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COMPLAINT FOR DAMAGES

COMES NOW PLAINTIFF ALEJO MACHUCA (hereinafter referred to as “MACHUCA” or “Plaintiff”) and complains against the above-named Defendants and for causes of action against the Defendants, and each of them, as follows:

THE PARTIES

1. At all times mentioned herein, Plaintiff was, and now is, an individual residing and/or domiciled in the County of Los Angeles, State of California.

2. Plaintiff is informed and believes, and thereon alleges that at all times relevant herein, Defendant UNITED GROCERY WORKERS, INC., a California corporation (hereinafter referred to as “United Grocery Workers” and collectively with all other Defendants as “Defendants”) was, and now is, a valid business of form unknown, duly organized and existing under the laws of the State of California, having its principal place of business in the County of Los Angeles, State of California.

3. Plaintiff is informed and believes, and thereon alleges that at all times relevant herein, Defendant AZALEA PARK, INC., a California corporation (hereinafter referred to as “Azalea Park” and collectively with all other Defendants as “Defendants”) was, and now is, a valid business of form unknown, duly organized and existing under the laws of the State of California, having its principal place of business in the County of Los Angeles, State of California.

4. Plaintiff is ignorant of the true names and capacities, whether corporate, associate, individual, or otherwise, of Defendants sued herein as DOES 1 through 100, inclusive, and therefore sues said Defendants by such fictitious names. Plaintiff will seek leave of Court to amend this Complaint to assert the true names and capacities of the fictitiously named Defendants when the same have been ascertained. Plaintiff is informed and believes, and thereon alleges, that each Defendant designated as “DOES” herein is legally responsible for the events, happenings, acts, occurrences, indebtedness, damages, and liabilities hereinafter alleged and caused injuries and damages proximately thereby to the Plaintiff, as hereinafter alleged.

1 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants named
2 herein has, at all times relevant herein, been the officer, agent, employee, and/or representative of
3 the remaining Defendants and has acted within the course and scope of such agency and
4 employment, and with the permission and consent of the co-Defendants.

5 **JURISDICTION AND VENUE**

6 6. This Court has jurisdiction over the claims alleged herein. The relief requested is within the
7 jurisdiction of this Court.

8 7. Venue is proper in the County of Los Angeles. Defendants conduct business in the County
9 of Los Angeles and all of Plaintiff's employment was carried out in the County of Los Angeles.

10 8. All of the claims alleged herein arose in the County of Los Angeles.

11 9. The amount in controversy in this matter exceeds the sum of \$35,000.00, exclusive of
12 attorney's fees, interest, and costs.

13 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

14 10. Plaintiff was jointly employed by Defendants at OLA Restobar beginning in or around
15 January 2023 and continuing through the time of his termination on or about August 28, 2023.
16 Plaintiff was considered a full-time, non-exempt employee throughout his employment. Plaintiff
17 and other similarly situated aggrieved employees were seemingly paid weekly.

18 11. The "Aggrieved Employees" are all current and former California employees who worked
19 for Defendants during the relevant time period pursuant to California *Labor Code* §§ 2698 et seq.,
20 the Labor Code Private Attorneys General Act of 2004 ("PAGA").

21 12. It is Plaintiff's position that Defendants committed the following Labor Code violations
22 against Plaintiff and other similarly situated aggrieved employees.

23 13. Defendants did not compensate Plaintiff and other similarly situated aggrieved employees
24 with the minimum wages to which they were entitled for work performed and, as such, did not
25 compensate Plaintiff and other similarly situated aggrieved employees for all hours worked at the
26 minimum wage rate pursuant to California *Labor Code* §§ 1194, 1197 and 1197.1.

1 14. This is so because Plaintiff and other similarly situated aggrieved employees either did not
2 receive their daily, legally mandated thirty-minute meal periods, did not receive them timely, and/or
3 were not completely relieved and/or were routinely interrupted during their daily, legally mandated
4 meal periods. Plaintiff and other similarly situated aggrieved employees were often required to
5 continue performing their duties even during their meal periods, thereby resulting in Plaintiff and
6 other similarly situated aggrieved employees not taking their meal periods, not taking them timely,
7 and/or said meal periods being interrupted. Since Plaintiff was not duly compensated for the time
8 he spent working during his meal periods, Defendants were in violation of California's minimum
9 wage laws.

10 15. As a further result of their failure to provide Plaintiff and other similarly situated aggrieved
11 employees Code-compliant meal periods, Defendants violated California *Labor Code* § 510,
12 because they failed to compensate Plaintiff and other similarly situated aggrieved employees
13 overtime compensation, even though they may have worked more than 8 hours per day, 12 hours
14 per day, and/or 40 hours per week. Plaintiff and other similarly situated aggrieved employees'
15 actual work hours entitled them to overtime compensation (daily and/or weekly). However, they
16 were not paid accurately and/or fully for their overtime hours. Moreover, any incentive and/or
17 bonus payments were not included in calculating Plaintiff and others' regular rate of pay for
18 purposes of determining their correct overtime rate of pay.

19 16. Defendants also violated California *Labor Code* § 226.7 and the applicable Industrial
20 Welfare Commission Wage Order No. 5 because they failed to provide Plaintiff and other similarly
21 situated aggrieved employees with ten-minute rest periods for every four hours of work, or majority
22 portion thereof, throughout their employment. Defendants did not relieve Plaintiff and other
23 similarly situated aggrieved employees of all their duties during said rest periods, instead directing
24 them to continue working. Defendants did not pay Plaintiff and other similarly situated aggrieved
25 employees one additional hour of pay at the regular rate of compensation for each workday when
26 one or more statutory rest periods was not provided. It was not company policy and/or not part of
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1 the company culture for employees such as Plaintiff and other similarly situated aggrieved
2 employees to take their daily rest breaks. Given the heavy workload and expectation for Plaintiff
3 and other similarly situated aggrieved employees to timely complete their tasks, the culture at OLA
4 Restobar did not lend itself to the employees receiving statutory rest periods at which time they
5 were relieved of all work duties. It was the normal practice and custom of Defendants not to
6 authorize, permit, and/or enforce statutory rest periods. As such, the work environment and culture
7 at OLA Restobar was not conducive to receiving statutory rest breaks under California law.

8 17. Defendants also violated California *Labor Code* §§ 512 and 226.7 along with the applicable
9 Industrial Welfare Commission Wage Order No. 5 because they failed to provide Plaintiff and other
10 similarly situated aggrieved employees a thirty-minute, uninterrupted meal periods for every five
11 (5) hours of work. As described above, Defendants either failed to provide a meal period timely or
12 entirely, or it did not completely relieve Plaintiff and other similarly situated aggrieved employees
13 of all duty during said meal periods. Defendants did not duly compensate Plaintiff and other
14 similarly situated aggrieved employees one additional hour of pay at the regular rate of
15 compensation for each workday when one or more statutory meal periods was not provided or was
16 interrupted. In addition, meal periods were not consistently taken before the fifth hour worked, in
17 further contravention of California law.

18 18. Additionally, Plaintiff and other similarly situated aggrieved employees incurred necessary,
19 business-related expenses and costs that were not reimbursed by Defendants. These costs include,
20 but are not limited to the requirement to use a personal cellular phone for the direct benefit of
21 Defendants. For example, Defendants required Plaintiff and other similarly situated aggrieved
22 employees to download a phone application known as Homebase in order to check their schedules
23 and communicate with management and/or other employees as necessary. However, despite
24 requiring Plaintiff and other similarly situated aggrieved employees to incur business-related costs
25 and expenses, Defendants did not duly reimburse them. Accordingly, Defendants were in violation
26 of California *Labor Code* §§ 2800 and 2802.

1 19. Furthermore, during the relevant time period, and as a result of the above violations,
2 Defendants failed to pay Plaintiff and other similarly situated aggrieved employees all wages due
3 to them within any time period specified by California *Labor Code* § 204.

4 20. Defendants were also in violation of California *Labor Code* § 226(a) by failing to timely
5 provide and/or include pertinent information on Plaintiff and other similarly situated aggrieved
6 employees' wage statements including, but not limited to the name and address of the legal entity
7 that is the employer, all hours worked (minimum wage and overtime), gross wages earned, net
8 wages earned, all applicable hourly rates, all deductions, and premium pay for the missed meal and
9 rest periods, among other information.

10 21. During the relevant time period, Defendants also failed to keep accurate and complete
11 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and other
12 similarly situated aggrieved employees pursuant to California *Labor Code* § 1174(d).

13 22. Defendants also violated California *Labor Code* §§ 201-203 because they willfully failed to
14 pay to Plaintiff other similarly situated aggrieved employees earned and due wages upon separation
15 of employment, either immediately upon involuntary termination, or within 72 hours of resignation.
16 These earned but unpaid wages include, but are not limited to minimum wages, overtime
17 compensation, premium pay for missed meal and rest periods, and reimbursement for the work-
18 related expenses incurred.

19 23. Defendants also violated the California Healthy Workplace Healthy Families Act
20 (California *Labor Code* §§ 246 et seq.) as they seemingly failed to provide Plaintiff and other
21 similarly situated aggrieved employees with mandatory paid sick leave.

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1 I.

2 **FIRST CAUSE OF ACTION**

3 **Violation of the Private Attorneys General Act**

4 **[California *Labor Code* §§ 2698 et seq.]**

5 **Against All Defendants & DOES 1 through 100, Inclusive**

6 24. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this
7 Complaint as though duly set forth in full herein.

8 25. Plaintiff provided the required written notice to the Labor & Workforce Development
9 Agency (“LWDA”) and Defendants of the specific violations of the California Labor Code that
10 Defendants and DOES 1-100 are alleged to have violated and continue to violate.

11 26. Pursuant to California *Labor Code* § 2699.3, no response was received from the LWDA
12 within 65 days of the postmark date of the notice to the LWDA.

13 27. Plaintiff has therefore exhausted all administrative remedies required of him under
14 California *Labor Code* §§ 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of
15 action and pursue penalties in a representative action for Defendants’ violations of the Labor Code.

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

21 29. Plaintiff is an “aggrieved employee” because he was employed by the alleged violators and
22 had the alleged violations committed against him and is therefore properly suited to represent the
23 interests of other current and former employees who worked for Defendants in the State of
24 California during the PAGA period.

30. Based on the acts alleged above, Plaintiff, on behalf of himself and other similarly situated aggrieved employees, seeks penalties under California *Labor Code* §§ 2698 and 2699 because of Defendants' violations of the California Labor Code, as alleged herein.

31. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not seeking individual/victim-specific relief under this cause of action.

32. Specifically, Plaintiff seeks penalties under California *Labor Code* § 2699 for the following: violations of California Labor Code Sections 201, 202, 203, 204 and/or 204b, 210, 221, 226, 226.3, 226.7, 226.8, 510, 512, 558, 1174, 1174.5, 1194, 1197, and 1198, via 2698 and 2699, any other Labor Codes and Wage Orders violated on the facts alleged in this Complaint.

33. Pursuant to California *Labor Code* §§ 2698 et seq., Plaintiff seeks to recover attorney's fees, costs, and civil penalties on behalf of Plaintiff and other current and former similarly situated aggrieved employees as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional limits of this Court.

WHEREFORE, PLAINTIFF ALEJO MACHUCA prays for judgment against Defendants and DOES 1-100, and each of them, as follows:

1. For the imposition of civil penalties against Defendants;
2. For maximum civil penalties against Defendants available under California *Labor Code* § 2699 in a manner and amount authorized by that statute, as described more particularly herein and representative PAGA claims;
3. For all costs and disbursements incurred in this suit;
4. For reasonable attorney's fees against Defendants where available by law, including but not limited to those pursuant to California *Labor Code* §§ 2698 et seq., California *Code of Civil Procedure* § 1021.5, and/or other applicable laws; and
5. For such other and further relief as this Court may deem proper.

1 Dated: August 15, 2024

SEZGIN KHOUSADIAN LLP

2 By: Arthur Sezgin
3 ARTHUR SEZGIN, ESQ.
4 Attorneys for PLAINTIFF
5 ALEJO MACHUCA
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