

MARALLE MESSRELIAN (SBN 316974)
maralle@mmlawapc.com
MM LAW, APC
500 N. Brand Blvd., Suite 2000
Glendale, CA 91203
Telephone (818) 810-7747
Facsimile (818) 230-9018

Attorneys for Plaintiff,
ERIKA ESPINA

Assigned for All Purposes:
Judge Randall J. Sherman
Dept. CX105

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
(UNLIMITED JURISDICTION)

ERIKA ESPINA,

Plaintiff,

vs.

J & E HOSPITALITY GROUP, INC.; a
California corporation; PRIME
HOSPITALITY GROUP, INC., a California
corporation; SOL AGAVE GROUP, INC., a
California corporation; TASTE MEXICO
HOSPITALITY, INC., a California
corporation; EDGAR ESTRADA GALINDO,
an individual; RAFAEL DOMINGUEZ
LOPEZ, an individual; and DOES 1 to 25,
inclusive,

Defendant(s).

Case No.: 30-2024-01439280-CU-OE-CXC

COMPLAINT FOR DAMAGES FOR:

- 1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 6) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203);
- 7) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 8) Failure to Provide Personnel Records;
- 9) Failure to Provide Pay Records;
- 10) Civil Penalties (Lab. Code §§ 2698, *et seq.*);
- 11) Sexual Harassment in Violation of the Fair Employment and Housing Act (“FEHA”)(Gov. Code § 12940(j));
- 12) Retaliation in Violation of the FEHA (Gov. Code, § 12940(h));

- 13) Failure To Prevent, Investigate, and Remedy Harassment and Retaliation in Violation of the FEHA; (Gov. Code, §§ 12940(j)(1) & (k))
14) Retaliation Under Labor Code § 1102.5;
15) Retaliation Under Labor Code § 98.6;
16) Wrongful Constructive Discharge In Violation of Public Policy; and
17) Unfair Competition (Bus. & Prof. Code, § 17200 *et seq.*)

JURY TRIAL DEMANDED

COMES NOW Plaintiff, ERIKA ESPINA (hereafter “Plaintiff”), and complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this action based on alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), the Business and Professions Code, and public policy against J & E HOSPITALITY GROUP, INC., a California corporation; PRIME HOSPITALITY GROUP, INC., a California corporation; SOL AGAVE GROUP, INC., a California corporation; TASTE MEXICO HOSPITALITY, INC., a California corporation; EDGAR ESTRADA GALINDO (“GALINDO”), an individual; RAFAEL DOMINGUEZ LOPEZ (“LOPEZ”), an individual; and DOES 1 to 25, inclusive, (collectively “SOL AGAVE” or “Defendants”).

JURISDICTION AND VENUE

2. Jurisdiction and venue are proper in this Court and this action is properly filed in the County of Orange because Defendants J & E HOSPITALITY GROUP, INC., a California corporation; PRIME HOSPITALITY GROUP, INC., a California corporation; SOL AGAVE GROUP, INC., a California corporation; TASTE MEXICO HOSPITALITY, INC., a California corporation; EDGAR ESTRADA GALINDO, an individual; RAFAEL DOMINGUEZ LOPEZ, an individual; and DOES 1 to 25, inclusive, do business in the County of Orange and because Defendants’ obligations and liabilities arise therein, and because the

1 work that was performed by Plaintiff in the County of Orange is the subject of this action.
2 Moreover, Plaintiff's damages sought herein exceed \$35,000.

3 **THE PARTIES**

4 3. Plaintiff ERIKA ESPINA is a resident of the city of Aliso Viejo in Orange
5 County, California. At all relevant times, Plaintiff was an "employee" within the meaning of
6 Title 8 California Code of Regulations Section 11050 and an "Aggrieved Employee" within
7 the meaning of Labor Code Section 2699(c).

8 4. Defendant J & E HOSPITALITY GROUP, INC. was and is a California
9 corporation doing business in Orange County. As such, it is a citizen of California based on
10 Plaintiff's information and belief.

11 5. Defendant PRIME HOSPITALITY GROUP, INC. was and is a California
12 corporation doing business in Orange County. As such, it is a citizen of California based on
13 Plaintiff's information and belief.

14 6. Defendant SOL AGAVE GROUP, INC. was and is a California corporation
15 doing business in Orange County. As such, it is a citizen of California based on Plaintiff's
16 information and belief.

17 7. Defendant TASTE MEXICO HOSPITALITY, INC. was and is a California
18 corporation doing business in Orange County. As such, it is a citizen of California based on
19 Plaintiff's information and belief.

20 8. Defendant EDGAR ESTRADA GALINDO is a citizen of California based on
21 Plaintiff's information and belief.

22 9. Defendant RAFAEL DOMINGUEZ LOPEZ is a citizen of California based on
23 Plaintiff's information and belief.

24 10. In relevant part, Labor Code section 558.1 states:

25 (a) Any employer or other person acting on behalf of an employer, who violates,
26 or causes to be violated, any provision regulating minimum wages or hours and
27 days of work in any order of the Industrial Welfare Commission, or violates, or
28 causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

11. Based on Plaintiff’s information and belief, Defendant EDGAR ESTRADA GALINDO and Defendant RAFAEL DOMINGUEZ LOPEZ are natural persons and owner, director, officer, and/or managing agent of J & E HOSPITALITY GROUP, INC., PRIME HOSPITALITY GROUP, INC., SOL AGAVE GROUP, INC., and/or TASTE MEXICO HOSPITALITY, INC., who directly or indirectly, or through their agents, employed or exercised control over the wages, hours, or working conditions of Plaintiff and the Aggrieved Employees (defined below). Therefore, they are liable to Plaintiff and the Aggrieved Employees for their violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, 1194, and 2802 pursuant to Labor Code section 558.1.

12. The “Aggrieved Employees” are all current and former non-exempt or hourly paid employees who worked for Defendants in California at any of their locations during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

13. At all times herein relevant, Defendants J & E HOSPITALITY GROUP, INC., PRIME HOSPITALITY GROUP, INC., SOL AGAVE GROUP, INC., TASTE MEXICO HOSPITALITY, INC., EDGAR ESTRADA GALINDO, RAFAEL DOMINGUEZ LOPEZ, and DOES 1 to 25, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, representatives, servants, employees, successors, coconspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant designated as a DOE herein.

14. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 25, inclusive, are unknown to Plaintiff who sues said defendants by such fictitious names. Plaintiff is informed and believes, and based on that

1 information and belief alleges, that each of the defendants designated as a DOE is legally
2 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
3 the injuries and damages to Plaintiff as alleged in this Complaint. Plaintiff will seek leave of
4 court to amend this Complaint to show the true names and capacities when the same have been
5 ascertained.

6 15. Plaintiff further alleges that Defendants including the unknown defendants
7 identified as DOES, directly or indirectly controlled or affected the working conditions,
8 wages, working hours, and conditions of employment of Plaintiff and the other Aggrieved
9 Employees so as to make each of said Defendants employers and employers liable under the
10 statutory provisions set forth herein.

11 **JOINT LIABILITY**

12 16. Under California law, Defendants are jointly and severally liable as employers
13 for the violations alleged herein because they have each exercised sufficient control over the
14 wages, hours, working conditions, and employment status of Plaintiff and the Aggrieved
15 Employees. Plaintiff is informed and believes, and thereon allege that at all relevant times
16 Defendants operated as a single integrated enterprise with common ownership and centralized
17 human resources. As a result, Defendants utilized the same unlawful policies and practices and
18 subjected all Aggrieved Employees to these same policies and practices. Among other things,
19 Plaintiff is informed and believes that: (1) there is common ownership in, and financial
20 control, in Defendants' companies, (2) Defendants utilize common management, who have
21 control over the day-to-day operations and employment matters, including the power to hire
22 and fire, set schedules, issue employee policies, and determine rates of compensation; (3)
23 Defendants utilize the same policies and procedures for all employees, including issuing the
24 same employee handbooks and other form agreements; (4) Defendants use at least some of the
25 same Human Resources personnel and attorneys to oversee employment matters; and, (6)
26 Defendants share employees.

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GENERAL ALLEGATIONS

17. Defendants first began to employ Plaintiff as a waitress in or around November of 2019 at its Sol Agave restaurant located at 111 Avenida Del Mar in San Clemente, California. Plaintiff generally worked 5 days a week – Monday, and Wednesday through Saturday from approximately 9:30/10:00 a.m. to 3:00/4:30 p.m. Plaintiff's employment at the San Clemente location ended on or around June 1, 2024.

18. In or around January 2024, SOL AGAVE began to employ Plaintiff as a waitress at its San Juan Capistrano restaurant located at 31111 Rancho Viejo Rd. in San Juan Capistrano, California. Plaintiff generally worked Monday, Tuesday, Friday and Saturday, from approximately 4:00/5:00 p.m. to 9:00/10:00 p.m.

19. At all relevant times, SOL AGAVE has issued wages to Plaintiff and all of the other Aggrieved Employees on a bi-weekly basis and paid her by the hour. At all relevant times, SOL AGAVE has classified Plaintiff and all of the other Aggrieved Employees as a non-exempt employee entitled to the protections of the Labor Code and the Wage Order. Plaintiff's latest rate of pay is approximately \$16.00 per hour.

20. SOL AGAVE has failed to pay Plaintiff and the other Aggrieved Employees for all time worked or subject to its control. SOL AGAVE required Plaintiff and the Aggrieved Employees to perform necessary work duties after clocking out for the end of their shifts and failed to compensate them for this time. For example, on numerous occasions, Plaintiff had to clock out and continue to assist with tables. SOL AGAVE has failed to compensate Plaintiff and the Aggrieved Employees for this work performed off-the-clock. Furthermore, to the extent Plaintiff and the Aggrieved Employees have worked through their meal periods and those meal periods were interrupted, they were not compensated for that time, which would be akin to a minimum wage violation.

21. Due to the above "off the clock" violations, SOL AGAVE has failed to pay Plaintiff and the Aggrieved Employees properly-calculated overtime wages. Plaintiff's and the Aggrieved Employees' actual work hours, which included the "off the clock" work as described above, entitled them to overtime, however, it was not company policy to keep

1 accurate track of all hours worked and to pay employees, like Plaintiff, the accurate amount of
2 overtime, especially since the “off the clock” work was not factored into the equation.
3 Furthermore, any incentive payments and/or bonus payments were not factored into the
4 employees’ regular rate of pay for purposes of deciphering the correct overtime rate of pay. In
5 addition, any bonus and/or incentive payments were not factored into the correct meal and rest
6 break premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

7 22. In addition, Plaintiff and the Aggrieved Employees were not given accurate tips
8 to which they were entitled in violation of California Labor Code Section 351 and 353.

9 23. SOL AGAVE has failed to provide all compliant meal periods and authorize
10 and permit all compliant rest periods to which Plaintiff and the other Aggrieved Employees
11 were entitled. Plaintiff is entitled to take off-duty, uninterrupted 30-minute meal periods
12 before the fifth hour of work and to take uninterrupted 10-minute rest periods for every four
13 hours or major fraction thereof worked. Due to the press of business, Plaintiff and the other
14 Aggrieved Employees would not be able to take timely, uninterrupted meal periods before the
15 5th hour worked. When Plaintiff and the other Aggrieved Employees tried to take a meal
16 period, SOL AGAVE management or the other staff would interrupt them with requests for
17 assistance, instructions, or they would have to tend to customers. In fact, throughout her
18 employment tenure at the San Clemente location, Plaintiff rarely took her meal breaks or 10-
19 minute rest breaks due to the work load/ press of business and because there was no “breaker”
20 in place to relieve Plaintiff so that she can take her timely, uninterrupted statutory breaks. At
21 the San Juan Capistrano location, when Plaintiff was able to take her meal periods, they were
22 often late. Compliant meal and rest breaks were definitively not part of SOL AGAVE’s
23 culture, especially in a fast-paced restaurant environment. On information and belief, SOL
24 AGAVE did not provide premium wages to Plaintiff for these meal and rest break violations;
25 if SOL AGAVE did provide premium wages, they were not paid at the correct rate, as
26 explained above.

27 24. SOL AGAVE has failed to reimburse Plaintiff and the other Aggrieved
28 Employees for the business expenses they incurred in direct consequence of the discharge of

1 their duties. During her employment, SOL AGAVE required Plaintiff and the other Aggrieved
2 Employees to use their own personal cell phones and download an app to receive their weekly
3 schedule, messages regarding changes in schedule, information about specials, and to
4 communicate with management concerning work matters. SOL AGAVE also required
5 Plaintiff and the other employees to pay for additional aprons. SOL AGAVE did not reimburse
6 Plaintiff and the other Aggrieved Employees for these uniform and mobile phone expenses.
7 Accordingly, SOL AGAVE was in violation of California Labor Code sections 2800 and
8 2802.

9 25. SOL AGAVE has failed to pay Plaintiff and the other Aggrieved Employees
10 all wages due to them within any time period specified by California Labor Code section 204,
11 including the minimum wages and overtime as described above as well as meal/rest break
12 premiums

13 26. SOL AGAVE has not provided Plaintiff and the other Aggrieved Employees
14 accurate, itemized wage statements. Wage statements must include all hours worked, overtime
15 hours worked, all applicable hourly rates, the correct legal name and correct address of
16 employer entity, gross wages earned, all deductions, net wages earned, reimbursement for
17 business expenses, the correct start and end of the applicable pay period, the employee ID
18 numbers or social security numbers, among other items. Labor Code § 226(a)(2). SOL
19 AGAVE issued wage statements that inaccurately reflected total hours worked, gross and net
20 wages earned, and the number of hours worked at each hourly rate because of SOL AGAVE's
21 failure to properly pay wages as explained herein. Labor Code §§ 226(a)(1), (2), (5), (9).

22 27. SOL AGAVE has also violated Labor Code section 558 and engaged in
23 business practices which violate Business and Professions Code Section 17200.

24 28. Moreover, Plaintiff would have individual causes of action against SOL
25 AGAVE for violations under the Fair Employment and Housing Act (FEHA) for sexual
26 harassment, failure to prevent sexual harassment in violation of the FEHA, retaliation in
27 violation of the FEHA, and wrongful constructive discharge in violation of the FEHA and
28 public policy. During her employment tenure at the San Clemente location, Plaintiff was

1 subjected to sexual harassment by an employee, Daniel (last name unknown), who would
2 make inappropriate comments and stare at Plaintiff especially when she would bend over to
3 get something. Plaintiff notified the HR representative, Jessica (last name unknown) about
4 Daniel's sexually harassing conduct to no avail. SOL AGAVE did not take any corrective
5 action. In fact, SOL AGAVE retaliated against Plaintiff for her complaints and reduced her
6 work schedule, ultimately to only working one day per week. SOL AGAVE's lack of
7 investigation and failure to prevent harassment and her reduced work schedule caused Plaintiff
8 a great deal of anxiety and stress and made it difficult for Plaintiff to continue working at the
9 San Clemente location. Consequently, Plaintiff was forced to quit her job at the San Clemente
10 location on or around June 1, 2024.

11 29. Plaintiff would also have individual claims against SOL AGAVE for retaliation
12 in violation of Labor Code sections 98.6 and 1102.5. During her employment at the San
13 Clemente location, SOL AGAVE retaliated against Plaintiff and reduced Plaintiff's work
14 hours after Plaintiff complained about the sexual harassment that she was experiencing at the
15 workplace. During her employment at the San Juan Capistrano location, Plaintiff sent notice to
16 the LWDA regarding the labor code violations Defendants were committing against her and
17 others. Plaintiff also complained to management, including to LOPEZ, about not
18 implementing the tip pooling/tip sharing policy to all of the servers across the board. Plaintiff
19 also encouraged her co-worker to report the sexual harassment she was experiencing at the
20 workplace (which was caught on surveillance). SOL AGAVE retaliated against Plaintiff for
21 her complaints and reduced Plaintiff's work schedule at the San Juan Capistrano location from
22 4 to 5 days per week to 3 days per week. It is important to note that other employees have seen
23 an increase in their work hours, up to 6 days a week and SOL AGAVE has hired new
24 employees who are working more hours than Plaintiff. As such, any justification for reducing
25 Plaintiff's work hours is pretext, as Defendants had the required retaliatory animus.

26 30. Pursuant to California Government Code § 12960, Plaintiff has exhausted her
27 administrative remedies. Plaintiff filed a complaint with the State of California Civil Rights
28 Department ("CRD") (previously "DFEH") alleging claims in this complaint. On the same

1 day, the CRD issued a notice of right-to-sue to Plaintiff against the named Defendants.

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

4 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

5 **(By Plaintiff against all Defendants)**

6 31. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

7 32. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
8 entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and
9 1198, and the Wage Order.

10 33. Section 2(K) of the Wage Order defines “hours worked” as “the time during
11 which an employee is subject to the control of an employer, and includes all the time the
12 employee is suffered or permitted to work, whether or not required to do so.”

13 34. Section 3 of the Wage Order states:

14 (A) Daily Overtime - General Provisions

15 (1) The following overtime provisions are applicable to
16 employees 18 years of age or over and to employees 16 or
17 17 years of age who are not required by law to attend
18 school and are not otherwise prohibited by law from
19 engaging in the subject work. Such employees shall not
20 be employed more than eight (8) hours in any workday or
21 more than 40 hours in any workweek unless the employee
22 receives one and one-half (1 ½) times such employee’s
23 regular rate of pay for all hours worked over 40 hours in
24 the workweek. Eight (8) hours of labor constitutes a day’s
25 work. Employment beyond eight (8) hours in any
26 workday or more than six (6) days in any workweek is
27 permissible provided the employee is compensated for
28 such overtime at not less than:

(a) One and one-half (1 ½) times the employee’s
regular rate of pay for all hours worked in excess
of eight (8) hours up to and including 12 hours in
any workday, and for the first eight (8) hours
worked on the seventh (7th) consecutive day of
work in a workweek.

(b) Double the employee’s regular rate of pay for

all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

35. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

36. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

37. California Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

38. California Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

39. California Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

40. In conjunction, these provisions of the California Labor Code require

1 employers to pay non-exempt employees no less than their agreed-upon or statutorily
2 mandated wage rates for all hours worked, including unrecorded hours when the employer
3 knew or reasonably should have known that employees were working during those hours. (*See*
4 *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

5 41. Defendants required Plaintiff to work in excess of eight (8) hours in one
6 workday and forty (40) hours in one workweek without compensating her for such time
7 worked at the premium rates required by California law.

8 42. As described more fully above, Defendants failed to pay all minimum, regular,
9 overtime, and double time wages to Plaintiff because Defendants paid wages based on
10 rounded times, did not pay for off-the-clock work, and failed to pay overtime and double time
11 wages based on correct regular rates of pay.

12 43. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
13 an amount, subject to proof, to the extent that she was not paid the full amount of wages
14 earned during each pay period during the applicable limitations period, including minimum,
15 overtime, and double-time wages.

16 44. As a result of Defendants' conduct, Plaintiff seeks damages and/or restitution
17 for unpaid wages which Defendants failed to pay her at the rates set forth herein, interest
18 thereon, and costs of suit and reasonable attorney's fees pursuant to California Labor Code §§
19 1194.

20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO PROVIDE REST BREAKS**

22 **(Lab. Code §§ 226.7 and 1198)**

23 **(By Plaintiff against all Defendants)**

24 45. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 46. At all relevant times during the applicable limitations period, Plaintiff was a
26 non-exempt employee of Defendants and entitled to the benefits and protections of California
27 Labor Code §§ 226.7, 1198, and the Wage Order.

28 47. Labor Code § 1198 states,

1 “The maximum hours of work and the standard conditions of labor
2 fixed by the commission shall be the maximum hours of work and the
3 standard conditions of labor for employees. The employment of any
4 employee for longer hours than those fixed by the order or under
5 conditions of labor prohibited by the order is unlawful.”

6 48. In relevant part, Section 12 of the Wage Order states:

7 Rest Periods:

8 (A) Every employer shall authorize and permit all employees
9 to take rest periods, which insofar as practicable shall be in the
10 middle of each work period. The authorized rest period time
11 shall be based on the total hours worked daily at the rate often
12 (10) minutes net rest time per four (4) hours or major fraction
13 thereof. However, a rest period need not be authorized for
14 employees whose total daily work time is less than three and
15 one-half (3 1/2) hours. Authorized rest period time shall be
16 counted as hours worked for which there shall be no deduction
17 from wages.

18 (B) If an employer fails to provide an employee a rest period
19 in accordance with the applicable provisions of this Order, the
20 employer shall pay the employee one (1) hour of pay at the
21 employee’s regular rate of compensation for each work day that
22 the rest period is not provided.

23 49. In addition, Labor Code Section 226.7 states

24 (b) An employer shall not require an employee to work during a
25 meal or rest or recovery period mandated pursuant to an applicable
26 statute, or applicable regulation, standard, or order of the Industrial
27 Welfare Commission, the Occupational Safety and Health Standards
28 Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or
recovery period in accordance with a state law, including, but not
limited to, an applicable statute or applicable regulation, standard, or
order of the Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of Occupational Safety and
Health, the employer shall pay the employee one additional hour of pay
at the employee's regular rate of compensation for each workday that
the meal or rest or recovery period is not provided.

50. Pursuant to the Wage Order, Plaintiff was entitled to be provided with net rest
breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

51. Defendants failed to authorize and permit Plaintiff to take compliant rest
periods and failed to pay one hour of correctly-calculated premium pay for each day such a

1 rest period was not provided.

2 52. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
3 an amount subject to proof to the extent she was not paid additional wages owed for all rest
4 breaks not provided to her.

5 53. By reason of the above, Plaintiff is entitled to premium wages for workdays in
6 which one or more rest breaks were not provided to her pursuant to California Labor Code §
7 226.7, plus interest and costs.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PROVIDE MEAL PERIODS**

10 **(Lab. Code §§ 226.7, 512, and 1198)**

11 **(By Plaintiff against all Defendants)**

12 54. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

13 55. At all relevant times during the applicable limitations period, Plaintiff was a
14 non-exempt employee of Defendants and entitled to the benefits and protections of California
15 Code §§ 226.7, 512 and 1198, and the Wage Order.

16 56. Labor Code § 1198 states,

17 "The maximum hours of work and the standard conditions of labor
18 fixed by the commission shall be the maximum hours of work and the
19 standard conditions of labor for employees. The employment of any
20 employee for longer hours than those fixed by the order or under
21 conditions of labor prohibited by the order is unlawful."

22 57. In relevant part, Labor Code Section 512 states

23 "An employer may not employ an employee for a work period of more
24 than five hours per day without providing the employee with a meal
25 period of not less than 30 minutes, except that if the total work period
26 per day of the employee is no more than six hours, the meal period may
27 be waived by mutual consent of both the employer and employee. An
28 employer may not employ an employee for a work period of more than
10 hours per day without providing the employee with a second meal
period of not less than 30 minutes, except that if the total hours worked
is no more than 12 hours, the second meal period may be waived by
mutual consent of the employer and the employee only if the first meal
period was not waived."

58. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee...
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

59. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff was entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day he worked five or more hours. Pursuant to California Labor Code § 512, Plaintiff was also entitled to a second 30-minute meal period when he worked more than ten (10) hours in a workday.

60. During the relevant time period, Defendants failed to provide Plaintiff with compliant meal periods before the fifth hour of work and failed to pay one hour of correctly-calculated premium pay for each day such a meal period was not provided.

61. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount subject to proof to the extent she was not paid additional wages owed for all meal periods not provided to her.

62. By reason of the above, Plaintiff is entitled to premium wages for workdays in which one or more meal periods were not provided to her pursuant to California Labor Code § 226.7, plus interest and costs.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

(By Plaintiff against all Defendants)

63. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

64. At all relevant times, Plaintiff was a non-exempt employee of Defendants and

1 entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802, and the
2 Wage Order.

3 65. In pertinent part, California Labor Code § 2802(a) states:
4 An employer shall indemnify his or her employee[s] for all
5 necessary expenditures incurred by the employee in direct
6 consequence of the discharge of his or her duties.

6 66. California Labor Code § 1198 prohibits employers from employing their
7 employees under conditions prohibited by the Wage Order.

8 67. Defendants failed to reimburse Plaintiff for business expenses she incurred in
9 direct consequence of the discharge of her duties. As described above, Defendants required
10 Plaintiff and the other Aggrieved Employees to purchase uniform items and use their own
11 personal mobile phones in effectuating their job duties. However, Defendants did not reimburse
12 Plaintiff for these business expenses. Accordingly, Defendants were in violation of California
13 Labor Code sections 2800 and 2802.

14 68. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
15 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
16 Defendants' failure to indemnify Plaintiff for the reasonable expenses she incurred in the course
17 of performing her duties.

18 69. By reason of the above, Plaintiff is entitled to reimbursement for all necessary
19 expenditures and losses and interest due and owing to within three years (3) of the date of the
20 filing of the Complaint until the date of entry of judgment pursuant to California Labor Code §
21 2802(b). Further, Plaintiff seeks reasonable attorney's fees pursuant to Labor Code § 2802(c).

22 **FIFTH CAUSE OF ACTION**

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

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

25 **(By Plaintiff against all Defendants)**

26 70. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

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

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

73. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to the 1-year period immediately preceding the date this lawsuit was filed.

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

75. 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 according to proof at trial.

SIXTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201-203)

(By Plaintiff against all Defendants)

76. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

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

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

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

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

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

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

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

21 **SEVENTH CAUSE OF ACTION**

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

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

24 **(By Plaintiff against all Defendants)**

25 84. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

28 86. At all times relevant during the liability period, Defendants failed to pay

1 Plaintiff the full amount of all owed wages when due as required by California Labor Code
2 Section 204.

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

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

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

15 **EIGHTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE PERSONNEL RECORDS**

17 **(By Plaintiff against all Defendants)**

18 90. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

19 91. Labor Code section 1198.5 dictates "every current and former employee, or his
20 or her representative, has the right to inspect and receive a copy of the personnel records that
21 the employer maintains relating to the employee's performance or to any grievance concerning
22 the employee."

23 92. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the
24 employer shall make the contents of those personnel records available for inspection to the
25 current or former employee, or his or her representative, at reasonable intervals and at
26 reasonable times..." On information and belief, Defendants intentionally failed to provide
27 Plaintiff with personnel records when requested by Plaintiff via letter on July 13, 2024, as
28 required by law. Plaintiff requested her personnel records in accordance with California Labor

1 Code section 1198.5(k) on July 13, 2024 via certified U.S. mail.

2 93. Defendants failed to provide Plaintiff with an opportunity to inspect or copy her
3 records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has
4 suffered and continues to suffer substantial losses related to Defendants' failure to provide
5 personnel records.

6 94. Plaintiff seeks all available remedies for Defendants' violations including, but
7 not limited to penalties, and costs to the extent permitted by law and according to proof at trial.
8 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the
9 amount of \$750.00, along with costs and attorney's fees.

10 **NINTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE PAY RECORDS**

12 **(By Plaintiff against all Defendants except TASTE MEXICO HOSPITALITY, INC.)**

13 95. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 96. Labor Code section 226 sub-section (b) dictates "an employer...shall afford
15 current and former employees the right to inspect or copy records pertaining to their
16 employment, upon reasonable request to the employer..."

17 97. Moreover, pursuant to sub-section (c) of Labor Code section 226, "an employer
18 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
19 pertaining to a current or former employee shall comply with the request as soon as practicable,
20 but no later than 21 calendar days from the date of the request." On information and belief,
21 Defendants intentionally failed to provide Plaintiff with pay records when requested by
22 Plaintiff via letter, on July 13, 2024, and as required by law. Plaintiff requested her pay records
23 in accordance with California Labor Code section 226 on July 13, 2024, via U.S. certified mail.
24 Defendants failed to provide Plaintiff with an opportunity to inspect or copy her pay records
25 within 21 days.

26 98. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered
27 and continues to suffer substantial losses related to Defendants' failure to provide pay records.
28 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the

1 amount of \$750.00, along with costs and attorney's fees.

2 99. Plaintiff seeks all available remedies for Defendants' violations including, but
3 not limited to, penalties and costs to the extent permitted by law and according to proof at trial.

4 **TENTH CAUSE OF ACTION**

5 **CIVIL PENALTIES**

6 **(Lab. Code §§ 2698, *et seq.*)**

7 **(By Plaintiff against all Defendants)**

8 100. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

9 101. Plaintiff is an Aggrieved Employee under the Private Attorneys General Act of
10 2004 ("PAGA") because she was employed by Defendants during the applicable statutory
11 period and suffered one or more of the violations of the Labor Code set forth in this Complaint.
12 Plaintiff seeks to recover on her own behalf, on behalf of the State of California, and on behalf
13 of all current and former Aggrieved Employees of Defendants, the civil penalties provided by
14 PAGA, plus reasonable attorney's fees and costs.

15 102. During the applicable time period, Defendants violated California Labor Code
16 §§ 98.6, 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1102.5, 1174, 1194, 1197, 1198,
17 and 2802.

18 103. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
19 behalf of themselves and other current or former employees, to bring a civil action to recover
20 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

21 104. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the
22 Aggrieved Employees are entitled to recover civil penalties for each of the Defendants'
23 violations of California Labor Code §§ 98.6, 201, 202, 203, 204, 226, 226.7, 510, 512, 558,
24 558.1, 1102.5, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the
25 following amounts:

26 A. For violations of California Labor Code § 204, one hundred dollars
27 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
28 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts

1 established by California Labor Code § 210).

2 B. For violations of California Labor Code § 226(a), two hundred fifty
3 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
4 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
5 established by California Labor Code § 226.3).

6 C. For violations of California Labor Code §§ 510, 512, and 558.1, fifty
7 dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars
8 (\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
9 established by California Labor Code § 558).

10 D. For violations of California Labor Code § 1174, five hundred dollars
11 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
12 California Labor Code § 1174.5).

13 E. For violations of California Labor Code § 1197, one hundred dollars
14 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
15 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation,
16 per pay period (regardless of whether the initial violations were intentionally committed)
17 (penalty amounts established by California Labor Code § 1197.1).

18 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 351,
19 353, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per
20 pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved
21 Employee per pay period for each subsequent violation (penalty amounts established by
22 California Labor Code § 2699(f)(2)).

23 G. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff individually
24 is entitled to recover civil penalties for each of the Defendants' violations of California Labor
25 Code §§ 98.6 and 1102.5 during the applicable limitations period in the following amounts:

- 26 1) For violations of California Labor Code § 98.6, an amount not to exceed
27 \$10,000 for each violation by Defendants of California Labor Code §
28 98.6(a), as well as attorney's fees and costs under Labor Code § 2699(g)

(penalty amounts established by California Labor Code § 98.6(b)(3)).

2) For violations of California Labor Code § 1102.5, an amount not to exceed \$10,000 for each violation by Defendants of California Labor Code § 1102.5(c), as well as attorney's fees and costs under Labor Code § 2699(g) (penalty amounts established by California Labor Code § 1102.5(f)).

105. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated July 13, 2024, Plaintiff filed written notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail to 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. Plaintiff accompanied her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing her that it does not intend to investigate these allegations.

106. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties and reasonable attorney’s fees and costs in connection with their claims for civil penalties.

ELEVENTH CAUSE OF ACTION

SEXUAL HARASSMENT IN VIOLATION OF THE FEHA

(Gov. Code § 12940(j)(1))

(By Plaintiff against all Defendants except GALINDO and LOPEZ)

107. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully alleged herein.

108. Plaintiff was and is at all times relevant hereto an employee covered by Government Code section 12926(c).

109. Defendants were at all times relevant hereto employers within the meaning of Government Code section 12926(d) and, as such, required by FEHA to take all reasonable steps to prevent harassment and discrimination from occurring and to ensure a workplace free

1 from sexual harassment.

2 110. "Daniel" was at all times relevant hereto an employee of SOL AGAVE. The
3 actions of "Daniel" towards Plaintiff, while in the course and scope of his employment with
4 SOL AGAVE as described herein, created a hostile sexual environment which materially
5 altered Plaintiff's working conditions and which constitutes sexual harassment in violation of
6 California Government Code section 12940(j)(1).

7 111. Under the FEHA, employers must take all reasonable steps to prevent
8 discrimination and harassment from occurring. Cal. Gov. Code §§ 12940(j)(l) and (k).
9 Employers must help ensure a workplace free from sexual harassment by posting in the
10 workplace a poster made available by the Department of Fair Employment and Housing. *Id.*

11 112. If an employer has failed to take such preventative measures, that employer can
12 be held liable for the harassment. Cal. Code. Regs., tit. 2, §7287.6(b)(3).

13 113. As described above, "Daniel" sexually harassed Plaintiff, repeatedly during her
14 employment by making sexually charged comments to Plaintiff.

15 114. The acts taken toward Plaintiff were carried out by and/or ratified by
16 Defendants and/or managing agent employees of Defendants, acting in a despicable,
17 oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to
18 injure and damage Plaintiff, thereby justifying an award to her of punitive damages in a sum
19 appropriate to punish and make an example of Defendants.

20 115. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
21 and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and
22 emotional distress. Plaintiff is informed and believes and thereon alleges that she will continue
23 to experience said emotional suffering for a period in the future she cannot presently ascertain,
24 all in an amount subject to proof at the time of trial.

25 116. The FEHA provides for an award of reasonable attorneys' fees and costs
26 incurred by a prevailing Plaintiff in an action brought under its provisions. Plaintiff has
27 employed and will continue to employ attorneys for the initiation and prosecution of this
28 action. Plaintiff has incurred and will continue to incur attorneys' fees and costs herein.

1 Plaintiff is entitled to an award of attorneys' fees and costs.

2 **TWELFTH CAUSE OF ACTION**

3 **RETALIATION IN VIOLATION OF THE FEHA**

4 **(Gov. Code, § 12940(h))**

5 **(By Plaintiff against all Defendants except GALINDO and LOPEZ)**

6 117. Plaintiff incorporates by reference each and every paragraph of this Complaint
7 as if fully alleged herein.

8 118. The California Fair Employment and Housing Act (FEHA), Government Code
9 section 12900 et seq., makes it an unlawful employment practice for an employer to discharge,
10 expel, or otherwise discriminate against any person because the person has opposed any
11 practices forbidden by it. (*Id.* § 12940(h).)

12 119. As alleged above, Plaintiff was retaliated against and eventually resigned from
13 her employment due to the hostile working conditions SOL AGAVE subjected her to after
14 reporting and complaining about Daniel's consistent sexually harassing behavior at the
15 workplace. Defendants retaliated against Plaintiff and reduced her work schedule to one day
16 per week . Plaintiff had no other choice but to resign from her employment.

17 120. The acts taken toward Plaintiff were carried out by and/or ratified by
18 Defendants and/or managing agent employees of Defendants acting in a despicable,
19 oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to
20 injure and damage Plaintiff, thereby justifying an award to her of punitive damages in a sum
21 appropriate to punish and make an example of Defendants.

22 121. As a proximate result of the wrongful acts of Defendants, Plaintiff has been
23 harmed in that Plaintiff has suffered actual, consequential and incidental financial losses,
24 including without limitation, loss of salary and benefits, and the intangible loss of
25 employment-related opportunities and damage to her professional reputation, all in an amount
26 subject to proof at the time of trial. Plaintiff claims such amounts as damages together with
27 prejudgment interest pursuant to Civil Code sections 3287 and/or 3288 and/or any other
28 provision of law providing for prejudgment interest.

122. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and emotional distress. Plaintiff is informed and believes and thereon alleges that she will continue to experience said emotional suffering for a period in the future he cannot presently ascertain, all in an amount subject to proof at the time of trial.

123. The FEHA provides for an award of reasonable attorneys' fees and costs incurred by a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an award of attorneys' fees and costs.

THIRTEENTH CAUSE OF ACTION

FAILURE TO PREVENT, INVESTIGATE, AND REMEDY HARASSMENT AND RETALIATION IN VIOLATION OF THE FEHA

(Gov. Code, §§ 12940(j)(1) & (k))

(By Plaintiff against all Defendants except GALINDO and LOPEZ)

124. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully alleged herein.

125. Plaintiff was and is at all times relevant hereto an employee covered by Government Code § 12926(c).

126. Defendants were at all times relevant hereto employers who employed five or more persons within the meaning of Government Code § 12926(d) and California Government Code §§ 12940, et seq., was in full force and effect and was binding on Defendants.

127. It is unlawful for an employer to not take immediate and appropriate corrective action against harassment of an employee that the employer knows or should have known about. (Gov. Code, § 12940(j)(1).) It is also unlawful for an employer to not take all reasonable steps necessary to prevent discrimination and harassment from occurring. (Id. § 12940(k).) If an employer has failed to take such preventative measures, that employer can be held liable for the harassment. (Cal. Code. Regs., tit. 2, § 7287.6(b)(3).)

1 128. As described above, Defendants subjected Plaintiff to unlawful sexual
2 harassment, and retaliation in violation of Cal. Gov. Code § 12940(j)(1) and (k).

3 129. Plaintiff is informed and believes and thereupon alleges that Defendants knew or
4 reasonably should have known of Daniel's consistent sexual harassment against Plaintiff. In
5 fact, Plaintiff complained about the sexual harassment she was experiencing to both her
6 supervisor and SOL AGAVE's Human Resources department. To Plaintiff's knowledge,
7 Defendants took no meaningful or adequate disciplinary action to address the harassment.

8 130. Plaintiff is informed and believes and thereupon alleges that Defendants failed
9 to provide adequate training to its executives, supervisors, managers, and employees on the
10 laws pertaining to sexual harassment and retaliation. As a result, Defendants failed to take all
11 reasonable steps necessary to prevent or stop the harassment and retaliation from occurring.

12 131. As a proximate result of the wrongful acts of Defendants, Plaintiff has been
13 harmed in that Plaintiff has suffered actual, consequential and incidental financial losses,
14 including without limitation, loss of salary and benefits, and the intangible loss of
15 employment-related opportunities and damage to her professional reputation, all in an amount
16 subject to proof at the time of trial. Plaintiff claims such amounts as damages together with
17 prejudgment interest pursuant to Civil Code Sections 3287 and/or § 3288 and/or any other
18 provision of law providing for prejudgment interest.

19 132. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
20 and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and
21 emotional distress. Plaintiff is informed and believes and thereon alleges that she will continue
22 to experience said emotional suffering for a period in the future she cannot presently ascertain,
23 all in an amount subject to proof at the time of trial.

24 133. The acts taken toward Plaintiff were carried out by and/or ratified by
25 Defendants and/or managing agent employees of Defendants acting in a despicable,
26 oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to
27 injure and damage Plaintiff, thereby justifying an award to her of punitive damages in a sum
28 appropriate to punish and make an example of Defendants.

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

FOURTEENTH CAUSE OF ACTION

RETALIATION

(Lab. Code § 1102.5)

(By Plaintiff against all Defendants)

135. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

136. According to Labor Code section 1102.5, subdivision (b),

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, ... to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance,... if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

137. This statute reflects the broad public policy interest in encouraging workplace whistleblowers to report unlawful acts without fearing retaliation.

138. Defendants were employers for purposes of California law.

139. Plaintiff was an employee of Defendants, performing work on behalf of Defendants.

140. During her employment tenure, Plaintiff complained to management about the sexual harassment she was experiencing at the workplace, not having a uniform tip pooling/sharing policy in place and notifying the LWDA of SOL AGAVE's labor code violations. Plaintiff also encouraged one of her co-workers to report the sexual harassment she was experiencing at the workplace. Defendants retaliated against Plaintiff for her complaints and reduced her work hours.

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

6 142. Plaintiff requests all available relief under Labor Code § 1102.5 including
7 damages and the imposition of civil penalties of \$10,000 for each violation as well as
8 attorney's fees.

9 143. The foregoing conduct engaged in by Defendants and each of their directors,
10 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
11 ratified, and carried on with a conscious and willful disregard of their workers' right to work
12 in an environment free of retaliation and labor code violations, so as to justify the imposition
13 of punitive damages to punish and set an example of said Defendants.

14 **FIFTEENTH CAUSE OF ACTION**

15 **RETALIATION**

16 **(Lab. Code § 98.6)**

17 **(By Plaintiff against all Defendants)**

18 144. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

19 145. According to Labor Code section 98.6, subdivision (a), a person shall not
20 discharge an employee because the employee has filed a bona fide complaint or claim relating
21 to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written
22 or oral complaint that he or she is owed unpaid wages, or because of the exercise of any right
23 afforded him or her.

24 146. Defendants were employers for purposes of California law.

25 147. Plaintiff was an employee of Defendants, performing work on behalf of
26 Defendants.

27 148. Defendants retaliated against Plaintiff and reduced her work schedule for
28 making oral complaints about not having a uniform tip pooling/tip sharing policy in place and

1 filing written notice with the LWDA regarding SOL AGAVE's labor code violations.

2 149. Pursuant to Labor Code sections 98.6(b), Plaintiff is entitled to reinstatement
3 and reimbursement for lost wages and work benefits in addition to \$10,000 for Defendants'
4 violation.

5 150. The foregoing conduct engaged in by Defendants and each of their directors,
6 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
7 ratified, and carried on with a conscious and willful disregard of their workers' right to work
8 in an environment free of retaliation and labor code violations, so as to justify the imposition
9 of punitive damages to punish and set an example of said Defendants.

10 **SIXTEENTH CAUSE OF ACTION**

11 **WRONGFUL CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY**

12 **(By Plaintiff against all Defendants except GALINDO and LOPEZ)**

13 151. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 152. At all times during her employment with SOL AGAVE, Plaintiff performed her
15 duties with the utmost diligence and competence.

16 153. Defendants intentionally created an illegal work environment and atmosphere
17 by harassing Plaintiff based on her sex/gender and violating numerous labor code sections as
18 outlined in this Complaint, thereby not giving Plaintiff an opportunity to work in an
19 environment free of sexual harassment, retaliation, and labor code violations. This situation
20 became intolerable for Plaintiff and Plaintiff had no alternative but to quit her job at the San
21 Clemente location.

22 154. The employment of Plaintiff was constructively wrongfully terminated on or
23 around June 1, 2024 in violation of the fundamental public policy of the State of California
24 with respect to sexually harassing an employee on account of her sex, retaliating against an
25 employee for reporting sexual harassment at the workplace, and violating numerous labor code
26 sections, including not compensating Plaintiff for all hours worked, not compensating Plaintiff
27 the minimum wage, not compensating Plaintiff overtime wages, not reimbursing Plaintiff for
28 business expenses incurred in the course of performing her duties, not providing Plaintiff

1 accurate, itemized wage statements, and not paying Plaintiff wages owed every pay period and
2 upon the separation of employment, among others. Moreover, Plaintiff was forced to hire an
3 attorney to assist her to end these illegal activities. Said conduct violated statutory and
4 constitutional expressions of public policy including, FEHA, the California Labor Code and
5 the California Constitution, Article 1 section 8.

6 155. As set forth above, said actions by Defendants were wrongful and in violation
7 of the fundamental principles of the public policy of the State of California as reflected in its
8 laws, objectives and policies. Said statutes and constitutional expressions of public policy
9 include, but are not limited to, the California Labor Code. These laws inure to the benefit of
10 the public at large, and not just the private interests of the employers and employees whom
11 they govern or protect.

12 156. As a direct and proximate result of the aforementioned acts and omissions of
13 Defendants, Plaintiff suffered general and compensatory damages, including but not limited
14 to, loss of income (past and future), loss of employment benefits (past and future), general and
15 compensatory damages (past and future), mental pain and anguish and emotional distress (past
16 and future), and will continue to suffer in the future, in an amount to be proved at trial.

17 157. The foregoing conduct engaged in by Defendants and each of their directors,
18 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
19 ratified, and carried on with a conscious and willful disregard of their workers' right to work
20 in an environment free of retaliation, so as to justify the imposition of punitive damages to
21 punish and set an example of said Defendants.

22 **SEVENTEENTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION**

24 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

25 **(By Plaintiff against all Defendants except GALINDO and LOPEZ)**

26 158. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

27 159. At all relevant times during the applicable limitations period, Plaintiff has been
28 an employee of Defendants and entitled to the benefits and protections of the Business and

1 Professions Code §§ 17200, *et seq.*

2 160. The unlawful conduct of Defendants alleged herein amounts to and constitutes
3 unfair competition within the meaning of California Business & Professions Code §§ 17200,
4 *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have
5 unfairly gained a competitive advantage over other comparable companies doing business in
6 California that comply with their legal obligations to, among other things, refrain from
7 harassment and retaliation and prevent harassment and retaliation, pay their employees
8 premium wages for workdays in which they did not provide employees with one or more meal
9 and rest periods, indemnify them for all business expenses incurred during the course of
10 performing their duties, and pay them all wages earned.

11 161. As a result of Defendants' unfair competition as alleged herein, Plaintiff has
12 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiff for all
13 hours worked, failed to provide her with premium wages for missed meal and rest periods, and
14 failed to reimburse Plaintiff for all expenses she incurred in the course of performing her
15 duties.

16 162. Pursuant to California Business & Professions Code § 17203, Plaintiff is
17 entitled to restitution of all monies rightfully belonging to her that Defendants did not pay her
18 or otherwise retained by means of their unlawful and unfair business practices.

19 163. Plaintiff is entitled to reasonable attorneys' fees in connection with her unfair
20 competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial
21 benefit doctrine and/or the common fund doctrine.

22 164. Accordingly, with respect to this cause of action, Plaintiff prays for the herein
23 stated relief, and an award of all reasonable costs and attorneys' fees, including interest
24 thereon, as permitted by law, all in amounts subject to proof.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- 27 1. For compensatory damages including lost past and future wages, commissions, and all
28 other sums of money, including employment benefits, together with interest on said

- 1 amounts, and any other economic injury to Plaintiff, according to proof;
- 2 2. For general damages according to proof;
- 3 3. For special and consequential damages to the extent allowed by law;
- 4 4. For punitive and exemplary damages against corporate Defendants in an amount subject
- 5 to proof;
- 6 5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
- 7 subject to proof at trial;
- 8 6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
- 9 7. proof at trial;
- 10 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
- 11 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 12 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
- 13 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 14 10. For maximum civil penalties available under the Labor Code and applicable Wage
- 15 Order against Defendants as described more particularly in the Complaint;
- 16 11. For restitution and disgorgement for all unfair business practices by corporate
- 17 Defendants against Plaintiff in an amount according to proof;
- 18 12. For an order enjoining corporate Defendants from further unfair and unlawful business
- 19 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 20 13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor
- 21 Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated
- 22 damages, damages, penalties, and waiting time penalties according to proof to the
- 23 extent permitted by law;
- 24 14. For the imposition of civil penalties and/or statutory penalties;
- 25 15. For all interest as allowed by law;
- 26 16. For all costs and disbursements incurred in this suit;
- 27 17. Reasonable attorney's fees where available by law, including but not limited to,
- 28 pursuant to, Code of Civil Procedure section 1021.5, Labor Code section 1102.5(j),

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and/or other applicable laws; and

18. For such other and further relief as this Court may deem proper.

DEMAND FOR JURY TRIAL

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

Dated: November 10, 2024

MM LAW, APC

By Maralle Messrelian
Maralle Messrelian, Esq.
Attorney for Plaintiff,
ERIKA ESPINA