconstruct time and pay records, and/or has led to the submission of inaccurate
11 information about wages and amounts deducted from wages to state and federal government agencies.

12 86. California Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on
13 behalf of themselves and other current or former employees, to bring a civil action to recover civil
14 penalties pursuant to the procedures specified in California Labor Code Section 2699.3.

15 **Failure to Pay Wages Upon Termination**

16 87. Labor Code Section 201 provides that all earned and unpaid wages of an employee who
17 is discharged are due and payable immediately at the time of discharge.

18 88. Labor Code Section 202 provides that all earned and unpaid wages of an employee who
19 quits after providing at least 72-hours' notice before quitting are due and payable at the time of quitting
20 and that all earned and unpaid wages of an employee who quits without providing at least 72-hours'
21 notice before quitting are due and payable within 72 hours.

22 89. Labor Code Section 203 provides that the wages of an employee continue on a daily
23 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid
24 wages to the employee in accordance with Labor Code Section 201 or Section 202.

25 90. Plaintiff is informed and believes that Defendants' failure to timely pay them all of
26 their earned and unpaid wages, including unpaid minimum wages and overtime wages, and unprovided
27 rest and meal period premium wages, have been willful in that, at all relevant times, Defendants have
28 deliberately maintained policies and practices that violate the requirements of the Labor Code and the

1 Wage Order even though, at all relevant times, they have had the ability to comply with those legal
2 requirements.

3 **Section 558 Penalties**

4 91. The PAGA claims are also brought against Defendants pursuant to provisions of the
5 labor code including § 558 which permits liability of persons or employers who violate or cause to be
6 violated Labor Code and IWC regulations. California Labor Code Section 2699.

7 92. The PAGA states:

8 Notwithstanding any other provision of law, any provision of this code that
9 provides for a civil penalty to be assessed and collected by the Labor and Workforce
10 Development Agency or any of its departments, divisions, commissions, boards,
11 agencies, or employees, for a violation of this code, may, as an alternative, be
12 recovered through a civil action brought by an aggrieved employee on behalf of
13 himself or himself and other current or former employees...

14 93. One provision of law enforceable through PAGA as to civil penalties, though not
15 unpaid wages, is Labor Code § 558, which states the following:

16 (a) Any employer or other person acting on behalf of an employer who violates, or
17 causes to be violated, a section of this chapter or any provision regulating hours and
18 days of work in any order of the Industrial Welfare Commission shall be subject to
19 a civil penalty as follows:

20 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for
21 each pay period for which the employee was underpaid in addition to any amount
22 sufficient to recover underpaid wages.

23 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
24 employee for each pay period for which the employee was underpaid in addition to
25 an amount sufficient to recover underpaid wages...

26 **Penalties Authorized by PAGA**

27 94. Pursuant to California Labor Code sections 2699(a) and (f), Plaintiff and the other
28 Aggrieved Employees of Defendants are entitled to, and seek to, recover civil penalties for
29 Defendants' violations of California Labor Code sections 201, 202, 203, 204, 210, 216, 221, 225.5,
30 226, 226.3, 226.7, 246, 246.5, 510, 511, 512, 551, 552, 558, 1194-1197.1, 1198, and 2698, et seq and
31 2698 *et seq.*, during the Relevant Time Period in the following amounts:

- 32 a. For violations of California Labor Code sections 201, 202, 203, 210, 226.7, and 1198,
33 one hundred dollars (\$100.00) for each aggrieved employee per pay period for each
34 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per
35 pay period for each subsequent violation (penalty amounts established by California

1 Labor Code Section 2699(f)(2));

2 b. For violations of California Labor Code Section 1194-1197.1, 1198, one hundred
3 dollars (\$100.00) for each aggrieved employee per pay period for each initial
4 violation and two hundred dollars and fifty (\$250.00) for each aggrieved employee
5 per pay period for each subsequent violation regardless of whether the initial
6 violation is intentionally committed (penalty amounts established by California
7 Labor Code § 1197.1);

8 c. For violations of California Labor Code Sections 216 and 221, one hundred dollars
9 (\$100.00) for each aggrieved employee for each initial violation and two hundred
10 dollars (\$200.00) for each aggrieved employee for each subsequent or willful
11 violation (penalty amounts established by California Labor Code § 225.5);

12 d. For violations of California Labor Code Section 1174, five hundred dollars
13 (\$500.00) for each of Defendants' violations in addition to any other penalties or
14 fines permitted by law (penalty amounts established by California Labor Code §
15 1174.5);

16 e. For violations of California Labor Code Section 226, two hundred fifty dollars
17 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per
18 employee for each subsequent violation (penalty amounts established by California
19 Labor Code Section 226.3);

20 f. For violations of California Labor Code Section 204, one hundred dollars (\$100.00)
21 per employee for initial violation and two hundred dollars (\$200.00) per employee
22 for each subsequent violation, plus 25 percent of the amount unlawfully withheld
23 (penalty amounts established by California Labor Code Section 210);

24 g. For violations of California Labor Code section 510, 511, 512, 551, 552 and, Wage
25 Order 5-2001 Sections 9, 11, and 12, fifty dollars (\$50.00) for each aggrieved
26 employee for each initial violation for pay period for which the employee was
27 underpaid in addition to an amount sufficient to recover unpaid wages and one
28 hundred dollars (\$100.00) for each underpaid employee for each pay period for

1 which the employee was underpaid in addition to an amount sufficient to recover
2 unpaid wages (penalty amounts established by California Labor Code Section
3 558).

- 4 h. For violations of California Labor Code Section 558, fifty dollars (\$50.00) for
5 initial violation, fifty dollars (\$50.00) for each underpaid employee for each pay
6 period for which the employee was underpaid; for each subsequent violation, one
7 hundred dollars (\$100.00) for each underpaid employee for each pay period for
8 which the employee was underpaid (penalty amounts established by California
9 Labor Code Section 558).

10 95. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of herself and
11 the other Aggrieved Employees, is entitled to an award of reasonable attorneys' fees and costs.

12 **PRAYER FOR RELIEF**

13 Wherefore, Plaintiff on behalf of herself and on behalf of all other Aggrieved Employees,
14 prays for judgment against Defendants as follows:

- 15 a. Civil penalties;
16 b. Other penalties and fines permitted by law;
17 c. Costs of suit;
18 d. Reasonable attorneys' fees;
19 e. Pre-judgment and post-judgment interest as provided by law; and
20 f. Such other and further relief as the Court deems just and proper.

21
22 DATED: June 19, 2024

BOYAMIAN LAW, INC.

23
24 By: 

25 Michael H. Boyamian
26 Attorneys for Plaintiff DIANA MENDEZ
27 ROSALES, an Individual, On Behalf of
28 Herself, Other Aggrieved Employees, and the
General Public

EXHIBIT 1



BOYAMIAN LAW

April 17, 2024

SUBMITTED ELECTRONICALLY VIA ONLINE SUBMISSION

Labor Workforce and Development Agency
Attention: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

**Re: Notice of PAGA Claims Pursuant to Labor Code Section 2699.3
Diana Mendez Rosales adv. Downey Restaurant Group Inc.**

Dear Labor and Workforce Development Agency and Employer:

My office represents Diana Mendez Rosales (“Rosales” or “Claimant”) with respect to various wage and hour claims on behalf of herself and all other similarly situated current and former non-exempt, hourly Restaurant Employees, including, but not limited to, the titles of any “server”, “cooks”, “food runner”, “busser”, “bus boy”, “food preparer”, or any other similarly situated titles (hereinafter “Restaurant Employees” or “Aggrieved Employees”) of Downey Restaurant Group Inc., d/b/a Gaucho Grill (hereinafter referred to as “Gaucho Grill” or the “Company”) from April 17, 2023 to the present. The purpose of this letter is to satisfy the notice requirements of Labor Code Section 2699.3(a) against these entities as well as any others that are affiliated or under common control or ownership.

Below we set forth the facts and theories¹ which we believe support our contention that Gaucho Grill has violated and continues to violate various provisions of the California Labor Code including, but not limited to, failure to provide meal and rest breaks, failure to pay for all hours worked, failure to pay overtime pay, failure to provide proper sick time, and failure to provide accurate wage statements.

Facts & Theories About the Case

Downey Restaurant Group Inc., d/b/a Gaucho Grill operates a variety of Argentinian themed and inspired full-service restaurants. The collection of restaurants advertise

¹ These facts, theories, and claims are based on Ms. Rosales’ experience and counsel’s review of those records currently available relating to Ms. Rosales’ employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Rosales reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

themselves as being part of the “Gaucho Grill” chain of restaurants operating and serving in or around the greater Los Angeles area. All locations are registered as the same business entity and therefore should be treated as a single enterprise by management. At all relevant times, Gaucho Grill issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Rosales and other Aggrieved Employees, regardless of its location or position.

Ms. Rosales commenced her employment with the Company in or around June of 2020 as a Cook earning \$20 an hour. Ms. Rosales still currently works at the Gaucho Grill restaurant in Buena Park, California located at 5980 Orangethrope Avenue. Throughout her tenure with Gaucho Grill, Ms. Rosales worked as a Cook and was classified as a non-exempt, hourly employee with eligibility for overtime pay. Throughout the majority of her employment with Gaucho Grill, Ms. Rosales was *scheduled* to work eight (8) hours a day for five days a week, but would often would work 6 days a week. However, after reporting forged signatures on documents provided to her, Gaucho Grill began to retaliate against Ms. Rosales by reducing her hours to only work four days instead of five days and placed her on a suspension.²

(1) Meal and Rest Break Violations

Our investigation has revealed that Restaurant Employees, including Ms. Rosales, are not provided with legally compliant meal periods and rest breaks. Restaurant Employees of Gaucho Grill, including Ms. Rosales, typically work 8 hours per day. The Company failed to schedule a meal period where Aggrieved Employees and Ms. Rosales are relieved of all duty for a 30-minute period within the first five hours of their shift or pay the premium compensation for the missed or late meal period. Our investigation has revealed that the management of Gaucho Grill instructed Ms. Rosales and other Restaurant Employees to record their meal breaks at the fifth hour, but then further directed to have the Restaurant Employees continue working, without taking the mandated meal break. Consequently, no legitimate meal break is effectively taken even though a meal break is being recorded. The Company’s de facto policy to violate the actual policy constitutes a clear violation of California labor laws.

Furthermore, our investigation leads us to believe that Gaucho Grill management engaged in the manipulation of time entries for Restaurants Employees, including Ms. Rosales. Specifically, Gaucho Grill management accused Ms. Rosales of clocking out for her meal breaks beyond the fifth hour on three separate occasions and presented Mr. Rosales with a signed acknowledgement form purportedly acknowledging these infractions. Ms. Rosales, however, denied any knowledge of such violations and asserted that she had not signed any acknowledgment form regarding these alleged incidents, further asserting that her signature had been forged. Subsequently, Gaucho Grill retaliated against Ms. Rosales for her complaints of the forged signature by suspending her from employment. Upon her return from suspension, her working hours were arbitrarily reduced.

²

In addition, our investigation leads us to believe that Restaurant Employees never receive a second meal period for shifts in excess of ten hours or pay the premium compensation for the missed second meal period. Concerning the second meal period, there is no evidence that Ms. Rosales and Restaurant Employees have agreed to waive their right to a second meal period with respect to shifts lasting more than 10 hours but less than 12 hours.

With respect to rest breaks, Ms. Rosales and other similarly situated Restaurant Employees are not provided any training about statutory breaks under California law, are not scheduled to take rest breaks, and in fact, rest breaks are not made available to them. Restaurant Employees, including Ms. Rosales, are not provided with a second rest period for shifts lasting six to ten hours, or a third rest period for shifts in excess of ten hours.

California law requires that an employer provides an employee who works more than five hours a meal break that is no less than 30 minutes in duration. 8 CCR 11050(11)(A). Unless an employee is relieved of all duty during the 30-minute meal period, the meal period is considered an on-duty meal period and counted as time worked. *Id.* However, an on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-the-job paid meal period. *Id.* If an employer fails to provide an employee a lawful meal period, the employer must pay the employee one hour of pay for each violation. 8 CCR 11050(11)(D). Additionally, California law mandates that an employer must “authorize and permit” an employee to take a duty-free rest period not less than 10 minutes in duration for every four hours of work. 8 CCR 11050(12)(A). Violation of the rest break provisions requires the employer pay the employee one hour of pay for each workday a rest period was not provided. 8 CCR 11050(12)(B). Lastly, in California, the employer is required to keep records of all hours worked. Labor Code § 1174(d).

With respect to meal periods, the Company engaged in an unlawful act of having Restaurant employees including Mr. Rosales clock out for their meal periods but in reality, continuing to work. As such, the Companies documented timekeeping records to reflect the 30-minute meal periods taken from the hours worked by Restaurant Employees are false and inaccurate. Our investigation leads us to believe that the Company’s timekeeping records show clear meal break violations but there is no corresponding meal break premium being paid as a result of those violations.

Gaucha Grill would also fail to provide legally compliant rest breaks to Aggrieved Employees, including Ms. Rosales. With respect to rest breaks, our investigation has uncovered that the Company places a greater concern over the press of work and anticipated foot traffic at its restaurant locations rather than ensuring that Aggrieved Employees, including Claimant, receive their statutorily-mandated and compliant rest periods. During the Relevant Time Period, the Company’s managers have directed Restaurant Employees, including Claimant, to take a *combined* break at the beginning of their shift so that during rush hours, the restaurant can maintain adequate coverage to attend to the rush of patrons frequenting their restaurant locations. As a result of this practice, Gaucha Grill violated California law which requires that an employer provide a rest period in the middle of the “work period” before

their lunch and a separate rest period in the middle of the “work period” after their lunch break. *Rodriguez v. E.M.E., Inc.*, 246 Cal.App.4th 1027, 1045 (2016). Because Gaucho Grill failed to provide rest periods in compliance with the timing requirements of California law, the Company needed to pay the employees, including Ms. Rosales, one hour of pay at their regular rate of pay each day that they were only provided one combined break. Lab. Code § 226.7; Wage Order No. 4, subd. 12(B).

The California Supreme Court in *Brinker Restaurant Corp. v. Superior Ct.*, Cal. 4th 1004 (2012) mandated that “absent truly unusual circumstances” placing both rest breaks before the meal break, and none after, would not comport with the wage order requirement that rest breaks “insofar as practicable, shall be in the middle of each work period.” *Id.* at 1032, citing DLSE Opn. Letter No. 2001.09.17 at p.4. In other words, “[a]s a general matter,” one rest break should fall on either side of the meal break. *Id.* An employer violates the law by maintaining a policy that “fails to give full effect” to the timing, duration, and relief from duty requirements of the Wage Order. *Id.* at 1032-1033. Such a defective policy or practice, by itself, establishes a substantive violation of the law. At a minimum, “an employer must inform employees in a meaningful or consistent way that they could take rest breaks, [and] the definition of any such rest breaks.” *Godfrey v. Oakland Port Services Corp.*, 230 Cal.App.4th 1267, 1286 (2014).

More alarming is that during the Relevant Time Period when the Company’s management is made aware of meal and/or rest break violations, their response is to provide the Restaurant Employee with additional time for their following break. However, permitting a longer break in response to a meal and/or rest period violation is not a lawful option under California law. The only obligation Gaucho Grill has under the circumstances is to pay a premium for the missed, shortened, or late meal and/or rest break. *See Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1145, 1152-54 (2012) (holding that “the language of section 558, subdivision (a), is more reasonably construed as providing a civil penalty that consists of both the \$50 or \$100 penalty amount *and* any underpaid wages, with the underpaid wages going entirely to the affected employee or employees as an express exception to the general rule that civil penalties recovered in a PAGA action are distributed 75 percent to the Labor and Workforce Development Agency (LWDA) and 25 percent to the aggrieved employees.”) (emphasis in original). In *Kirby v. Immoos Fire Protection, Inc.*, 53 Cal.4th 1244 (2012), the Cal. Supreme Court clarified that an employer does not have a lawful “choice” between providing a meal period or paying a premium. *Id.* at 1257. But even if the premium is paid, a violation still happened. *See also Ruelas v. Costco*, 2015 WL 1359326 (N.D. Cal. 2015) (holding employees could recover both meal period premium and PAGA penalty).

(2) Failure to Pay for All Hours Worked Including Overtime

Current and former hourly, non-exempt aggrieved Restaurant Employees including Ms. Rosales, are not paid for all of their time worked. Our investigation has revealed that Gaucho Grill directs payment to Restaurant Employees based on their scheduled hours of work. Our investigation has revealed that Restaurant Employees were not properly compensated for

working overtime. Gaucho Grill had and continues to have, a company-wide policy and/or practice of understaffing its restaurants while assigning heavy workloads, which led to a failure to provide Ms. Rosales and other Aggrieved Employees with adequate meal period coverage, because there were too few employees on duty to handle the workload. As a result of this inadequate meal period coverage, Ms. Rosales and other Restaurant Employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Moreover, on information and belief, because Gaucho Grill frowned upon employees accruing meal period penalties, Gaucho Grill pressured Ms. Rosales and other Aggrieved Employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that Gaucho Grill would otherwise owe. Thus, Ms. Rosales and other Aggrieved Employees performed work during meal periods for which they were not paid.

Claimant seeks to recover civil penalties pursuant to the unpaid compensation for all hours worked as defined by the Labor Code and the applicable Industrial Welfare Commission wage order as to the time during which an employee is subject to the control of an employer, and includes all the time the employee is engaged, suffered or permitted to work, whether or not required to do so, or as otherwise set forth in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, (2018) 4 Cal.5th 903; *see also Morillion v. Royal Packing Co.* (2000) 22 Cal-4th 575; *Troester v. Starbucks Corp.* (2018) 421 P.3d 1114 (California Supreme Court decision affirming that relevant statutes and wage order do not allow employers to require employees to routinely work for minutes off-the-clock without compensation.) In California, by law, any time which is not compensated automatically constitutes a minimum wage violation. *See Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324). In California, the employer is also required to keep records of all hours worked. Labor Code § 1174(d). California law further requires that all hours worked over 8 in a day or 40 in a week or worked on the 7th consecutive day of a work week be paid 1.5 times an employee's regular rate of pay. *See, e.g.*, Lab. Code §§ 510, 1194; Cal. Code Regs., tit. 8, § 11090, et seq.

Gaucho Grill knew or should have known that as a result of these company-wide practices and/or policies, Ms. Rosales and other Aggrieved Employees were performing assigned duties off-the-clock during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Rosales and/or other Aggrieved Employees sometimes worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Rosales and/or other Aggrieved Employees were not paid for all the hours that they worked including overtime wages for all of the overtime hours they actually worked.

(3) Other Claims

Gaucho Grill also violated California's Healthy Workplaces, Healthy Families Act of 2014 by failing to provide employees with paid sick days pursuant to Labor Code section 246. Labor Code §§ 246(a),(b), provides in relevant part: "[a]n employee who, on or after July 1,

2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment.” In addition, Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code § 246(i) requires employers to “provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.”

Here, Ms. Rosales reported an injury to Gaucho Grill and requested time off due to her inability to work because of her injuries. After providing the Company with proper medical documentation of her restrictions and need for time off, Gaucho Grill's management informed Ms. Rosales that she had accumulated 35 hours of paid sick time. Ms. Rosales agreed and took the days off as requested. Subsequently, Ms. Rosales noticed on her next paycheck that there were two issues. First, Mr. Rosales was not paid for her time off as agreed to, and second, the amount of sick time available was 12 hours. This contradicted the 35 hours of sick time Gaucho Grill claimed Ms. Rosales had. Our investigation leads us to believe that the manner in which sick time is accrued is contrary to what Labor Code section 246 states. Ms. Rosales worked 40 hours per week for three years, maintaining a schedule of Monday through Friday from 6:00 a.m. to 2:30 p.m., to suggest she had only 12 hours of sick time simply is inaccurate. Thus, Ms. Rosales and other similarly situated employees were not fully compensated for all hours worked, were deprived of overtime compensation, were not awarded accurate sick time, were not provided accurate wage statements in a violation of Labor Code Section 226, and former employees were not fully compensated in a timely manner when their employment ended, in violation of Labor Code Section 201 *et seq.*

Accordingly, we believe that Gaucho Grill has violated, and continues to violate, numerous provisions of California law, including, without limitation Labor Code Sections §§ 201, 202, 203, 204, 210, 216, 221, 225.5, 226, 226.3, 226.7, 246, 246.5, 510, 511, 512, 551, 552, 558, 1194-1197.1, 1198, and 2698, *et seq.*, as well as the relevant IWC orders and regulations, and that Ms. Rosales and other similarly situated Restaurant Employees are entitled to all civil and statutory penalties allowed by law. Our investigation is continuing, and there may be more violations uncovered.

California Labor Code Section 2699.3(a) requires an aggrieved employee to inform the Agency before filing a civil action under the Private Attorneys General Act of 2004 (“PAGA”). Based on the foregoing facts, Ms. Rosales is asserting PAGA claims on behalf of herself and on behalf of all other Restaurant Employees employed by the Gaucho Grill in its California

restaurant locations from April 17, 2023, to the present. Claimant seeks civil penalties under PAGA for the following Labor Code violations:

1. Violations of Labor Code sections 216, 1194, 225.5, 558 for failing to pay minimum wages due. Gaucho Grill does not pay minimum wages to Claimant and other non-exempt, hourly employees for all hours worked, as required by Labor Code sections 216, 510, 511, 558, 1182.1-1182.3, 1194-1197.1 and 1198.
2. Violations of Labor Code section 558 for failing to pay wages due, including those for missed meal and rest periods as required by Labor Code sections 226.7, 512, 551-553. Specifically, with respect to meal breaks, Gaucho Grill does not permit Claimant and other non-exempt, hourly employees to take an uninterrupted, off-duty, and/or full meal periods, and does not pay one additional hour of pay at their regular rate of compensation for each missed meal period. The Company also does not provide Claimant and other non-exempt, hourly employees with rest periods. Nor does it pay one additional hour of pay at their regular rate of compensation for each missed rest period.
3. Violations of Labor Code sections 226 and 226.3, requiring employers to provide specific information on employees' itemized wage statements, as the Company does not have an established mechanism for accurately recording the hours or meal/rest periods of non-exempt hourly restaurant staff. The deficiency extended to the absence of timesheets, clock-in/out punch data, or any documented timekeeping records for the Claimant and other employees in similar roles.
4. Violations of Labor Code sections 204 and 210, based on the Company's failure to pay Claimant and similarly situated non-exempt, hourly employees on the regular pay day all owed wages, and the Company's failure to fully compensate former employees in a timely manner when their employment ended, in violation of Labor Code Section 201 et seq.

////

We respectfully request that the Labor Workforce Development Agency notify this office within sixty (60) days if it wishes to investigate this matter further or, in the alternative, notify us that you will not pursue an investigation so that we may pursue these penalties under the Private Attorney General Act of 2004. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned. If the Company wishes to resolve these claims without resorting to protracted litigation, please contact the undersigned forthwith to discuss this matter further.

Thank you for your immediate attention to this matter.

Sincerely,

BOYAMIAN LAW, INC.



Michael H. Boyamian

CC: Downey Restaurant Group, Inc. (*Sent via Certified Mail; Return Receipt Requested*)
Attention: Hee Y Park (*Agent of Service of Process*)
5241 Lincoln Ave., Ste C2
Cypress, California 90630