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County of Santa Cruz
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SANTA CRUZ**

10 **MARVELIA HERNANDEZ,**

11 **Plaintiff,**

12 **vs.**

13 **CAFE EL PALOMAR, INC.; LEONEL**
14 **ESPINOZZA; and DOES 1 to 25, inclusive,**

15 **Defendants.**

CASE NO.: 24CV02038

COMPLAINT FOR DAMAGES FOR:

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

JURY TRIAL DEMANDED

COMES NOW Plaintiff, MARVELIA HERNANDEZ (hereinafter "Plaintiff"), and
alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Santa Cruz in this judicial district because Defendants CAFÉ EL PALOMAR, INC.; LEONEL ESPINOZZA; and DOES 1 to 25, inclusive (hereinafter collectively "CAFÉ EL PALOMAR" or "Defendant(s)") do business in the County of Santa Cruz, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Santa Cruz is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$35,000.

2. Plaintiff is a female resident of the County of Santa Cruz, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant CAFÉ EL PALOMAR, INC. is a California corporation, doing business in the County of Santa Cruz, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant LEONEL ESPINOZZA is a resident of the State of California, and the owner, managing agent, and/or director of CAFÉ EL PALOMAR, INC. and is being included in this lawsuit pursuant to Labor Code Section 558.1 as he controlled the hours, wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees and was involved in the wage and hour practices and policies. Defendants CAFÉ EL PALOMAR, INC. and LEONEL ESPINOZZA are collectively referred to herein as "Defendant(s)" (unless otherwise noted) or "CAFE EL PALOMAR".

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

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 6. 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.
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11 **GENERAL ALLEGATIONS**

12 7. Plaintiff started working at CAFE EL PALOMAR on or around 2022 or 2023 as a
13 cook. Plaintiff was classified as an hourly, non-exempt employee. Plaintiff's employment
14 ended on or around August 2023. Plaintiff generally worked a 7 to 8-hour shift and her latest
15 rate of pay was \$22/hour.
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17 8. 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.
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9 9. 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 CAFE EL PALOMAR anywhere in the state of California (at all different restaurant locations)
16 during the relevant PAGA period.
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18 10. It is Plaintiff’s position that CAFE EL PALOMAR has violated the following Labor
19 Code Sections against Plaintiff and other similarly situated aggrieved employees, who include
20 all non-exempt, hourly employees who worked for CAFE EL PALOMAR at their various
21 locations/restaurants in the State of California during the relevant PAGA period.
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23 11. CAFE EL PALOMAR violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because
24 it 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 CAFE EL PALOMAR had a company policy wherein they would
27 disproportionately round down the number of hours worked, resulting in “time shaving” and
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1 further resulting in aggrieved employees not being paid for all hours worked. In addition, since
2 Plaintiff and other employees worked through meal periods while “off the clock”, the latter
3 would be considered a minimum wage violation under California law. Moreover, CAFE EL
4 PALOMAR failed to provide its employees with proper and accurate reporting time pay. In
5 fact, one look at Plaintiff’s paystubs indicates that hours were clearly rounded as there were no
6 random decimals.

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8 12. Due to the above “off the clock” violations, CAFE EL PALOMAR also violated Labor
9 Code §510 because it failed to pay Plaintiff and other aggrieved employees overtime
10 compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or
11 40 hours per week throughout their employment. Plaintiff’s and other aggrieved employees’
12 actual work hours entitled them to overtime compensation, however, CAFE EL PALOMAR
13 did not compensate its hourly, non-exempt employees with the correct amount of overtime due
14 to the “off the clock” work and time shaving as described above. Furthermore, CAFE EL
15 PALOMAR failed to include bonuses/incentive payments/sick pay in calculating employees’
16 regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the
17 incentive and bonus payments/sick pay were also not factored into employees’ regular rate for
18 purposes of receiving meal and rest break premiums per the Ferra v. Loews case. In fact,
19 Plaintiff would receive monthly bonus payments of approximately \$300 that were not factored
20 into her regular rate of pay for purposes of calculating her correct overtime rate (which would
21 have been more than \$33.00/hour).

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24 13. CAFE EL PALOMAR also violated Labor Code § 226.7 and the appropriate Industrial
25 Welfare Commission Wage Order no. 5 because it failed to provide Plaintiff and other
26 similarly situated aggrieved employees with 10-minute rest periods for every four hours of
27 work, or majority portion thereof, throughout their employment. CAFE EL PALOMAR did
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1 not completely relieve Plaintiff and others of all duty during said rest periods. CAFE EL
2 PALOMAR did not pay to Plaintiff and others one additional hour of pay at Plaintiff's regular
3 rate of compensation for each workday that one or more statutory rest periods was not
4 provided. It was not part of the company policy for employees such as Plaintiff to take at least
5 two rest breaks per shift. The concept of rest breaks was not consistently implemented as it was
6 not company policy. Moreover, it would not have been possible for employees such as Plaintiff
7 to take such rest breaks due to being understaffed and due to a heavy workload, especially in
8 the fast-paced restaurant industry wherein customer service and making food quickly and
9 efficiently is of paramount importance. In fact, Plaintiff did not get a single rest break during
10 her entire employment tenure as it was simply not enforced and not allowed. As such, the
11 culture as well as the policies and procedures of CAFE EL PALOMAR did not lend itself to
12 the employees receiving consistent statutory rest breaks wherein they were relieved of all work
13 duties. The environment at CAFE EL PALOMAR was not conducive to receiving multiple
14 statutory rest breaks under California law and timely, statutory rest breaks were not authorized
15 or enforced.
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18 14. CAFE EL PALOMAR violated Labor Code §§ 512 and 226.7 and the appropriate
19 Industrial Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-
20 exempt employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal
21 periods for every five (5) hours of work throughout their employment. CAFE EL PALOMAR
22 did not completely relieve Plaintiff and other employees of all duty during said meal
23 periods. CAFE EL PALOMAR did not pay to Plaintiff and its hourly, non-exempt employees
24 one additional hour of pay at their regular rate of compensation for each workday that one or
25 more statutory meal periods was not provided. Plaintiff and others did not receive timely,
26 uninterrupted meal breaks during their employment. In fact, while management would
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generally state that employees “could eat”, there simply would be no time to actually take a meal break and management would also not create the time for Plaintiff and others to take a meal break. As such, the culture and practice/policy of CAFÉ EL PALOMAR was that Plaintiff and others simply did not receive meal breaks. Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal break was not consistently part of the company culture and was not enforced by CAFE EL PALOMAR. Consequently, it was the normal practice and custom of CAFE EL PALOMAR not to authorize, permit, and enforce timely statutory meal periods. If CAFE EL PALOMAR had Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff and others generally worked more than a 6-hour shift. If CAFE EL PALOMAR had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it would be invalid and unenforceable because the nature of Plaintiff’s job does not and did not prevent her from taking a meal period and the company could have hired “breakers” to relieve Plaintiff of her job duties so that she can actually take a timely, uninterrupted meal period. Moreover, any such “on duty” meal period agreement did not allow for Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff and others did not always receive statutory, timely meal periods during their employment. To the extent that CAFE EL PALOMAR argues that employees receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, “section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a

1 violation even if the remedy for the violation has been paid. *See Wert v. U.S. Bancorp*, (S.D.
2 Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at
3 CAFE EL PALOMAR was not conducive to receiving consistent, timely, statutory meal breaks
4 under California law. Moreover, any meal or rest break premiums paid were not compensated
5 at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as
6 overtime compensation.

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8 15. Furthermore, during the relevant time period, and due to the above labor code
9 violations, CAFE EL PALOMAR failed to pay Plaintiff and other similarly situated aggrieved
10 employees all wages due to them within any time period specified by California Labor Code
11 section 204. Since Plaintiff was not compensated for her "off the clock" work and since
12 Plaintiff did not receive meal and rest break premiums, Plaintiff would still be owed wages
13 pursuant to Labor Code Section 204. CAFE EL PALOMAR was also in violation of California
14 Labor Code section 226(a) by failing to include pertinent information on the wage statements,
15 including but not limited to, the correct hourly rate, all hours worked, overtime hours worked,
16 correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and
17 rest breaks, all deductions, tips, the correct start and end of the pay period, all employee
18 identifying information, the correct and complete name and address of the legal employer, and
19 reimbursement for business expenses, among others. As such, CAFE EL PALOMAR did not
20 provide Plaintiff and other similarly situated aggrieved employees with complete, accurate
21 itemized wage statements.
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24 16. During the relevant time period, CAFE EL PALOMAR also failed to keep accurate and
25 complete payroll records showing the actual hours worked per day and the wages paid to
26 Plaintiff and others pursuant to California Labor Code sections 1174(d).

27 17. CAFE EL PALOMAR also violated Labor Code § 203 because it willfully failed to pay
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1 Plaintiff and other similarly situated aggrieved employees earned and due wages upon
2 separation of employment, either immediately upon involuntary termination, or within 72
3 hours of resignation. These earned but unpaid wages include compensation for all hours
4 worked, including minimum wages, overtime compensation, and premium pay for missed meal
5 and rest breaks.

6 18. During the relevant time period, Plaintiff and other aggrieved employees incurred
7 necessary, business-related expenses and costs that were not reimbursed by CAFE EL
8 PALOMAR. These costs include, but are not limited to, use of personal cell phones for work
9 purposes and uniforms. Accordingly, CAFE EL PALOMAR was in violation of California
10 Labor Code sections 2800 and 2802.

12 19. Additionally, CAFE EL PALOMAR violated Labor Code Section 351 and 353 by
13 taking some of the tips meant for employees and also deducting the tips from Plaintiff's and
14 others' earned wages. CAFE EL PALOMAR also deducted the credit card fee from Plaintiff's
15 and others' tips and did not timely provide the credit card and even cash tips to Plaintiff and
16 other similarly situated aggrieved employees. As such, Plaintiff and the other similarly situated
17 employees were not given accurate tips to which they were entitled.

19 20. Furthermore, CAFE EL PALOMAR did not provide proper and correct/accurate sick
20 pay that was also delineated on employee pay stubs and also failed to provide proper sick leave
21 in violation of Labor Code sections 233 and 246. Moreover, there were no suitable seating/rest
22 break facilities for the employees pursuant to Wage Order no. 5-2001.

24 21. Furthermore, Plaintiff believes Defendants have also violated Labor Code Section 558
25 and have engaged in business practices which violate Business and Professions Code Section
26 17200.

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FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

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

(Plaintiff against all named defendants and all DOE defendants)

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(California Labor Code Sections 1194, 1194.2, 1197)

(Plaintiff against all named defendants and all DOE defendants)

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

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

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

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

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

34. For all hours worked by Plaintiff for which he was paid less than the minimum wage rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount

1 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
2 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

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

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME**

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

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

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

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

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

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

26 40. Plaintiff was entitled to the above overtime premiums.

27 41. Defendants did not pay Plaintiff premium wages of at least one and one-half times
28 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay

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 42. 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 43. 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 44. 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 45. 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 46. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
13 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the
14 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
15 reasonable attorney's fees and costs of suit.

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

19 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

19 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

14 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

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

3 64. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
4 continue to refuse to pay her unpaid wages as required by Labor Code Section 203.

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

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

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

15 **SEVENTH CAUSE OF ACTION**

16 **FAILURE TO GIVE REST BREAKS**

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

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

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

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

24 The authorized rest period time shall be based on the total hours worked daily at the
25 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
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- 27 b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which
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1 provides that if an employer fails to provide an employee a rest period in
2 accordance with the applicable provisions of this order, the employer shall pay the
3 employee one (1) hour of pay at employee's regular rate of compensation for each
4 workday that the rest period is not provided;

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

9
10 d. California Labor Code section 226.7, which states that (a) no employer shall require
11 any employee to work during any rest period mandated by an applicable order of
12 the Industrial Welfare Commission, and (b) if an employer fails to provide an
13 employee a rest period in accordance with an applicable order of the Industrial
14 Welfare Commission, the employer shall pay the employee one (1) additional hour
15 of pay at employee's regular rate of compensation for each work day that the rest
16 period is not provided.

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

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

25
26 72. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
27 fees as well as interest under Labor Code section 218.6.

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

4 **EIGHTH CAUSE OF ACTION**

5 **FAILURE TO GIVE MEAL BREAKS**

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

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

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

- 10 a. California Labor Code section 512(a), which requires that employees be given a 30-
11 minute uninterrupted meal break after five (5) hours of work, and a second
12 uninterrupted meal break after ten (10) hours of work;
- 13 b. California Labor Code section 226.7, which states that (a) no employer shall require
14 any employee to work during any meal period mandated by an applicable order of
15 the Industrial Welfare Commission, and (b) if any employer fails to provide an
16 employee a meal period in accordance with an applicable order of the Industrial
17 Welfare Commission, the employer shall pay the employee one (1) additional hour
18 of pay at the employee's regular rate of compensation for each workday that the
19 meal period is not provided;
- 20 c. California Industrial Welfare Commission Order No. 4/5 section 11(B), as codified
21 under Title 8 of the California Code of Regulations Section 11050, which states that
22 if an employer fails to provide an employee a meal period in accordance with the
23 applicable provisions of the Wage Order, the employer shall pay the employee one
24 (1) hour of pay at the employee's regular rate of compensation for each workday
25 that the meal period is not provided;
- 26
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- 1 d. California Industrial Welfare Commission Wage Order No. 4/5 Section 7(A)(3), as
2 codified under Title 8 of the California Code of Regulations Section 11050, which
3 requires an employer to maintain records documenting its employees' meal periods;
4 e. California Industrial Welfare Commission wage order No. 4/5 Section 20(A), as
5 codified under California Code of Regulations Section 11050, which penalizes the
6 employer \$50.00 for each initial violation, per employee, of any provision of the
7 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
8 f. California Labor Code section 1171 and 1173, which have given the California
9 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4
10 and 5) as enforceable law.
11

12 76. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks
13 after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted
14 to take a second relieved meal break after ten (10) hours of work, as required by California
15 law. California Labor Code section 512(a) and California Industrial Welfare Commission
16 Order No. 4/5, as codified under California Code of Regulations Sections 11050 et. seq.
17 requires that employees receive uninterrupted meal periods every five (5) hours of consecutive
18 work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of
19 all work duty. California Labor Code section 226.7 provides that employers may not require
20 their employees to work through their meal periods. California Labor Code section 226.7 and
21 California Code of Regulations section 11050 requires that if the employer fails to provide the
22 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
23 of pay for each work day that the meal period is not given.
24
25

26 77. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
27 regulations, and wage orders alleged in this cause of action along with any allowable interest,
28

1 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
2 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

3 78. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
4 fees as well as interest under Labor Code section 218.6.

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

8 **NINTH CAUSE OF ACTION**

9 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

11 80. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 79, inclusive, of this Complaint as though fully set forth herein.

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

16 82. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
17 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
18 of completing his job duties, which were not reimbursed by Defendant. These expenses
19 include, but are not limited to, use of personal cell phones for work purposes and uniforms.

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

22 **TENTH CAUSE OF ACTION**

23 **PRIVATE ATTORNEYS GENERAL ACT**

24 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
25 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 1174,**
1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802)

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

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

1 paragraphs 1 through 83, inclusive, of this Complaint as though fully set forth herein.

2 85. Plaintiff has complied with the procedures for bringing suit specified in California
3 Labor Code § 2699.3. By letter dated April 12, 2024, Plaintiff gave written notice by certified
4 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the
5 specific provisions of the California Labor Code alleged to have been violated, including the
6 facts and theories to support the alleged violations.

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

9 87. Plaintiff therefore has exhausted all administrative remedies required of her under
10 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
11 cause of action and pursue penalties in a representative action for Defendants’ violations of the
12 Labor Code.

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

19 89. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
20 violator and had one or more of the alleged violations committed against her, and therefore is
21 properly suited to represent the interests of other current and former employees, including all
22 current and former hourly, non-exempt employees who worked for CAFE EL PALOMAR in the
23 State of California during the applicable PAGA Period.

24 90. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties
25 under California Labor Code sections 2698 and 2699 because of Defendants’ violations of
26 numerous provisions of the California Labor Code as alleged in this Complaint.

27 91. Plaintiff therefore has exhausted all administrative remedies required of her under
28 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute
this cause of action and pursue penalties in a representative action for Defendants’ violations of

1 the Labor Code.

2 92. California Labor Code section 2699 et seq. imposes penalties upon culpable
3 Defendants for violating the Labor Code.

4 93. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
5 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
6 seeking individual penalties/victim specific relief or underpaid wages for herself or other
7 employees under this specific PAGA cause of action. Plaintiff has separate causes of action in
8 this Complaint for individual wages but is not seeking wages through the PAGA action.

9 94. Specifically, Plaintiff seeks penalties under California Labor Code
10 section 2699, for the following:

11 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
12 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
13 2800, 2802, and any other Labor Codes/Industrial Welfare Commission Order (No. 5) violated
14 based on the facts alleged in this Complaint.

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

19 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

25 97. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
26 constitutes unfair and unlawful business practices under California Business and Professions
27 Code Section 17200, et seq.
28

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

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

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

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

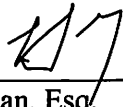
PRAYER FOR RELIEF

1. For compensatory damages including lost past and future wages, overtime, commissions, and all other sums of money, including employment benefits, together with interest on said amounts, and any other economic injury to Plaintiff, according to proof;
2. For special and consequential damages to the extent allowed by law;
3. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiff in an amount according to proof;
4. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code section 17200, et seq.;
5. For damages and penalties against Defendants under Labor Code sections 204, 210, 226 for Plaintiff in an amount subject to proof at trial;
6. For damages and penalties pursuant to Labor Code section 203 against Defendants in an amount subject to proof at trial;

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

DATED: July 17, 2024

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Marvelia Hernandez

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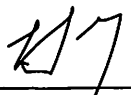
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DEMAND FOR JURY TRIAL

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

DATED: July 17, 2024

MESSRELIAN LAW INC.

By  _____
Harout Messrelian, Esq.
Attorneys for Plaintiff Marvelia Hernandez