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Superior Court of CA,
County of Santa Clara
24CV446642
Reviewed By: J. Nguyen

Attorneys for Plaintiff LILLIANA DELGADO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

LILLIANA DELGADO,

Plaintiff,

vs.

CARNITAS EL RINCON INC.;
GUILBALDO GUERRERO;
CARNITAS EL RINCON YUBA CITY
INC; CARNITAS EL RINCON VALLEJO
INC; RAFAEL GUERRERO; CARNITAS
EL RINCON TROPICANA INC; JOSE
FRANCISCO GUERRERO; CARNITAS
EL RINCON REDWOOD CITY INC;
CARNITAS EL RINCON ALUM ROCK
INC; and DOES 1 to 25, inclusive,

Defendants.

CASE NO.: 24CV446642

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**
- 12) **SEXUAL HARASSMENT IN VIOLATION OF FAIR EMPLOYMENT AND HOUSING ACT ("FEHA");**
- 13) **FAILURE TO PREVENT SEXUAL HARASSMENT VIOLATION OF FEHA;**

1 4. Plaintiff is informed and believes that at all times herein mentioned, Defendants
2 GUILBALDO GUERRERO; RAFAEL GUERRERO and JOSE FRANCISCO GUERRERO
3 are male residents of the State of California, and the owners, managing agents, and/or directors
4 of CARNITAS EL RINCON INC.; CARNITAS EL RINCON YUBA CITY INC;
5 CARNITAS EL RINCON VALLEJO INC; CARNITAS EL RINCON TROPICANA INC;
6 CARNITAS EL RINCON REDWOOD CITY INC; and CARNITAS EL RINCON ALUM
7 ROCK INC, and are being included in this lawsuit pursuant to Labor Code Section 558.1 as
8 they controlled the hours, wages, and/or working conditions of Plaintiff and other hourly, non-
9 exempt employees. Defendants CARNITAS EL RINCON INC.; GUILBALDO
10 GUERRERO; CARNITAS EL RINCON YUBA CITY INC; CARNITAS EL RINCON
11 VALLEJO INC; RAFAEL GUERRERO; CARNITAS EL RINCON TROPICANA INC;
12 JOSE FRANCISCO GUERRERO; CARNITAS EL RINCON REDWOOD CITY INC;
13 CARNITAS EL RINCON ALUM ROCK INC; and DOES 1 to 25, inclusive, are collectively
14 referred to herein as "Defendant(s)" (unless otherwise noted) or "CARNITAS EL RINCON".
15 CARNITAS EL RINCON INC.; GUILBALDO GUERRERO; CARNITAS EL RINCON
16 YUBA CITY INC; CARNITAS EL RINCON VALLEJO INC; RAFAEL GUERRERO;
17 CARNITAS EL RINCON TROPICANA INC; JOSE FRANCISCO GUERRERO;
18 CARNITAS EL RINCON REDWOOD CITY INC; CARNITAS EL RINCON ALUM ROCK
19 INC are considered joint employers in that they each controlled the wages, hours, and/or
20 working conditions of the employees. They are also considered an integrated enterprise under
21 the law. The integrated enterprise test sets forth four factors for assessing whether two entities
22 are considered a single entity for purposes of liability: (1) interrelation of operations; (2)
23 common management; (3) centralized control of labor relations; and (4) common ownership or
24 financial control. Even though one does not have to show proof of all factors to prevail on an
25 integrated enterprise claim, here the factors are unequivocally met as all companies and entities
26 have the exact same ownership and management, including Guilebaldo Guerrero, Rafael
27 Guerrero, and Jose Francisco Guerrero. Furthermore, there is centralized control of labor
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1 relations and there is interrelation of operations in running the different restaurants in terms of
2 utilizing employees from one location to work or cover other locations.

3 5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
4 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
5 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
6 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
7 for the conduct alleged herein. Upon discovering the true names and capacities of these
8 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
9 capacities of these fictitiously named defendants.

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

15
16 **GENERAL ALLEGATIONS**

17 7. Plaintiff started working at CARNITAS EL RINCON on or around 2023 as a
18 cashier/preparation staff. Plaintiff is and was classified as an hourly, non-exempt employee.
19 Plaintiff's last rate of pay was \$17.80 per hour. Plaintiff is still currently employed with
20 CARNITAS EL RINCON.

21 8. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
22 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
23 Security Services USA, Inc., an onsite security provider. After about a year of employment,
24 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
25 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
26 termination of employment and weekly payment of wages to temporary employees. The trial
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1 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
2 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
3 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
4 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
5 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
6 PAGA representative to sue for violations that the representative has personally suffered. The
7 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
8 and others. The statute also states that an “aggrieved employee” is “any person who was
9 employed by the alleged violator and against whom one or more of the alleged violations was
10 committed.” Because at least one of the violations that Huff had alleged had affected him
11 personally, the Court of Appeal denied Securitas’ motion.
12

13 9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
14 other employees, it allows for suits broader than the specific violations the named
15 employee experienced. Therefore, even if the employee did not personally experience the
16 Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is
17 Plaintiff’s position that Plaintiff can equivocally bring the following labor code violations on
18 behalf of all other employees, including ALL hourly, non-exempt employees who worked for
19 CARNITAS EL RINCON anywhere in the state of California (at all different restaurant
20 locations) during the relevant PAGA period.
21

22 10. It is Plaintiff’s position that CARNITAS EL RINCON has violated the following Labor
23 Code Sections against Plaintiff and other similarly situated aggrieved employees, who include
24 all non-exempt, hourly employees who worked for CARNITAS EL RINCON at their various
25 locations/restaurants in the State of California during the relevant PAGA period.
26

27 11. CARNITAS EL RINCON violated Labor Code § 1194, 1194.2, 1197, and 1197.1
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1 because it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours
2 worked, including the statutory minimum wage for all hours worked and for “off the clock”
3 work. This is so because CARNITAS EL RINCON had a company policy wherein they would
4 disproportionately round down the number of hours worked, resulting in “time shaving” and
5 further resulting in aggrieved employees not being paid for all hours worked. In addition, and
6 to the extent Plaintiff and other employees worked through meal periods while “off the clock”,
7 the latter would be considered a minimum wage violation under California law. Moreover,
8 CARNITAS EL RINCON failed to provide its employees with proper and accurate reporting
9 time pay.
10

11 12. Due to the above “off the clock” violations, CARNITAS EL RINCON also violated
12 Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees overtime
13 compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or
14 40 hours per week throughout their employment. Plaintiff’s and other aggrieved employees’
15 actual work hours entitled them to overtime compensation, however, CARNITAS EL
16 RINCON did not compensate its hourly, non-exempt employees with the correct amount of
17 overtime due to the “off the clock” work and time shaving as described above. Moreover,
18 overtime compensation was simply not part of the company policy and not paid to Plaintiff and
19 others. Furthermore, CARNITAS EL RINCON failed to include bonuses/incentive payments
20 in calculating employees’ regular rate of pay for use in deciphering the correct overtime rate of
21 pay. Additionally, the incentive and bonus payments were also not factored into employees’
22 regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews
23 case.
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26 13. CARNITAS EL RINCON also violated Labor Code § 226.7 and the appropriate
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1 Industrial Welfare Commission Wage Order no. 5 because it failed to provide Plaintiff and
2 other similarly situated aggrieved employees with 10-minute rest periods for every four hours
3 of work, or majority portion thereof, throughout their employment. CARNITAS EL RINCON
4 did not completely relieve Plaintiff and others of all duty during said rest periods. CARNITAS
5 EL RINCON did not pay to Plaintiff and others one additional hour of pay at Plaintiff's regular
6 rate of compensation for each workday that one or more statutory rest periods was not
7 provided. It was not part of the company policy for employees such as Plaintiff to take either
8 one or two rest breaks per shift. In fact, Plaintiff did not receive a single timely, uninterrupted
9 rest break throughout her entire employment tenure. Moreover, it would not have been possible
10 for employees such as Plaintiff to take such rest breaks due to being understaffed and due to a
11 heavy workload, especially in the fast-paced food industry. As such, the culture as well as the
12 policies and procedures of CARNITAS EL RINCON did not lend itself to the employees
13 receiving consistent statutory rest breaks wherein they were relieved of all work duties. The
14 environment at CARNITAS EL RINCON was not conducive to receiving multiple statutory
15 rest breaks under California law and timely, statutory rest breaks were not authorized or
16 enforced.
17
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19 14. CARNITAS EL RINCON violated Labor Code §§ 512 and 226.7 and the appropriate
20 Industrial Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-
21 exempt employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal
22 periods for every five (5) hours of work throughout their employment. CARNITAS EL
23 RINCON did not completely relieve Plaintiff and other employees of all duty during said meal
24 periods. CARNITAS EL RINCON did not pay to Plaintiff and its hourly, non-exempt
25 employees one additional hour of pay at their regular rate of compensation for each workday
26 that one or more statutory meal periods was not provided. Plaintiff and others did not always
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1 receive timely, uninterrupted meal breaks due to work obligations. Like the rest breaks,
2 receiving a thirty-minute uninterrupted and timely meal break was not consistently part of the
3 company culture and was not enforced by CARNITAS EL RINCON. To the extent that
4 Plaintiff even received meal periods, they were either late or consistently interrupted by work
5 obligations. Consequently, it was the normal practice and custom of CARNITAS EL RINCON
6 not to authorize, permit, and enforce timely statutory meal periods. If CARNITAS EL
7 RINCON had Plaintiff sign a meal period waiver, it would not be valid and enforceable since
8 Plaintiff and others generally worked more than a 5-hour shift. If CARNITAS EL RINCON
9 had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through
10 the meal periods, it would be invalid and unenforceable because the nature of Plaintiff's job
11 does not and did not prevent her from taking a meal period and the company could have hired
12 "breakers" to relieve Plaintiff of her job duties so that she can actually take a timely,
13 uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow
14 for Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff and others did
15 not always receive statutory, timely meal periods during their employment. To the extent that
16 CARNITAS EL RINCON argues that employees receive meal break premium pay for missed
17 meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA
18 penalties are for the violations themselves, irrespective of whether an employee received the
19 premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire*
20 *Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice
21 between providing *either* meal and rest breaks *or* an additional hour of pay." See *Kirby v.*
22 *Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the
23 extra hour of pay does not excuse the violation; the employer has still committed a violation
24 even if the remedy for the violation has been paid. See *Wert v. U.S. Bancorp.*, (S.D. Cal. Mar.

22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at CARNITAS EL RINCON was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

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

16. CARNITAS EL RINCON also violated Labor Code § 203 because it willfully failed to

1 pay other similarly situated aggrieved employees earned and due wages upon separation of
2 employment, either immediately upon involuntary termination, or within 72 hours of
3 resignation. These earned but unpaid wages include compensation for all hours worked,
4 including minimum wages, overtime compensation, and premium pay for missed meal and rest
5 breaks.

6 17. During the relevant time period, Plaintiff and other aggrieved employees incurred
7 necessary, business-related expenses and costs that were not reimbursed by CARNITAS EL
8 RINCON. These costs include, but are not limited to, use of personal cell phones for work
9 purposes, and uniforms. Accordingly, CARNITAS EL RINCON was in violation of California
10 Labor Code sections 2800 and 2802.
11

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

18 19. Furthermore, CARNITAS EL RINCON did not provide proper and correct/accurate
19 sick pay (inclusive of all bonuses/shift differentials/incentive payments) that was also
20 delineated on employee pay stubs and also failed to provide proper sick leave in violation of
21 Labor Code sections 233 and 246. Moreover, there were no suitable seating/rest break facilities
22 for the employees pursuant to Wage Order no. 5-2001 as employees did not have a designated
23 break area.
24

25 20. Furthermore, Plaintiff believes Defendants have also violated Labor Code Section 558
26 and have engaged in business practices which violate Business and Professions Code Section
27 17200.
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1 21. In addition, Plaintiff would have individual claims under the Fair Employment and
2 Housing Act (FEHA) against CARNITAS EL RINCON for sexual harassment and failure to
3 prevent sexual harassment. Throughout her employment tenure, Plaintiff has been sexually
4 harassed multiple times per week by her manager. The manager would consistently touch
5 Plaintiff's rear end or rub up against her body from behind. When questioned, the manager
6 would say it's not his fault because Plaintiff has a big butt. The manager has told Plaintiff that
7 he has feelings for her and even tried to open the bathroom door once while Plaintiff was
8 inside. Plaintiff has reported the sexual harassment to the owners, who stated that they would
9 do something about it, however, nothing has been done and the hostile work environment
10 remains. Moreover, Daisy Carmona witnessed the sexual assault and sexual harassment.

12 22. Pursuant to California Government Code section 12960, Plaintiff has exhausted her
13 administrative remedies. Plaintiff filed a complaint with the California Civil Rights Department
14 (formerly, Department of Fair Employment and Housing ("DFEH")), alleging claims in this
15 complaint. The California Civil Rights Department immediately issued to Plaintiff a right to sue
16 letter/notice.

17
18 **FIRST CAUSE OF ACTION**

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

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

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

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

25 24. At all times relevant herein, Defendants were required to compensate its employees for
26 all hours worked upon reporting for work at the appointed time stated by the employer
27 pursuant to Industrial Welfare Commission Order 5-2001, California Code of
28

1 Regulations, Title 8, Section 11050.

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

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

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

10 28. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
11 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
12 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
13 reasonable attorney's fees and costs of suit.

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

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

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

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

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

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

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

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

23 **THIRD CAUSE OF ACTION**

24 **FAILURE TO PAY OVERTIME**

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

27 **(Plaintiff against all named defendants and all DOE defendants)**
28

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

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

10 39. Plaintiff was a non-exempt employee entitled to the protections of the California
11 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations,
12 Title 8, Section 11050.

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

15 41. Plaintiff was entitled to the above overtime premiums.

16 42. Defendants did not pay Plaintiff premium wages of at least one and one-half times
17 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
18 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
19 twelve (12) in a day.

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

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

24 45. Defendants know or should know the actual dates of overtime worked, the amount of
25 overtime worked, and the amount of unpaid overtime due.

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

2 47. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
3 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the
4 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
5 reasonable attorney's fees and costs of suit.

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

9 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

23 52. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
24 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
25 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
26 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
27 reasonable attorney's fees.
28

1 53. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
2 sustained damages, including loss of earnings, in an amount to be established at trial. As a
3 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
4 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
5 and attorney's fees pursuant to statute.

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

9 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

19 58. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
20 informed, believes, and thereon alleges, that all times relevant during the liability period,
21 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
22 including overtime hours, the minimum wage, and premium pay for missed meal and rest
23 breaks.

24 59. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
25 amount, subject to proof, to the extent she was not paid all wages each pay period. The precise
26 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
27 from Defendants' records or indirectly based on information from Defendants' records.
28

1 60. 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 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO GIVE REST BREAKS**

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

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

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

- 11 a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which
12 provides that every employer shall authorize and permit all employees to take rest
13 periods, which insofar as practicable shall be in the middle of each work period.
14 The authorized rest period time shall be based on the total hours worked daily at the
15 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
16
17 b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which
18 provides that if an employer fails to provide an employee a rest period in
19 accordance with the applicable provisions of this order, the employer shall pay the
20 employee one (1) hour of pay at employee's regular rate of compensation for each
21 workday that the rest period is not provided;
22
23 c. Title 8 of the California Code of Regulations sections 11050(20)(A), which
24 penalizes the employer \$50.00 for each initial violation, per employee, of any
25 provision of the Wage Order, and \$100.00 for each additional violation thereafter
26 per employee; and
27
28 d. California Labor Code section 226.7, which states that (a) no employer shall require

1 any employee to work during any rest period mandated by an applicable order of
2 the Industrial Welfare Commission, and (b) if an employer fails to provide an
3 employee a rest period in accordance with an applicable order of the Industrial
4 Welfare Commission, the employer shall pay the employee one (1) additional hour
5 of pay at employee's regular rate of compensation for each work day that the rest
6 period is not provided.

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

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

16 73. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
17 fees as well as interest under Labor Code section 218.6.

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

21 **EIGHTH CAUSE OF ACTION**

22 **FAILURE TO GIVE MEAL BREAKS**

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

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

26 76. Plaintiff brings this cause of action under the following laws, for the following reasons:
27

- 28 a. California Labor Code section 512(a), which requires that employees be given a 30-

1 minute uninterrupted meal break after five (5) hours of work, and a second
2 uninterrupted meal break after ten (10) hours of work;

3 b. California Labor Code section 226.7, which states that (a) no employer shall require
4 any employee to work during any meal period mandated by an applicable order of
5 the Industrial Welfare Commission, and (b) if any employer fails to provide an
6 employee a meal period in accordance with an applicable order of the Industrial
7 Welfare Commission, the employer shall pay the employee one (1) additional hour
8 of pay at the employee's regular rate of compensation for each workday that the
9 meal period is not provided;
10

11 c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified
12 under Title 8 of the California Code of Regulations Section 11050, which states that
13 if an employer fails to provide an employee a meal period in accordance with the
14 applicable provisions of the Wage Order, the employer shall pay the employee one
15 (1) hour of pay at the employee's regular rate of compensation for each workday
16 that the meal period is not provided;
17

18 d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as
19 codified under Title 8 of the California Code of Regulations Section 11050, which
20 requires an employer to maintain records documenting its employees' meal periods;
21

22 e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as
23 codified under California Code of Regulations Section 11050, which penalizes the
24 employer \$50.00 for each initial violation, per employee, of any provision of the
25 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
26

27 f. California Labor Code section 1171 and 1173, which have given the California
28 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5)

1 as enforceable law.

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

15 78. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
16 regulations, and wage orders alleged in this cause of action along with any allowable interest,
17 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
18 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
19

20 79. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
21 fees as well as interest under Labor Code section 218.6.

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

25 **NINTH CAUSE OF ACTION**

26 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

27 **(Plaintiff against All Named Defendants and all DOE defendants)**
28

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

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

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

10 84. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
11 and attorney’s fees and costs, under Labor Code section 2802.

12 **TENTH CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
15 **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, and IWC Wage Order 5-2001)

16 **(Plaintiff against CARNITAS EL RINCON and all DOE defendants)**

17 85. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 84, inclusive, of this Complaint as though fully set forth herein.

19 86. Plaintiff has complied with the procedures for bringing suit specified in California
20 Labor Code § 2699.3. By letter dated May 16, 2024 and May 24, 2024, Plaintiff gave written
21 notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and
22 Defendants of the specific provisions of the California Labor Code alleged to have been violated,
including the facts and theories to support the alleged violations.

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

25 88. Plaintiff therefore has exhausted all administrative remedies required of her under
26
27
28

1 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
2 cause of action and pursue penalties in a representative action for Defendants' violations of the
3 Labor Code.

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

10 90. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
11 violator and had one or more of the alleged violations committed against her, and therefore is
12 properly suited to represent the interests of other current and former employees, including all
13 current and former hourly, non-exempt employees who worked for CARNITAS EL RINCON at
14 all locations in the State of California during the applicable PAGA Period.

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

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

22 93. California Labor Code section 2699 et seq. imposes penalties upon culpable
23 Defendants for violating the Labor Code.

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

95. Specifically, Plaintiff seeks penalties under California Labor Code

1 section 2699, for the following:

2 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
3 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
4 1198, 2800, 2802, and any other Labor Codes/Industrial Welfare Commission Order (No. 5)
5 violated based on the facts alleged in this Complaint.

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

10 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

26 101. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
27 multiple damages as specifically provided in California Business and Professions Code section
28

1 17200 et seq.

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

5 **TWELFTH CAUSE OF ACTION**

6 **SEXUAL HARASSMENT IN VIOLATION OF FEHA**

7
8 **(Plaintiff against CARNITAS EL RINCON INC.; GUILBALDO GUERRERO; and all**
9 **DOE Defendants)**

10 103. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 102, inclusive, of this Complaint as though fully set forth herein.

12 104. At all times herein mentioned, FEHA, Government Code section 12900, et seq.,
13 was in full force and effect and was binding on Defendants. Specifically, Government Code
14 section 12940(j) prohibits an employer from sexually harassing an employee on the basis of her
15 sex.

16 105. Plaintiff's manager, Carlos Mora, is considered a supervisor under FEHA as he
17 controlled Plaintiff's work. As such, it is Plaintiff's position that CARNITAS EL RINCON
18 would be liable for Carlos Mora's sexually harassing behavior and in transforming Plaintiff's
19 work environment into a hostile sexual environment which materially altered Plaintiff's working
20 conditions and which constitutes sexual harassment in violation of California Government Code
21 section 12940(j)(1).

22 106. Furthermore, this cause of action is based upon:

- 23 a. Article I Section VIII of the California Constitution which prohibits the
24 discrimination and harassment of employees based upon their sex;
25
26 b. California Government Code Section 12940 which prohibits supervisors and
27 employers from discriminating, harassing, terminating, and retaliating against, an
28

1 employee on the basis of their sex and sexually harassing an employee, and doing
2 any of these things to an employee because of their complaints to their supervisors
3 that they are being subjected to conduct that violates said code section;

4 c. Title II, Division IV of the California Code of Regulations regarding the California
5 Fair Employment and Housing act, and specifically, Sections 7287.6, 7287.8, and
6 7291.1(f)(1) of said code of regulations which makes unwelcome sexual advances,
7 sexual battery, and sexual favors which condition employment benefits unlawful;

8 d. California Government Code Section 12940(j)(1) which prohibits employees from
9 harassing their subordinates on the basis of the subordinates' sex including sexually
10 harassing a subordinate; and
11

12 107. Plaintiff is informed, believes, and thereon alleges, that she was subjected to
13 sexual harassment, which was severe and ongoing, while Plaintiff was employed by Defendant
14 CARNITAS EL RINCON.
15

16 108. Based upon what is alleged in the above paragraphs, the Plaintiff alleges that
17 she was subjected to a sexually hostile and abusive work environment with a quid pro quo
18 nature, during the period of time specified in these Paragraphs, for which the corporate
19 Defendants did nothing to stop the harassing and intolerable work environment.

20 109. The Plaintiff alleges that the corporate Defendants are liable for
21 sexual harassment by allowing Plaintiff's manager, Carlos Mora, to condition Plaintiff's
22 employment based upon her forced and coerced willingness to tolerate Carlos Mora's sexual
23 harassment towards Plaintiff.
24

25 110. The corporate Defendants, including the individual owner, are also a party to
26
27
28

1 this cause of action because, amongst other things, they are strictly liable for the harassing
2 conduct of Plaintiff's manager, Carlos Mora, who was a supervisory and managerial employee
3 of Defendant CARNITAS EL RINCON INC. at all times alleged herein.

4 111. As a direct, foreseeable, and proximate result of the conduct of all Defendants
5 named in this cause of action, and each of them, the Plaintiff has suffered, and continues to
6 suffer emotional distress, as well as other financial losses to be ascertained according to proof.

7 112. In engaging in the aforementioned conduct, Defendants and DOES 1 to 25,
8 inclusive, and each of them, aided, abetted, incited, compelled, and/or coerced unlawful
9 employment practices in violation of the announced policy of this State against such practices.
10 Furthermore, they failed to take immediate and appropriate corrective action to prevent this
11 harassment.

12 113. As a proximate result of the conduct of the Defendants, Plaintiff has suffered and
13 will continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other
14 pecuniary losses according to proof. Plaintiff has also suffered and will continue to suffer
15 physical and emotional injuries, including nervousness, humiliation, depression, anguish,
16 embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff's
17 damages will be ascertained at trial.

18 114. In committing the foregoing acts, Defendants have been guilty of oppression,
19 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
20 punitive damages in a sum appropriate to punish and make an example out of the foregoing
21 Defendants.

22 115. The acts of oppression, fraud, and/or malice, were engaged in by employees of
23 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
24 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
25 wrongful conduct for which an award of punitive damages is sought, and/or was personally
26
27
28

1 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
2 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on
3 part of an officer, director, or managing agent of each of the Defendants, thereby entitling
4 Plaintiff to punitive and exemplary damages against each of the Defendants in accordance with
5 California Civil Code section 3294 in a sum appropriate to punish and make an example of
6 each Defendant.

7 116. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
8 A prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
9 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff
10 has incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to
11 an award of attorneys' fees and costs.

12 **THIRTEENTH CAUSE OF ACTION**

13 **FAILURE TO PREVENT SEXUAL HARASSMENT**

14 **IN VIOLATION OF FEHA**

15 **(Plaintiff against CARNITAS EL RINCON INC.; GUILBALDO GUERRERO; and all**
16 **DOE Defendants)**

17 117. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 116, inclusive, of this Complaint as though fully set forth herein.

19 118. At all times herein mentioned, FEHA, California Government Code section
20 12940(k), was in full force and effect and was binding on Defendants. This statute states that it
21 is an unlawful employment practice in California for an employer to "fail to take all reasonable
22 steps necessary to prevent discrimination and harassment from occurring."
23

24 119. As alleged above, Plaintiff was subjected to sexual harassment.

25 120. Defendants failed to take all reasonable steps necessary to prevent harassment.
26 In addition, CARNITAS EL RINCON INC. failed to remedy such harassment when it realized
27 and was informed that it was occurring. CARNITAS EL RINCON INC. further failed to train,
28

1 supervise, and monitor its employees and agents.

2 121. The failure of Defendants to prevent harassment created and encouraged an
3 environment where such harassment was condoned, encouraged, tolerated, sanctioned, and/or
4 ratified.

5 122. As a direct and proximate result of the aforementioned acts and omissions of
6 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
7 loss of income (past and future), loss of employment benefits (past and future), general and
8 compensatory damages (past and future), mental pain and anguish and emotional distress (past
9 and future), and will continue to suffer in the future, in an amount to be proved at trial.
10

11 123. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
12 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
13 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
14 their workers' right to work in an environment free of sexual harassment, so as to justify the
15 imposition of punitive damages to punish and set an example of said Defendants.

16 124. As a proximate result of the foregoing conduct, which violated the provisions of
17 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
18 fees and costs in the prosecution of this claim, in an amount to be proven at trial.
19

20 **PRAYER FOR RELIEF**

- 21 1. For compensatory damages including lost past and future wages, overtime,
22 commissions, and all other sums of money, including employment benefits, together
23 with interest on said amounts, and any other economic injury to Plaintiff, according to
24 proof;
25 2. For special and consequential damages to the extent allowed by law;
26 3. For general damages according to proof;
27 4. For an award of punitive damages against Defendants Carnitas El Rincon Inc. and
28

- 1 Guilebaldo Guerrero according to proof;
- 2 5. For restitution and disgorgement for all unfair business practices by corporate
- 3 Defendants against Plaintiff in an amount according to proof;
- 4 6. For an order enjoining corporate Defendants from further unfair and unlawful business
- 5 practices in violation of Business and Professions Code section 17200, et seq.;
- 6 7. For damages and penalties against Defendants under Labor Code sections 203/204/210/
- 7 226 for Plaintiff in an amount subject to proof at trial;
- 8 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
- 9 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period.
- 10 9. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half
- 11 (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
- 12 10. For maximum civil penalties available under the Labor Code and applicable Wage Order
- 13 against Defendant as described more particularly in the Complaint and Representative
- 14 PAGA claim/action;
- 15 11. For all remedies available to Plaintiff under the applicable Wage Order and the
- 16 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
- 17 liquidated damages, damages, penalties, and waiting time penalties according to proof
- 18 to the extent permitted by law;
- 19 12. For the imposition of civil penalties and/or statutory penalties;
- 20 13. Reasonable attorney's fees where available by law, including but not limited to,
- 21 pursuant to the California Labor Code, including section 2698, the FEHA, including
- 22 Government Code Section 12940 et seq. and/or other applicable laws; and
- 23 14. Costs and expenses of suit incurred herein;
- 24 15. For all interest as allowed by law;

24 ///

25 ///

26 ///

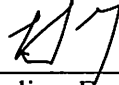
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28 ///

1 16. For such other and further relief as the Court deems just and proper.

2
3 DATED: September 3, 2024

MESSRELIAN LAW INC.

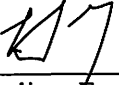
4 By 
5 Harout Messrelian, Esq.
6 Attorneys for Plaintiff Lilliana Delgado

7
8 **DEMAND FOR JURY TRIAL**

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

10
11 DATED: September 3, 2024

MESSRELIAN LAW INC.

12 By 
13 Harout Messrelian, Esq.
14 Attorneys for Plaintiff Lilliana Delgado