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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SANTA CLARA**

13 AIDEE ALVEAR,

14 *Plaintiff,*

15 vs.

16 SPORTSPLEX FOOD & BEVERAGE
17 LLC; THE PLEX, LLC; and DOES 1 to 25,
18 inclusive,

19 *Defendants.*

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Clerk of Court
Superior Court of CA,
County of Santa Clara
24CV452029
Reviewed By: L. Ayala

) CASE NO.: 24CV452029
)

) **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 GIVE REST BREAKS;**

) **8) FAILURE TO GIVE MEAL BREAKS;**

) **9) FAILURE TO REIMBURSE**
) **BUSINESS EXPENSES;**

) **10) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**

) **11) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200.**

) **DEMAND FOR JURY TRIAL**
)

COMES NOW Plaintiff, AIDEE ALVEAR (hereinafter “Plaintiff”), and complains and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Santa Clara in this judicial district because Defendants SPORTSPLEX FOOD & BEVERAGE LLC; THE PLEX, LLC; and DOES 1 to 25, inclusive, (collectively “Defendants” or “SPORTSPLEX”) do business in the County of Santa Clara, and because Defendants’ obligations and liabilities arise therein. Moreover, Plaintiff’s damages sought herein exceed \$35,000.

2. Plaintiff is a female resident of the State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant SPORTSPLEX FOOD & BEVERAGE LLC was and is a California limited liability company which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant THE PLEX, LLC was and is a California limited liability company which employed Plaintiff.

5. The “aggrieved employees” are all current and former non-exempt or hourly paid employees who worked for Defendants at any of their California 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”).

6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and under the authority of their agency, employment, or

representative capacity, with the consent of his/her codefendants.

JOINT LIABILITY

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

GENERAL ALLEGATIONS

8. Plaintiff started working for SPORTSPLEX on or around November 13, 2023 as a cook. Plaintiff was and is classified as an hourly, non-exempt employee. Plaintiff's last rate of pay was \$20.00 per hour. Plaintiff is still currently employed at SPORTSPLEX.

9. It is Plaintiff's position that SPORTSPLEX has violated numerous Labor Code Sections against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for SPORTSPLEX at their various locations/restaurants in the State of California during the relevant PAGA period.

10. SPORTSPLEX violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for "off the clock" work. This is so because SPORTSPLEX had a company policy wherein they would disproportionately round

1 down the number of hours worked for Plaintiff and others, resulting in “time shaving” and
2 further resulting in aggrieved employees not being paid for all hours worked. Moreover,
3 SPORTSPLEX failed to provide its employees, including Plaintiff and others, with proper and
4 accurate reporting time pay.

5 11. Due to the above “off the clock” violations, SPORTSPLEX also violated Labor Code §
6 510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation,
7 even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per
8 week throughout their employment. Plaintiff’s and other aggrieved employees’ actual work
9 hours entitled them to overtime compensation, however, SPORTSPLEX did not compensate its
10 hourly, non-exempt employees with the correct amount of overtime due to the “off the clock”
11 work and time shaving as described above. Furthermore, SPORTSPLEX failed to include
12 bonuses/incentive payments/shift differentials in calculating Plaintiff’s and other employees’
13 regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the
14 incentive, shift differential, and bonus payments were also not factored into employees’ regular
15 rate for purposes of receiving meal and rest break premiums per the *Ferra v. Loews* case

16 12. SPORTSPLEX also violated Labor Code § 226.7 and the appropriate Industrial Welfare
17 Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated
18 aggrieved employees with 10-minute rest periods for every four hours of work, or majority
19 portion thereof, throughout their employment. SPORTSPLEX did not completely relieve
20 Plaintiff and others of all duty during said rest periods. SPORTSPLEX did not pay to Plaintiff
21 and others one additional hour of pay at Plaintiff’s regular rate of compensation for each
22 workday that one or more statutory rest periods was not provided. Plaintiff has not taken a single
23 rest period during her employment tenure as rest breaks are not enforced and are not part of the
24 company policy.

25 13. Moreover, it would not have been possible for employees such as Plaintiff to
26 consistently take timely and UNINTERRUPTED rest breaks due to being understaffed and due
27 to a heavy workload, especially in the fast-paced restaurant environment and especially since
28 Plaintiff was a cook and had to consistently make pizzas, prepare vegetables, cut and weigh the
meat, make salads, cover the grill area, sweep and mop the area, take the trash out, etc. As such,

1 the culture as well as the policies and procedures of SPORTSPLEX did not lend itself to the
2 employees receiving consistent statutory rest breaks wherein they were relieved of all work
3 duties. The environment at SPORTSPLEX was not conducive to receiving statutory rest breaks
4 under California law and timely, statutory rest breaks were not authorized or enforced.

5 14. SPORTSPLEX violated Labor Code §§ 512 and 226.7 and the appropriate Industrial
6 Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt
7 employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods
8 for every five (5) hours of work throughout their employment. SPORTSPLEX did not
9 completely relieve Plaintiff and other employees of all duty during said meal periods.
10 SPORTSPLEX did not pay to Plaintiff and its hourly, non-exempt employees one additional
11 hour of pay at their regular rate of compensation for each workday that one or more statutory
12 meal periods was not provided. Like the rest breaks, receiving a consistent thirty-minute
13 uninterrupted and timely meal break was not part of the company culture and was not enforced
14 by SPORTSPLEX. Consequently, it was the normal practice and custom of SPORTSPLEX not
15 to authorize, permit, and enforce timely statutory meal periods.

16 15. If SPORTSPLEX had Plaintiff sign a meal period waiver, it would not be valid and
17 enforceable since Plaintiff and others generally worked more than a 5-hour shift. Furthermore,
18 under California law, employees must make an affirmative decision every day regarding
19 whether to waive their meal periods. August 13, 2003 DLSE Opinion Letter (“The decision to
20 forego a meal period may not, therefore, be based on a specific requirement of the employer or
21 on a policy or practice which could reasonably be perceived to be a condition of employment.
22 Therefore, blanket “waivers” of meal periods ...whether written or oral, will not be considered
23 valid.”). As such, Plaintiff and others did not always receive statutory, timely meal periods
24 during their employment. To the extent that SPORTSPLEX argues that employees receive meal
25 break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty
26 purposes since the PAGA penalties are for the violations themselves, irrespective of whether an
27 employee received the premium payment for a missed, short, or interrupted meal period. In
28 *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, “section 226.7 does not give employers
a lawful choice between providing either meal and rest breaks or an additional hour of pay.”

1 See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original).
2 Thus, the extra hour of pay does not excuse the violation; the employer has still committed a
3 violation even if the remedy for the violation has been paid. See *Wert v. U.S. Bancorp.*, (S.D.
4 Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at
5 SPORTSPLEX was not conducive to receiving consistent, timely, statutory meal breaks under
6 California law. Moreover, any meal or rest break premiums paid were not compensated at the
7 weighted average regular rate, inclusive of bonuses and/or incentive payments as well as
8 overtime compensation.

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

23 17. During the relevant time period, SPORTSPLEX also failed to keep accurate and
24 complete payroll records showing the actual hours worked per day and the wages paid to
25 Plaintiff and others pursuant to California Labor Code sections 1174(d).

26 18. SPORTSPLEX also violated Labor Code § 203 because it willfully failed to pay other
27 similarly situated aggrieved employees earned and due wages upon separation of employment,
28 either immediately upon involuntary termination, or within 72 hours of resignation. These
earned but unpaid wages include compensation for all hours worked, including minimum

wages, overtime compensation, and premium pay for missed meal and rest breaks.

19. During the relevant time period, Plaintiff and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by SPORTSPLEX. These costs include, but are not limited to uniforms, and use of personal cell phones for work purposes in that Plaintiff would utilize her personal cell phone to clock in and out (and was told to primarily use her personal cell phone to clock in and out and not the punching machine). Accordingly, SPORTSPLEX was in violation of California Labor Code sections 2800 and 2802.

20. Additionally, SPORTSPLEX violated Labor Code Section 351 and 353 by taking some of the tips meant for employees such as Plaintiff and also deducting the tips from employees' earned wages. SPORTSPLEX also deducted the credit card fee from employees' tips and did not timely provide the credit card and even cash tips to aggrieved employees. As such, aggrieved employees were not given accurate tips to which they were entitled.

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

FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

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

(Plaintiff against all named defendants and all DOE defendants)

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

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

24. For the three (3) years preceding filing of this action, Defendants failed to compensate

1 Plaintiff for all hours worked.

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

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

8 27. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
9 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled
10 to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable
11 attorney's fees and costs of suit.

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

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY MINIMUM WAGES**

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

18 **(Plaintiff against all named Defendants and all DOE defendants)**

19 29. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

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

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

32. During her employment, Plaintiff was regularly required as a matter of uniform policy

1 and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid
2 less than the minimum wage rate by Defendants for hours worked in violation of California
3 Labor Code Section 1197 and the applicable California IWC wage order(s).

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PAY OVERTIME**

18 **(California Industrial Welfare Commission Order 5-2001, California Code of
19 Regulations Title 8 Section 11050)**

20 **(Plaintiff against all named Defendants and all DOE defendants)**

21 36. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

22 37. Pursuant to Industrial Welfare Commission Order No. 5-2001, California Code of
23 Regulations, Title 8, Section 11050, for the period of Plaintiff's employment, Defendants were
24 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
25 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
26 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
27 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
28 week.

38. Plaintiff was a non-exempt employee entitled to the protections of the California

1 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations, Title 8,
2 Section 11050.

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

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

6 41. Defendants did not pay Plaintiff premium wages of at least one and one-half times
7 Plaintiff's regular rate of pay for hours worked past eight (8) in a day or two times Plaintiff's
8 regular rate of pay for hours worked past twelve (12) in a day.

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

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

13 44. Defendants know or should know the actual dates of overtime worked, the amount of
14 overtime worked, and the amount of unpaid overtime due.

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

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

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

24 **FOURTH CAUSE OF ACTION**

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

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

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

28 48. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

49. Pursuant to California Labor Code Section 226, every employer must furnish each

1 employee an itemized statement of wages and deductions at the time of payment of wages.

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

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

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

24 **(Plaintiff against all named Defendants and all DOE defendants)**

25 54. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

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

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

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

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

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

12 **SIXTH CAUSE OF ACTION**

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

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

15 **(Plaintiff against all named Defendants and all DOE defendants)**

16 60. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

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

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

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

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

65. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged

1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.
2 Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately preceding
3 the filing of this lawsuit.

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

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

9 **SEVENTH CAUSE OF ACTION**

10 **FAILURE TO GIVE REST BREAKS**

11 **(Plaintiff against all named Defendants and all DOE defendants)**

12 68. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

13 69. In relevant part, Wage Order 5-2001, Section 12 states:

14 Rest Periods:

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

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

22 70. In addition, Labor Code Section 226.7 states

23 (b) An employer shall not require an employee to work during a meal
24 or rest or recovery period mandated pursuant to an applicable statute, or
25 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.

26 (c) If an employer fails to provide an employee a meal or rest or
27 recovery period in accordance with a state law, including, but not limited
28 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.

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

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

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

74. 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.

EIGHTH CAUSE OF ACTION

FAILURE TO GIVE MEAL BREAKS

(Plaintiff against all named Defendants and all DOE defendants)

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

76. California Labor Code section 512(a) requires that employees be given a 30-minute uninterrupted meal break after five (5) hours of work, and a second uninterrupted meal break after ten (10) hours of work.

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

78. In relevant part, Wage Order 5-2001, Section 11 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.

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

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

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

82. 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.

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1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

3 **(Plaintiff against all named Defendants and DOE Defendants)**

4 83. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

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

8 85. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
9 her duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of
10 completing her job duties, which were not reimbursed by Defendants. These costs include, but
11 are not limited to, uniform items and using personal mobile phones for work purposes. As such,
12 Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest and
13 attorney’s fees and costs, under Labor Code section 2802.

14 **TENTH CAUSE OF ACTION**

15 **PRIVATE ATTORNEYS GENERAL ACT**

16 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
17 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 558.1,**
18 **1174, 1174.5, 1194, 1197, 1198, 2802)**

19 **(Plaintiff against all named Defendants and all DOE defendants)**

20 86. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

21 87. Pursuant to law, by letters dated July 12, 2024 and November 4, 2024 Plaintiff provided
22 the required written notice to the LWDA and Defendants of the specific violations of the
23 California Labor Code that Defendants and DOE defendants have violated and continue to
24 violate.

25 88. Pursuant to California Labor code section 2699.3, no response was received from the
26 LWDA within 65 days of the postmark date of the above-alleged July 12, 2024 letter.

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

1 Labor Code.

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

8 91. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
9 violator and had one or more of the alleged violations committed against her, and therefore is
10 properly suited to represent the interests of other current and former hourly, non-exempt
11 employees who worked for AKD at any of their California locations during the relevant PAGA
12 Period.

13 92. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks penalties
14 under California Labor Code sections 2698 and 2699 because of Defendants’ violations of
15 numerous provisions of the California Labor Code as alleged in this Complaint.

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

20 94. California Labor Code section 2699 et seq. imposes penalties upon culpable
21 Defendants for violating the Labor Code.

22 95. California Labor Code section 558 establishes a civil penalty as follows: Any employer
23 or other person action on behalf of an employer who violates, or causes to be violated, a section
24 of this chapter or any provision regulating hours and days of work in any order of the Industrial
25 Welfare Commission (including the “Hours and Days of Work” section of the Wage Order) shall
26 be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each underpaid
27 employee for each pay period for which the employee was underpaid... (2) for each subsequent
28 violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which
the employee was underpaid...

1 96. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
2 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
3 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved
4 employees in this specific cause of action under the Private Attorneys General Act.

5 97. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
6 the following:

7 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
8 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198,
9 2802, via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission
10 Wage Order Provisions (no. 5) violated based on the facts alleged in this Complaint.

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

15 **ELEVENTH CAUSE OF ACTION**

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

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

18 **(Plaintiff against all named Defendants and all DOE defendants)**

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

21 100. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
22 constitutes unfair and unlawful business practices under California Business and Professions
23 Code Section 17200, et seq.

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

27 102. For the four years preceding the filing of this action, Plaintiff has suffered
28 damages and request damages and/or restitution of all monies and profits to be disgorged from
corporate defendants in an amount according to proof at time of trial, but in excess of the

jurisdiction of this Court.

WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as follows:

1. For general damages according to proof;
2. For special and consequential damages to the extent allowed by law;
3. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof at trial;
4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to proof at trial;
6. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiff in an amount subject to proof at trial;
7. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
10. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and representative PAGA claim;
11. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law via PAGA;
12. For the imposition of civil penalties and/or statutory penalties;
13. For all interest as allowed by law;
14. For all costs and disbursements incurred in this suit;

1 15. Reasonable attorney's fees where available by law, including but not limited to,
2 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
3 and/or other applicable laws; and

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

5
6 **DATED:** November 18, 2024

MESSRELIAN LAW INC.

7
8 By Maralle Messrelian
9 Harout Messrelian, Esq.
10 Maralle Messrelian, Esq., Of Counsel
Attorneys for Plaintiff AIDEE ALVEAR

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
13
14

15 **DATED:** November 18, 2024

MESSRELIAN LAW INC.

16
17
18 By Maralle Messrelian
19 Harout Messrelian, Esq.
20 Maralle Messrelian, Esq., Of Counsel
Attorneys for Plaintiff AIDEE ALVEAR
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