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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 22 2022

BY Charlene Johnson
CHARLENE JOHNSON, DEPUTY

Attorneys for Plaintiff JESSICA PEREABRAS, an Individual,
On Behalf of Herself, Other Aggrieved Employees,
and the General Public

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

JESSICA PEREABRAS, an individual,
on behalf of herself, all other aggrieved
employees, and the general public,

Plaintiff,

vs.

THE VASQUEZ COMPANY, INC., a
California Corporation; MIGUEL'S JR.,
INC., a California Corporation; and
DOES 1 through 25, inclusive,

Defendants.

CASE NO.

CIV SB 2208345

COMPLAINT FOR:

- 1. CIVIL PENALTIES UNDER LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT OF
2004, LABOR CODE 2698, ET. SEQ**

FILED

1 Plaintiff JESSICA PEREABRAS, an individual, hereby files this Complaint (“Complaint”)
2 against Defendants THE VASQUEZ COMPANY, INC., a California Corporation, and MIGUEL’S
3 JR., INC., a California Corporation, and, DOES 1 through 25, inclusive, (hereinafter collectively,
4 “Miguel’s” or “Defendants”). Plaintiff, in her representative capacity, is informed and believes and
5 on the basis of that information and belief alleges as follows:

6 **INTRODUCTION**

7 1. This lawsuit challenges Defendants’ employment practices with respect to their non-
8 exempt, hourly workers employed in the State of California at Defendants’ restaurant locations
9 (hereinafter “Restaurant Employees”), based on Defendants’ policy and practice of failing, among
10 other things, to provide legally compliant meal and rest breaks, denying earned wages, including
11 overtime pay, and failing to reimburse necessary business expenditures from February 7, 2021 to the
12 present (“Relevant Time Period”). In particular, Defendants fail to provide timely and adequate
13 meal and rest breaks, fail to timely compensate employees for all wages earned, and fail to properly
14 and accurately calculate overtime and report wages earned, hours worked, and wage rates.

15 2. At all times relevant hereto, and with certain defined exceptions, Defendants’
16 compensation scheme did not fully compensate Plaintiff with at least minimum wages and/or
17 designated rates for all hours worked.

18 3. At all times relevant hereto, and with certain defined exceptions, Defendants’
19 compensation scheme did not fully compensate Plaintiff with overtime compensation for all
20 overtime hours worked.

21 4. At all times relevant hereto, and as a matter of policy and/or practice, Defendants
22 failed to provide Plaintiff with adequate off-duty meal periods and meal period compensation in
23 violation of Labor Code sections 226.7, 512, and 516 and IWC Wage Order No. 4 section 11.

24 5. At all times relevant hereto, and as a matter of policy and/or practice, Defendants
25 failed to provide Plaintiff with paid rest periods and rest period compensation in violation of Labor
26 Code sections 226.7 and 516 and IWC Wage Order No. 4 section 12.

27 6. At all times relevant hereto, and as a matter of policy and/or practice, Defendants’
28 knowingly and intentionally utilized a timekeeping system, which failed to compensate Plaintiff for

1 all hours worked.

2 7. At all times relevant hereto, and as a matter of policy and/or practice, Defendants
3 knowingly and intentionally provided Plaintiff with wage statements that, among others, do not
4 show all wages earned, all hours worked, or all applicable rates.

5 8. At all times relevant hereto, and as a matter of policy and/or practice, Defendants
6 failed to maintain documentation of the actual hours worked each day by Plaintiff, all wages earned,
7 and meal breaks taken in violation of Labor Code sections 1174 and IWC Wage Order No. 4 section
8 11.

9 9. At all times relevant hereto, and as a matter of policy and/or practice, Defendants
10 failed to pay Plaintiff all wages due and owing upon termination of employment including, but not
11 limited to, payment of wages for missed meal and rest periods compensation.

12 10. In this case, Plaintiff seeks penalties established by Labor Code section 2699, the
13 Private Attorneys General Act ("PAGA"), against Defendants for their unlawful employment
14 practices.

15 **PARTIES**

16 ***Plaintiff Jessica Pereabras***

17 11. Plaintiff Jessica Pereabras is an individual over the age of eighteen (18) and is now
18 and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State
19 of California. Plaintiff commenced her employment with Defendants in or around November 28,
20 2021 and worked as a non-exempt hourly employee until her resignation in or around December 18,
21 2021.

22 ***Defendant Miguel's Jr., Inc.***

23 12. Plaintiff is informed and believes and based thereon alleges that Defendant Miguel's
24 Jr., Inc. is a California Corporation and now and/or at all times mentioned in this complaint, was
25 licensed to do business, and actually doing business in the state of California. Miguel's Jr., Inc. owns
26 or operates Miguel's Jr., which identifies itself as a "fast food restaurant" that serves "homestyle
27 Mexican food" (www.miguelsjr.com). Miguel's Jr., Inc. currently owns or operates two full-service
28 Miguel's California Mexican Cocina Restaurants and twenty Miguel's Jr. fast-food restaurants

1 throughout the Inland Empire and Orange County.

2 ***Defendant The Vasquez Company, Inc.***

3 13. Plaintiff is informed and believes and based thereon alleges that Defendant, The
4 Vasquez Company, Inc. is a California Corporation and now and/or at all times mentioned in this
5 complaint, was licensed to do business, and actually doing business in the state of California. The
6 Vasquez Company, Inc. is part of the Miguel's Jr. enterprise. The Vasquez Company, Inc. currently
7 owns or operates two full-service Miguel's California Mexican Cocina Restaurants and twenty
8 Miguel's Jr. fast-food restaurants throughout the Inland Empire and Orange County.

9 ***Does 1 through 25***

10 14. DOES 1 through 100 inclusive are now and/or at all times mentioned in this
11 Complaint were, licensed to do business and/or actually doing business in the State of California.
12 Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of
13 DOES 1 through 100, inclusive and for that reason, DOES 1 through 25 are sued under such
14 fictitious names pursuant to California Code of Civil Procedure, section 474. Plaintiff will seek
15 leave of court to amend this Complaint to allege such names and capacities as soon as they are
16 ascertained. DOES 1 through 25 are believed to be business entities who were also co-employers of
17 the Plaintiff and the other aggrieved employees.

18 ***All Defendants***

19 15. The Vasquez Company, Inc. and Miguel's Jr., Inc. are companies conducting
20 business in the State of California as "Miguel's Jr." Defendants operate several "Miguel's Jr."
21 restaurant lo-cations in the counties of Riverside, San Bernardino, and Orange. Upon information
22 and belief, all identified business entities however share or are affiliated with the same agent of
23 service of process "Javier S. Vasquez" who identifies himself as the Chief Executive Officer for both
24 Defendants The Vasquez Company, Inc. and Miguel's Jr., Inc.

25 16. The degree of control exercised by The Vasquez Company, Inc. over Miguel's Jr.,
26 Inc. is enough to reasonably deem Miguel's Jr., Inc. as an agent of The Vasquez Company, Inc.
27 under traditional agency principles. Miguel's Jr., Inc. can legitimately be described as only a means
28 through which The Vasquez Company, Inc. acts and conducts its global business. Defendants

1 Miguel's Jr., Inc. and The Vasquez Company, Inc. have such a unity of interest and ownership that
2 the separate personalities do not in reality exist and that the corporate structure is just a shield for the
3 alter ego of each other. Plaintiff therefore is informed and believes and thereupon alleges that The
4 Vasquez Company, Inc. and Miguel's Jr., Inc., and each of them, were her employer under
5 California law, that Defendants herein did acts consistent with the existence of an employer-
6 employee relationship with Plaintiff and that Miguel's Jr., Inc. was owned, controlled, directly or
7 indirectly, by The Vasquez Company, Inc.

8 17. Plaintiff is informed and believes and based thereon alleges that at all times herein
9 mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint
10 venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within
11 the course and scope of said employment and/or agency; furthermore, that each and every Defendant
12 herein, while acting as a high corporate officer, director and/or managing agent, principal and/or
13 employer, expressly directed, consented to, approved, affirmed and ratified each and every action
14 taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the
15 matters referred to herein.

16 18. Plaintiff is informed and believes and based thereon alleges that at all times herein
17 mentioned, Defendants, and each of them, proximately caused Plaintiff, all others similarly situated
18 and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
19 damages alleged in this Complaint.

20 19. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
21 of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in
22 a joint venture, partnership, and common enterprise, and were acting within the course and scope of,
23 and in pursuit of said joint venture, partnership, and common enterprise and, as such were co-
24 employers of the Plaintiff and the other aggrieved employees.

25 20. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
26 of them, at all times mentioned in this Complaint, concurred with, contributed to, approved of, aided
27 and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every
28 one of the other Defendants in proximately causing the injuries and/or damages alleged in this

1 Complaint.

2 **JURISDICTION AND VENUE**

3 21. This Court has jurisdiction over all causes of action herein pursuant to the California
4 Constitution, Article VI, § 10, Code of Civil Procedure § 410.10 and Business and Professions Code
5 § 17203. Venue is proper in this Court under Code of Civil Procedure §§ 395 and 395.5 because
6 Defendants operate in this County, Plaintiff resides in and/or worked in this county and the injuries
7 that are the subject of this lawsuit arose in this county.

8 22. Plaintiff does not seek more than seventy-five thousand dollars (\$75,000) and waives
9 seeking more than seventy-five thousand dollars (\$75,000), including attorneys' fees but excluding
10 costs and interest, as to his share or portion of penalties or any other recovery with respect to the
11 violations alleged herein against Defendants. This case also raises no federal questions.

12 **FACTUAL ALLEGATIONS**

13 ***Background***

14 23. Plaintiff Jessica Pereabras commenced her employment with Defendants in or
15 around November 28, 2021. Plaintiff worked as a Drive-Thru Cashier at Defendants' restaurant
16 Miguel's Jr. located at 1240 W. Renaissance Pkwy, Rialto, California until in or around December
17 18, 2021. During her tenure with Defendants, Plaintiff was classified as a non-exempt, hourly
18 employee.

19 ***Defendants' Failure to Provide Adequate and Timely Meal and Rest Breaks***

20 24. Restaurant Employees, including Plaintiff, are not provided with legally compliant
21 meal periods and rest breaks, as they were often not made available due to the press of work. Our
22 investigation also revealed that, although Miguel's "Team Handbook" provides a suggested schedule
23 that "should" be followed for rest breaks and meal breaks, at times during the relevant time period,
24 Defendants did not, in practice, maintain a meal and break schedule to inform or notify Restaurant
25 Employees when to take their breaks.

26 25. Plaintiff is further informed and believes and based thereon alleges that Defendants
27 rarely, if ever, issue any compensation to Restaurant Employees for missed, late or shortened meal
28 and/or rest breaks. Indeed, the Company's Team Member Handbook provides, "If your rest break is

1 interrupted, you must be provided and are encouraged to take a full, continuous 10-minute rest break
2 *at a later time.*” Elsewhere, the Team Member Handbook provides: “However, during an eight-hour
3 workday, if you were unable to take a rest break before your meal period, you are encouraged to take
4 two separate rest breaks after your meal period that are as evenly spaced as possible.” This policy
5 itself is violative of California law. Moreover, due to the nature and press of the work, meal and rest
6 breaks are at times skipped, shortened, or late. Defendants’ Handbook also contemplates this
7 occurrence as it provides, in relevant part: “[T]he timing of rest breaks and meal periods may change
8 in order to meet business needs.”

9 26. Nevertheless, Defendants implemented a uniform policy and procedure in which
10 Plaintiff was not provided required statutorily-compliant meal and rest periods.

11 27. Defendants expect employees to “check, doublecheck and go the extra mile” for
12 every customer during every shift. In doing so, Restaurant Employees, including Plaintiff, were
13 often forced to work through their meal and rest breaks in order to keep up with the flow of
14 customers and meet Defendants’ standards for excellence, as expressed in its “Core Values” and
15 “Family Four Behaviors” sections of the Team Handbook.

16 28. Plaintiff is informed and believes and based thereon alleges that as a matter of policy
17 and/or practice, Defendants routinely failed to provide their non-exempt employees, including
18 Plaintiff and other aggrieved Restaurant Employees, with meal periods during which they were
19 relieved of all duties. Defendants did this by requiring Plaintiff and the other non-exempt employees
20 to work through their meal periods.

21 29. Specifically, throughout the Relevant Time Period, Defendants regularly:

- 22 a. Failed to provide Plaintiff and the other aggrieved employees with a first meal period
23 of not less than thirty (30) minutes during which they were relieved of all duty before
24 working more than five (5) hours; and
25 b. Failed to pay Plaintiff and the other aggrieved employees one hour of pay at their
26 regular rate of compensation for each workday that a meal period was not provided.

27 30. Plaintiff is further informed and believes and based thereon alleges that as a matter of
28 policy and/or practice, Defendants routinely failed to provide their non-exempt employees, including

1 Plaintiff and other aggrieved Restaurant Employees, with rest breaks during which they were relieved
2 of all duties. Defendants did this by requiring Plaintiff and the other non-exempt employees to work
3 through their rest breaks.

4 31. Specifically, throughout the Relevant Time Period, Defendants regularly:

- 5 a. Failed to provide paid rest periods of ten (10) minutes during which Plaintiff and the
6 other aggrieved employees were relieved of all duty for each four (4) hours of work;
- 7 b. Failed to compensate Plaintiff and the other aggrieved employees for break time
8 when breaks were taken; and
- 9 c. Failed to pay Plaintiff and the other aggrieved employees one (1) hour of pay at their
10 regular rate of compensation for each workday that a rest period was not permitted.

11 32. At all times relevant hereto, Labor Code section 226.7 and IWC Wage Order, number
12 4, section 12 required employers to authorize, permit, and provide a ten (10) minute paid rest for
13 each four (4) hours of work, during which employees are relieved of all duty.

14 33. At all times relevant hereto, Labor Code Section 226.7(b) and IWC Wage Order,
15 number 4, section 12 required employers to pay one hour of additional pay at the regular rate of
16 compensation for each employee and each workday that a proper rest period is not provided.

17 34. Throughout the Relevant Time Period, Plaintiff and the other aggrieved employees
18 were routinely denied the meal and rest breaks they were entitled to under California law.

19 ***Defendants' Failure to Pay Minimum Wages and Designated Rates***

20 35. IWC Wage Order, number 4 defines "hours worked" to mean "the time during which
21 an employee is subject to the control of an employer and includes all the time the employee is
22 suffered or permitted to work, whether or not required to do so."

23 36. Labor Code section 1182.12 and IWC Wage Order, number 4, section 4 formerly
24 provided that on and after January 1, 2008, the minimum wage shall be not less than eight dollars
25 (\$8.00) per hour.

26 37. Labor Code section 1182.12 and IWC Wage Order, number 4, section 4 provide that
27 on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars (\$9)
28 per hour, that on and after January 1, 2016, the minimum wage for all industries shall be not less

1 than ten dollars (\$10) per hour, that on and after January 1, 2017, the minimum wage for all
2 industries shall be not less than ten dollars and fifty cents (\$10.50) per hour, and that on and after
3 January 1, 2018, the minimum wage for all industries shall be not less than eleven dollars (\$11) per
4 hour,

5 38. Labor Code section 1194(a) provides in relevant part: “Notwithstanding any
6 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage is
7 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage,
8 including interest thereon, reasonable attorney’s fees, and costs of suit.”

9 39. Labor Code section 1194.2(a) provides in relevant part: “In any action under Section
10 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum
11 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated
12 damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

13 40. Labor Code section 1197 provides: “The minimum wage for employees fixed by the
14 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
15 minimum so fixed is unlawful.”

16 41. Defendants’ Restaurant Employees, including Plaintiff, are paid on an hourly basis
17 for their time spent working. Hours worked include, but are not limited to, all hours that an
18 employee is permitted or suffered to work including, but not limited to, off-the-clock work that an
19 employer either knew or should have known that an employee was performing.

20 42. As a matter of policy and/or practice, Defendants routinely suffered or permitted their
21 Restaurant Employees, including Plaintiff, to work portions of the day during which they were
22 subject to Defendants’ control, but Defendants failed to compensate them. As a matter of policy
23 and/or practice, Plaintiff and Restaurant Employees were frequently required to perform work during
24 their meal and rest breaks.

25 43. As a matter of policy and/or practice Defendants utilized a timekeeping system,
26 which failed to compensate Plaintiff and Restaurant Employees for all hours worked, whether by
27 rounding, time-shaving, or otherwise.

28 ///

1 44. Plaintiff is informed and believes, and based thereon alleges, Defendants' rounding of
2 time was not even-handed and has resulted in Plaintiff and Restaurant Employees not being
3 compensated for all hours worked, including all minimum and overtime wages earned. Defendants'
4 have the ability to compensate Plaintiff and Restaurant Employees to the minute as it appears the
5 Company utilizes a timekeeping system which allows Restaurant Employees, including Plaintiff to
6 digitally punch in and punch out at the cash registers – following their introductory period. Such a
7 practice or mechanism that is used in lieu of real-time recording such as a time clock, does not
8 accurately account for all hours worked.

9 45. Throughout the Relevant Time Period, Defendants did not maintain adequate records
10 of all wages earned, hours worked, and meal and rest breaks taken.

11 ***Defendants' Failure to Pay Overtime Compensation***

12 46. Labor Code Section 1194 provides that an employee receiving less than the legal
13 overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount
14 of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's
15 fees, and costs of suit.

16 47. Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday
17 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
18 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
19 one-half times the regular rate of pay for an employee." Labor Code Section 510(a) further states:
20 "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
21 the regular rate of pay for an employee." Labor Code Section 510(a) further states: "[A]ny work in
22 excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less
23 than twice the regular rate of pay of an employee."

24 48. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment
25 of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all
26 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for
27 payment of overtime wages equal to double the employee's regular rate of pay for all hours worked
28 in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8)

1 hours on the seventh (7th) day of work in any one workweek.

2 49. Plaintiff was classified as non-exempt by Defendants and was therefore entitled to
3 overtime compensation for all hours worked in excess of the hours and time specified in the Wage
4 Order, statutes and regulations identified herein.

5 50. As a matter of policy and/or practice, Plaintiff and Restaurant Employees were
6 frequently required to perform work during their meal and rest breaks.

7 51. As a matter of policy and/or practice Defendants utilized a timekeeping system,
8 which failed to compensate Plaintiff and Restaurant Employees for all hours worked, whether by
9 rounding, time-shaving, or otherwise.

10 52. Plaintiff is informed and believes, and based thereon alleges, Defendants' rounding of
11 time was not even-handed and has resulted in Plaintiff and Restaurant Employees not being
12 compensated for all hours worked, including all minimum and overtime wages earned. Defendants'
13 have the ability to compensate Plaintiff and Restaurant Employees to the minute as it appears the
14 Company utilizes a timekeeping system which allows Restaurant Employees, including Plaintiff to
15 digitally punch in and punch out at the cash registers – following their introductory period. Such a
16 practice or mechanism that is used in lieu of real-time recording such as a time clock, does not
17 accurately account for all hours worked.

18 53. Accordingly, Defendants failed to properly record the actual hours worked by
19 Plaintiff and Restaurant Employees and thus failed to pay overtime wages for the actual amount of
20 overtime hours worked.

21 ***Defendants' Failure to Reimburse Necessary Business Expenditures***

22 54. At all times relevant hereto, California Labor Code §2802 requires an employer to
23 indemnify its employees for all that such employees expend or lose in direct consequence of the
24 discharge of their duties, or in direct consequence of their obedience to the directions of their
25 employer.

26 55. As a matter of policy and/or practice Defendants' required Plaintiff and Restaurant
27 Employees to wear and maintain a Miguel's uniform, which was given to them by Defendants, and
28 black, non-denim pants and non-slip shoes, purchased individually. Our investigation has uncovered

1 that the articles of clothing at issue - namely, black, non-denim pants and non-slip shoes - were part
2 of Defendants' uniform, and that Defendants maintained an inflexible uniform policy requiring
3 Restaurant Employees to wear such items (e.g., for health and safety reasons).

4 56. Plaintiff is informed and believes and based thereon alleges, due to the nature of fast-
5 food restaurant work Plaintiffs' uniforms were often, and easily, dirtied and stained with food.
6 Accordingly, Plaintiff regularly had to spend extra money on her uniform maintenance. Plaintiff and
7 other Restaurant Employees were not reimbursed for such uniforms or maintenance of uniforms.

8 ***Defendants' Failure to Pay All Wages Due at Termination of Employment***

9 57. At all times relevant hereto, Labor Code § 201 required an employer that discharges
10 an employee to pay compensation due and owing to said employee immediately upon discharge.
11 Labor Code Sections 202 requires an employer to pay an employee who quits any compensation due
12 and owing to said employee within seventy-two (72) hours of an employee's resignation. Labor
13 Code Section 203 provides that if an employer willfully fails to pay compensation promptly upon
14 discharge or resignation, as required under Sections 201 and 202, then the employer is liable for
15 waiting time penalties in the form of continued compensation for up to thirty (30) workdays.

16 58. Defendants willfully and knowingly failed to pay Plaintiff and the other aggrieved
17 employees, upon termination of employment, all accrued compensation including payment of
18 minimum wage compensation, and missed rest periods compensation.

19 ***Defendants' Failure to Provide Accurate, Itemized Wage Statements***

20 59. At all times relevant hereto, Labor Code section 226 and IWC Wage Order, number
21 4, section 7 required employers to maintain adequate employment records and provide employees
22 with accurate itemized wage statements showing gross wages, total hours worked, all applicable
23 hourly rates worked during each pay period, the corresponding number of hours worked at each
24 hourly rate, and meal breaks taken.

25 60. Defendants' wage statements are facially non-compliant by virtue of the defective
26 meal and rest period policies and practices, the uncompensated work, the unlawful timekeeping
27 systems which does not accurately record the total hours worked by aggrieved Restaurant
28 Employees, including Plaintiff.

1 61. Wage statements provided to Plaintiff and the other Restaurant Employees by
2 Defendants do not show all wages earned, all hours worked, or all applicable rates, in violation of
3 the Labor Code section 226, and IWC Wage Order number 4, section 7.

4 62. Moreover, Defendants did not maintain adequate records of all wages earned, hours
5 worked, and breaks taken.

6 ***Exhaustion of Administrative Remedies***

7 63. Plaintiff has complied with the procedures for bringing suit specified in California
8 Labor Code Section 2699.3. By letter dated February 7, 2022 Plaintiff, on behalf of herself and the
9 other aggrieved employees, gave written notice by electronic mail and certified mail to the Labor
10 and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the
11 California Labor Code alleged to have been violated, including the facts and theories to support the
12 alleged violations. Attached as **Exhibit “1”** is a true and correct copy of the referenced letter.

13 64. More than sixty-five (65) calendar days have passed since Plaintiff provided the
14 LWDA with written notice. To date, Plaintiff has not received any written notice nor been notified
15 from the LWDA that it does intend to investigate the violations of the California Labor Code alleged
16 herein.

17 **FIRST CAUSE OF ACTION**

18 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

19 **(On Behalf of Plaintiff and the Other Aggrieved Employees Against All Defendants)**

20 65. Plaintiff incorporates by reference the allegations set forth above.

21 66. As set forth above, Plaintiff has complied with the procedures for bringing suit
22 specified in California Labor Code Section 2699.3. By letter dated February 7, 2022, Plaintiff, on
23 behalf of herself and the other aggrieved employees, gave written notice by certified mail to the
24 LWDA and to Defendants of the specific provisions of the California Labor Code alleged to have
25 been violated, including the facts and theories to support the alleged violations. More than sixty-five
26 (65) calendar days have passed since Plaintiff provided the LWDA with written notice. To date,
27 Plaintiff has not received any written notice nor been notified from the LWDA that it does intend to
28 investigate the violations of the California Labor Code alleged herein.

1 67. This action arises out of the allegedly unlawful labor practices of Defendants in
2 California. Through this private attorneys' general action, Plaintiff represents herself, and other
3 aggrieved employees of Defendants that were in California, against whom Defendants have
4 allegedly committed labor law violations alleged herein. As a result of the allegedly unlawful
5 conduct described herein, Plaintiff now seeks to recover civil penalties, attorneys' fees, and costs,
6 pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code Section 2698, *et seq.*

7 68. Labor Code Section 1198 makes it unlawful for an employer to employ an employee
8 under conditions that violate the applicable Wage Order.

9 69. Plaintiff is informed and believes that throughout the Relevant Time Period,
10 Defendants have applied centrally devised policies and practices to Plaintiff and the other aggrieved
11 employees with respect to wages, hours, and working conditions.

12 **Failure to Pay Overtime Compensation**

13 70. Labor Code Section 1194 provides that an employee receiving less than the legal
14 overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount
15 of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's
16 fees, and costs of suit.

17 71. Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday
18 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
19 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
20 one-half times the regular rate of pay for an employee." Labor Code Section 510(a) further states:
21 "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
22 the regular rate of pay for an employee." Labor Code Section 510(a) further states: "[A]ny work in
23 excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less
24 than twice the regular rate of pay of an employee."

25 72. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment
26 of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all
27 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for
28 payment of overtime wages equal to double the employee's regular rate of pay for all hours worked

1 in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8)
2 hours on the seventh (7th) day of work in any one workweek.

3 73. Plaintiff and the other aggrieved employees were classified as non-exempt by
4 Defendants and were therefore entitled to overtime compensation for all hours worked in excess of
5 the hours and time specified in the Wage Order, statutes and regulations identified herein.

6 74. As a matter of policy and/or practice, Plaintiff and the other aggrieved employees
7 were frequently required to performed work during meal and rest breaks.

8 75. As a matter of policy and/or practice, Defendants utilized a timekeeping system,
9 which failed to compensate Plaintiff and other aggrieved employees for all hours worked, whether
10 by rounding, time-shaving, or otherwise. Specifically, our investigation leads us to believe that
11 Defendants' rounding of time was not even-handed and has resulted in Plaintiff and other aggrieved
12 employees not being compensated for all hours worked.

13 76. Accordingly, Defendants failed to properly record the actual hours worked by
14 Plaintiff and other aggrieved employees, and thus failed to pay overtime wages for the actual amount
15 of overtime hours worked.

16 **Failure to Provide Timely and Adequate Meal and Rest Breaks**

17 77. Labor Code Section 512 and Section 11 of the Wage Order impose an affirmative
18 obligation on employers to provide non-exempt employees with uninterrupted, duty-free, meal
19 periods of at least thirty (30) minutes for each work period of five (5) or more hours, and to provide
20 them with two uninterrupted, duty-free, meal periods of at least thirty (30) minutes for each work
21 period of more than ten (10) hours.

22 78. Labor Code Section 226.7 and Section 11 of the Wage Order prohibit employers from
23 requiring employees to work during required meal periods and require employers to pay non-exempt
24 employees an additional hour of premium wages on each workday that the employee is not provided
25 with a required meal period.

26 79. At relevant times during the applicable limitations period, Defendants failed to
27 provide Plaintiff and Restaurant Employees with uninterrupted meal periods of at least thirty
28 (30) minutes on each day that they worked five (5) or more hours, as required by Labor Code

1 Section 512 and the Wage Order, as a result of duties and schedules that do not permit them to take
2 all legally required meal periods. Plaintiff is informed, believes, and thereon alleges that, at relevant
3 times during the applicable limitations period, Defendants maintained a policy or practice of not
4 providing the other aggrieved employees with uninterrupted meal periods of at least thirty
5 (30) minutes for each five (5) hour work period, as required by Labor Code Section 512 and the
6 Wage Order, as a result of duties and schedules that do not permit them to take all legally required
7 meal periods.

8 80. Section 12 of the Wage Order imposes an affirmative obligation on employers to
9 permit and authorize employees to take required rest periods at a rate of no less than ten (10) minutes
10 of net rest time for each four (4) hour work period, or major portion thereof, that must be in the
11 middle of each work period insofar as is practicable.

12 81. Labor Code Section 226.7 and Section 12 the Wage Order prohibit employers from
13 requiring employees to work during required rest periods and require employers to pay non-exempt
14 employees an additional hour of premium wages on each workday that the employee is not provided
15 with the required rest period.

16 82. At relevant times during the applicable limitations period, Defendants failed to
17 provide Plaintiff and Restaurant Employees with a net rest period of at least ten (10) minutes for
18 each four (4) hour work period, or major portion thereof, as required by the Wage Order, as a result
19 of duties and schedules that do not permit Plaintiff and Restaurant Employees to take all legally
20 required rest breaks.

21 83. Plaintiff is informed, believes, and thereon alleges that, at relevant times during the
22 applicable limitations period, Defendants maintained a policy or practice of not providing the other
23 aggrieved employees with net rest periods of a least ten (10) minutes for each four (4) hour work
24 period, or major portion thereof, as required by the Wage Order, as a result of duties and schedules
25 that do not permit them to take all legally required rest breaks.

26 84. Plaintiff is further informed, believes, and thereon alleges that Defendants rarely, if
27 ever, issues any compensation to Restaurant Employees for missed, late or shortened meal and/or
28 rest breaks.

1 **Failure to Reimburse Necessary Business Expenditures**

2 85. California Labor Code §2802 requires an employer to indemnify its employees for all
3 that such employees expend or lose in direct consequence of the discharge of their duties, or in direct
4 consequence of their obedience to the directions of their employer.

5 86. Defendants, and each of them, have violated California Labor Code §2802 by
6 requiring Plaintiff and all other Restaurant Employees to purchase and maintain uniforms required
7 by Defendants.

8 87. By virtue of Defendants' failure to comply with the provisions of California Labor
9 Code §2802, Plaintiff, and all other Restaurant Employees, have suffered, and will continue to
10 suffer, damages in an amount which is presently unknown to Plaintiff, but which exceeds the
11 jurisdictional limits of this Court, and which will be ascertained according to proof at trial.

12 **Failure to Pay Wages Upon Termination**

13 88. Labor Code Section 201 provides that all earned and unpaid wages of an employee
14 who is discharged are due and payable immediately at the time of discharge.

15 89. Labor Code Section 202 provides that all earned and unpaid wages of an employee
16 who quits after providing at least 72-hours' notice before quitting are due and payable at the time of
17 quitting and that all earned and unpaid wages of an employee who quits without providing at least
18 72-hours' notice before quitting are due and payable within 72 hours.

19 90. Labor Code Section 203 provides that the wages of an employee continue on a daily
20 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
21 unpaid wages to the employee in accordance with Labor Code Section 201 or Section 202.

22 91. Plaintiff is informed and believes and based thereon alleges Defendants utilized a
23 timekeeping system, which failed to compensate Plaintiff and other Restaurant Employees for all
24 hours worked, whether by rounding, time-shaving, or otherwise. Defendants' rounding of time was
25 not even-handed and has resulted in Plaintiff and other Restaurant Employees not being
26 compensated for all hours worked, including all minimum and overtime wages earned.

27 92. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and
28 the aggrieved employees all of their earned and unpaid wages, including unpaid minimum wage and

1 overtime, and failure to provide statutorily-compliant meal and rest periods and resulting premiums,
2 have been willful in that, at all relevant times, Defendants have deliberately maintained policies and
3 practices that violate the requirements of the Labor Code and the Wage Order even though, at all
4 relevant times, they have had the ability to comply with those legal requirements.

5 **Failure to Provide and Maintain Compliant Wage Statements**

6 93. Labor Code Section 1174 requires that every person employing labor in this state
7 shall keep (1) a record showing the names and addresses of all employees employed and the ages of
8 all minors; (2) at a central location in the state or at the plants or establishments at which employees
9 are employed, payroll records showing the hours worked daily by and the wages paid to, and the
10 number of piece-rate units earned by and any applicable piece rate paid to, employees employed at
11 the respective plants or establishments; (3) such records in accordance with rules established for this
12 purpose by the commission, but in any case, on file for not less than three years. This statute also
13 prevents an employer from prohibiting an employee from maintaining a personal record of hours
14 worked, or, if paid on a piece-rate basis, piece-rate units earned. Defendants have willfully failed to
15 keep the records required by Section 1174.

16 94. Pursuant to California Labor Code Section 226(a), Plaintiff and the other aggrieved
17 employees were entitled to receive, semimonthly or at the time of each payment of wages, an
18 accurate itemized statement showing: (a) gross wages earned; (b) net wages earned; (c) all applicable
19 hourly rates in effect during the pay period; and (d) the corresponding number of hours worked at
20 each hourly rate by the employee.

21 95. Defendants failed to provide Plaintiff with accurate itemized statements in accordance
22 with California Labor Code Section 226(a) by providing Plaintiff with wage statements with
23 inaccurate entries for hours worked, corresponding rates of pay, and total wages earned as a result of
24 the unlawful labor and payroll practices described herein.

25 96. Plaintiff is informed and believes and thereon alleges that, at all relevant times during
26 the applicable limitations period, Defendants maintained a policy or practice of not providing
27 aggrieved employees with accurate itemized wage statements by providing them with wage
28 statements with inaccurate entries for hours worked, corresponding rates of pay, total wages and

1 deductions from wages earned as a result of the unlawful labor and payroll practices described
2 herein.

3 97. Plaintiff is informed and believes and thereon alleges that Defendants' failure to
4 provide her and the other aggrieved employees with accurate written wage statements is knowing
5 and intentional.

6 98. Plaintiff is informed and believes and thereon alleges that Defendants had the ability
7 to provide her and the aggrieved employees with accurate wage statements, but intentionally
8 provided wage statements that they knew are not accurate.

9 99. As a result of being provided with inaccurate wage statements by Defendants,
10 Plaintiff and the aggrieved employees have suffered an injury. Their legal rights to receive accurate
11 wage statements were violated and they were misled about the amount of wages they had actually
12 earned and were owed. In addition, the absence of accurate information on their wage statements
13 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and
14 mathematical computations to determine the amounts of wages owed, has caused difficulty and
15 expense in attempting to reconstruct time and pay records, and/or has led to the submission of
16 inaccurate information about wages and amounts deducted from wages to state and federal
17 government agencies.

18 100. California Labor Code sections 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 civil
20 penalties pursuant to the procedures specified in California Labor Code Section 2699.3.

21 **Section 558 Penalties**

22 101. The PAGA claims are also brought against Defendants pursuant to provisions of the
23 labor code including § 558 which permits liability of persons or employers who violate or cause to
24 be violated Labor Code and IWC regulations. California Labor Code Section 2699.

25 102. The PAGA states:
26 Notwithstanding any other provision of law, any provision of this code that
27 provides for a civil penalty to be assessed and collected by the Labor and
28 Workforce Development Agency or any of its departments, divisions,
commissions, boards, agencies, or employees, for a violation of this code, may, as
an alternative, be recovered through a civil action brought by an aggrieved

employee on behalf of herself or herself and other current or former employees...

103. One provision of law enforceable through PAGA as to civil penalties, though not unpaid wages, is Labor Code § 558, which states the following:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to any amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages...

Penalties Authorized by PAGA

104. Pursuant to California Labor Code sections 2699(a) and (f), Plaintiff and the other aggrieved employees of Defendants are entitled to, and seek to, recover civil penalties for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1194-1197.1, 1198, 2802, and 2698 *et seq.*, during the applicable limitations period in the following amounts:

- a. For violations of California Labor Code sections 201, 202, 203, 226.7, 1198, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code Section 2699(f)(2));
- b. For violations of California Labor Code Section 1194-1197.1, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars and fifty (\$250.00) for each aggrieved employee per pay period for each subsequent violation regardless of whether the initial violation is intentionally committed (penalty amounts established by California Labor Code § 1197.1);
- c. For violations of California Labor Code Sections 216, 221, 223 one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two

1 hundred dollars (\$200.00) for each aggrieved employee for each subsequent or
2 willful violation (penalty amounts established by California Labor Code §
3 225.5);

4 d. For violations of California Labor Code Section 1174, five hundred dollars
5 (\$500.00) for each of Defendants' violations in addition to any other penalties or
6 fines permitted by law (penalty amounts established by California Labor Code §
7 1174.5);

8 e. For violations of California Labor Code Section 226, two hundred fifty dollars
9 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00)
10 per employee for each subsequent violation (penalty amounts established by
11 California Labor Code Section 226.3);

12 f. For violations of California Labor Code Section 204, one hundred dollars (\$100.00)
13 per employee for initial violation and two hundred dollars (\$200.00) per employee
14 for each subsequent violation, plus 25 percent of the amount unlawfully withheld
15 (penalty amounts established by California Labor Code Section 210);

16 g. For violations of California Labor Code section 510, 511, 512, 551, 552 and,
17 Wage Order 4-2001 Sections 9, 11, and 12, fifty dollars (\$50.00) for each
18 aggrieved employee for each initial violation for pay period for which the
19 employee was underpaid in addition to an amount sufficient to recover unpaid
20 wages and one hundred dollars (\$100.00) for each underpaid employee for each
21 pay period for which the employee was underpaid in addition to an amount
22 sufficient to recover unpaid wages (penalty amounts established by California
23 Labor Code Section 558).

24 h. For violations of California Labor Code Section 558, fifty dollars (\$50.00) for
25 initial violation, fifty dollars (\$50.00) for each underpaid employee for each pay
26 period for which the employee was underpaid; for each subsequent violation, one
27 hundred dollars (\$100.00) for each underpaid employee for each pay period for
28 which the employee was underpaid (penalty amounts established by California

1 Labor Code Section 558).

2 105. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of herself and
3 the other aggrieved employees, is entitled to an award of reasonable attorneys' fees and costs.

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff on behalf of herself and on behalf of all other aggrieved employees,
6 prays for judgment against Defendants as follows:

- 7 a. Civil penalties;
8 b. Other penalties and fines permitted by law;
9 c. Costs of suit;
10 d. Reasonable attorneys' fees;
11 e. Pre-judgment and post-judgment interest as provided by law; and
12 f. Such other and further relief as the Court deems just and proper.

13 DATED: April 22, 2022

BOYAMIAN LAW, INC.

14
15 By: 

16 Michael H. Boyamian
17 Attorney for Plaintiff JESSICA
18 PEREABRAS, Other Aggrieved Employees,
19 and the General Public
20
21
22
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28

EXHIBIT 1



BOYAMIAN LAW

February 7, 2022

SENT VIA ONLINE SUBMISSION TO:

Labor Workforce and Development Agency
Attention: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

**Re: *Pereabras adv. The Vasquez Company, Inc., et al*
Notice of PAGA Claims Pursuant to Labor Code Section 2699.3**

Dear Labor and Workforce Development Agency and Employer:

My office represents Jessica Pereabras with respect to claims on behalf of herself and other similarly situated current and former hourly, non-exempt restaurant employees (hereinafter, Restaurant Employees) of The Vasquez Company, Inc. and Miguel's Jr., Inc. (hereinafter collectively referred to as "Miguel's" or the "Company" unless otherwise noted). The purpose of this letter is to satisfy the notice requirements of Labor Code § 2699.3(a).

Below we set forth the facts and theories which we believe support our contention that Miguel's has violated and continues to violate various provisions of the California Labor Code including, but not limited to, failure to pay for all hours worked, failure to provide timely and adequate meal and rest breaks, and other related penalties.

Facts and Theories About the Case

Miguel's is a "fast food restaurant" that serves "homestyle Mexican food" (miguel'sjr.com). Ms. Pereabras worked for Miguel's from in or around November 28, 2021, to in or around December 18, 2021. Ms. Pereabras was hired as a Drive-Thru Cashier at the Miguel's Jr. location at 1240 W. Renaissance Pkwy, Rialto, CA 92376 and was classified as a non-exempt, hourly employee.

A. Meal & Rest Break Violations

Our investigation has revealed that Restaurant Employees, including Ms. Pereabras, are not provided with legally compliant meal and rest breaks, as meal and rest breaks were often not made available due to the press of work. Our investigation also revealed that, although Miguel's "Team Handbook" provides a suggested schedule that "should" be followed for rest breaks and meal breaks, at times during the relevant time period, Miguel's did not, in practice, maintain a meal and break schedule to inform or notify Restaurant Employees when to take their breaks.

Our investigation has also uncovered that Miguel's rarely, if ever, issues any compensation to Restaurant Employees for missed, late or shortened meal and/or rest breaks. Indeed, the Company's Team Member Handbook provides, "If your rest break is interrupted, you must be provided and are encouraged to take a full, continuous 10-minute rest break *at a later time*." Elsewhere, the Team Member Handbook provides: "However, during an eight-hour workday, if you were unable to take a rest break before your meal period, you are encouraged to take two separate rest breaks after your meal period that are as evenly spaced as possible." This policy itself is violative of California law. Moreover, due to the nature and press of the work, meal and rest breaks are at times skipped, shortened, or late.

As a result of this practice and/or policy, Miguel's violated California law which requires that an employer provide a rest period in the middle of the "work period" before their lunch and a separate rest period in the middle of the "work period" after their lunch break. *Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1045. Because Miguel's failed to provide rest periods in compliance with the requirements of California law, Miguel's needed to pay the Restaurant Employees, including Ms. Pereabras, one hour of pay at their regular rate of pay each day that they were not provided a mandated breaks or provided one combined break. Lab. Code § 226.7; Wage Order No. 4, subd. 12(B).

California law requires that an employer provides an employee who works more than five hours a meal break that is no less than 30 minutes in duration. 8 CCR 11070(11)(A). Unless an employee is relieved of all duty during the 30-minute meal period, the meal period is considered an on-duty meal period and counted as time worked. *Id.* However, an on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-the-job paid meal period. *Id.* If an employer fails to provide an employee a lawful meal period, the employer must pay the employee one hour of pay for each violation. 8 CCR 11070(11)(D). Additionally, California law mandates that an employer must "authorize and permit" an employee to take a duty-free rest period not less than 10 minutes in duration for every four hours of work. 8 CCR 11070(12)(A). Violation of the rest break provisions requires the employer pay the employee one hour of pay for each workday a rest period was not provided. 8 CCR 11070(12)(B). Lastly, in California, the employer is required to keep records of all hours worked. Labor Code § 1174(d).

B. Failure to Pay for All Hours Worked, Including Overtime

Current and former hourly, non-exempt Restaurant Employees, including Ms. Pereabras, are not paid for all of their time worked.

Our investigation has revealed that Miguel's does not compensate its Restaurant Employees, including Ms. Pereabras, for all hours worked, including overtime. Specifically, the Company required Restaurant Employees to regularly work for more than eight (8) hours per day and more than forty (40) hours per week. Miguel's do not

and did not pay Restaurant Employees one and one-half (1-1/2) times their regular rate of pay for any overtime hours worked over eight hours per day and/or forty hours per week.

Miguel's utilized a timekeeping system, which failed to compensate Ms. Pereabras and other aggrieved non-exempt, hourly Restaurant Employees for all hours worked, whether by rounding, time-shaving, or otherwise. Specifically, our investigation leads us to believe that Miguel's rounding of time was not even-handed and has resulted in Ms. Pereabras and other aggrieved non-exempt, hourly Restaurant Employees not being compensated for all hours worked, including all minimum and overtime wages earned. Miguel's has the ability to compensate Ms. Pereabras and other aggrieved Restaurant Employees to the minute as it appears the Company utilizes a timekeeping system which allows Restaurant Employees, including Ms. Pereabras to digitally punch in and punch out at the cash registers – following their introductory period. Such a practice or mechanism that is used in lieu of real-time recording such as a time clock, does not accurately account for all hours worked. *See Morillion v. Royal Packing Co.*, 22 Cal.4th 575 (2000); *See also Troester v. Starbucks Corp.*, 421 P.3d 1114 (2018) (recent California Supreme Court decision affirming that relevant statutes and wage order do not allow employers to require employees to routinely work for minutes off-the-clock without compensation.)

Ms. Pereabras also worked without receiving payment for all hours worked, and Miguel's did not timely process wages for herself and other Restaurant Employees. Specifically, Ms. Pereabras worked from November 24, 2021 to December 16, 2021 and did not receive all the wages that she was owed for the work she performed during that period nor was any compensation paid in a timely manner. Specifically, she worked the following schedule during her tenure with Miguel's:

Sunday 11/28/2021	12:00 P.M.-5:00 P.M.
Monday 11/29/2021	5:00 P.M.-9:30 P.M.
Wednesday 12/01/2021	5:00 P.M.-9:30 P.M.
Thursday 12/02/2021	4:30 P.M.-8:30 PM
Friday 12/03/2021	4:00 P.M.-10:00 P.M.
Saturday 12/4/2021	10:30 P.M.-4:30 P.M.
Monday 12/6/2021	4:00 P.M.-10:00 P.M.
Wednesday 12/08/2021	5:15 P.M. -9:00 P.M.
Thursday 12/09/2021	4:45 P.M.-9:00 P.M.
Saturday 12/11/2021	5:00 P.M.-9:30 P.M.
Sunday 12/12/2021	4:00 P.M.-8:00 P.M.
Wednesday 12/15/2021	5:15 P.M.-10:00 P.M.
Thursday 12/16/2021	4:00 P.M.-8:00 P.M.

Ms. Pereabras complained on multiple occasions about not receiving her wages, much less any wages. Miguel's ignored her complaints. Having determined that Miguel's was forcing her to work continuously with no pay, Ms. Pereabras was forced to resign. The final paycheck issued by Miguel's on December 27, 2021 – the only pay stub Ms. Pereabras received - was in the gross amount of "\$56.25" which represented "3.75" hours. However, given the schedule outlined above, Ms. Pereabras clearly worked more than 3.75 hours. Furthermore, the total earnings column of "\$513.30" is also incorrect as Ms. Pereabras never earned that amount during her brief tenure at Miguel's.

In addition to the legal principles above, California Labor Code § 204 requires an employer to pay employees twice monthly on a pre-designated, regular day. See Cal. Labor Code § 204(a). The statute, therefore, imposes "an obligation of timely payment of wages upon California employers and provides rules for scheduling wage payments." *See's Candy Shops, Inc. v. Superior Court*, 210 Cal. App. 4th 889, 904 (2012). The remedy for a violation of § 204 is found in § 210, which provides that "every person who fails to pay the wages of each employee" as provided for in § 204 "shall be subject to a penalty[.]" Cal. Lab. Code § 210; *see also Singer v. Becton, Dickinson & Co.*, No. 08-CV-821-IEG-BLM, 2008 WL 2899825, at *3 (S.D. Cal. July 25, 2008) ("Section 210 provides the only remedy for failure to comply with 204, i.e., for failure to make timely wage payments, and the remedy is a civil penalty.").

Further, Miguel's expects its employees to "check, doublecheck and go the extra mile" for every customer during every shift. In doing so, Restaurant Employees, including Ms. Pereabras, were often forced to work through their meal and rest breaks in order to keep up with the flow of customers and meet Miguel's standard of "excellence", as expressed in its "Core Values" and "Family Four Behaviors" sections of the Team Handbook. Consequently, Ms. Pereabras, and other Restaurant Employees, were not fully compensated for the time spent working through their meal and rest breaks.

California law requires that an employer compensate an employee for all hours worked. Pursuant to Labor Code § 1194 Miguel's had a duty to pay Ms. Pereabras not less than the minimum required hourly rate of pay set by the Department of Industrial Relations, and legal overtime wages. Sections 1194 and 1197 direct employers to compensate employees at the state-mandated minimum wage for all hours worked. Cal. Lab. Code §§ 1194, 1197. California law requires payment of overtime premium pay for all hours worked by non-exempt employees in excess of eight hours in one day, 40 hours in one week, and for the first eight hours on the seventh-straight day of work in one workweek. *See, e.g.*, Labor Code § 510. It further requires payment of double-time premium pay for all hours worked by such employees in excess of twelve hours in one day, or in excess of eight hours on the seventh-straight day of work in a single workweek. *Id.*

C. Unreimbursed Business Expenditures

California Labor Code § 2802 requires employers to always reimburse employees for necessary business expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

Restaurant Employees, including Ms. Pereabras, are required by Miguel's to wear and maintain a Miguel's uniform, which was given to them by Miguel's, and black, non-denim pants and non-slip shoes, purchased individually. Our investigation has uncovered that the articles of clothing at issue - namely, black, non-denim pants and non-slip shoes - were part of Miguel's uniform, and that Miguel's maintained an inflexible uniform policy requiring employees to wear such items (e.g., for health and safety reasons).

Additionally, due to the nature of fast-food restaurant work Ms. Pereabras' uniforms were often, and easily, dirtied and stained with food. Accordingly, Ms. Pereabras regularly had to spend extra money on her uniform maintenance. Ms. Pereabras, and other Restaurant Employees were not reimbursed for such uniforms or maintenance of uniforms.

D. Other Claims

The other alleged violations for penalties, including inaccurate wage statements, the failure to pay all wages by the appropriate pay period, and waiting time penalties, are largely derivative of the failure to provide statutory mandated and compliant meal and rest breaks to Restaurant Employees, including Ms. Pereabras.

a. Inaccurate Wage Statements

Separately, the unpaid hours are not reflected on wage statements issued to the Restaurant Employees, including Ms. Pereabras, in violation of Labor Code Section 226. California Labor Code Section 226(a) governs the information that must appear on wage statements. Specifically, Labor Code Section 226(a) requires that wage statements accurately itemize "(2) total hours worked by the employee..." Miguel's wage statements are facially non-compliant by virtue of the defective meal and rest period policies and practices, the uncompensated work, the unlawful timekeeping systems which does not accurately record the total hours worked by aggrieved Restaurant Employees, including Ms. Pereabras. Accordingly, the wage statements do not accurately itemize or reflect showing gross hours earned, total hours worked, all deductions made, net wages earned, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate.

b. Waiting Time Penalties.

These unpaid wages were also not paid at the time of the employees' termination or resignation, in violation of Labor Code Section 203. Additionally, wages that had been accounted for were not paid to employees upon the requisite time following their termination or resignation.

Based on the foregoing facts, Ms. Pereabras is asserting PAGA claims on behalf of herself and on behalf of all other Restaurant Employees employed by Miguel's in California from February 7, 2021, to the present. Ms. Pereabras seeks civil penalties under PAGA for the following Labor Code violations:

1. Violations of Labor Code section 558 for failing to pay wages due, including those for missed meal and rest periods as required by Labor Code sections 226.7, 512, 551-553. Specifically, with respect to meal breaks, The Vasquez Company and does not permit Ms. Pereabras and other Restaurant Employees to take off-duty meal periods and do not pay one additional hour of pay at their regular rate of compensation for each missed meal period. The Vasquez Company also does not provide Ms. Pereabras and other Restaurant Employees with rest periods. Nor does it pay one additional hour of pay at their regular rate of compensation for each missed rest period
2. Violations of Labor Code sections 216, 225.5, 558 for failing to pay minimum and overtime wages due. Specifically, The Vasquez Company does not pay minimum and overtime wages to Ms. Pereabras and other Restaurant Employees for all hours worked, as required by Labor Code sections 216, 510, 511, 558, 1182.1-1182.3, 1194-1197.1 and 1198.
3. Violations of Labor Code sections 226 and 226.3, requiring employers to provide specific information on employees' itemized wage statements, as The Vasquez Company does not include all hours worked and wages earned on the wage statements of Ms. Pereabras and other Restaurant Employees.
4. Violations of Labor Code sections 204 and 210, based on The Vasquez Company's failure to pay Ms. Pereabras and similarly situated Restaurant Employees on the regular pay day all owed wages.

Accordingly, we believe the Company has violated, and continues to violate, numerous provisions of California law, including, without limitation Labor Code Sections §§ 201, 202, 203, 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1194-1197.1, 1198, 2802, and 2698, *et seq.*, as well as the relevant IWC orders and regulations, and that Ms. Pereabras and other similarly situated current and former Restaurant Employees are entitled to all damages, restitution and statutory penalties allowed by law. Our investigation is continuing, and there may be more violations uncovered.

February 7, 2022

Page | 7 of 7

We respectfully request that the Labor Workforce Development Agency notify this office within sixty (60) days if it wishes to investigate this matter further. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned. If Miguel's wishes to resolve these claims prior to litigation by stopping its unlawful practices and making full restitution to Ms. Pereabras and others, please contact the undersigned forthwith to discuss this matter further. Thank you in advance for your attention to this matter.

Sincerely,

BOYAMIAN LAW, INC.



Michael H. Boyamian, Esq.

Cc: The Vasquez Company, Inc.
Attention: Javier S. Vasquez (*Agent of Service of Process*)
280 Corporate Terrace Street
Corona, California 92879

Miguel's Jr., Inc.
Attention: Javier S. Vasquez (*Agent of Service of Process*)
280 Corporate Terrace Street
Corona, California 92879

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 550 North Brand Boulevard, Suite 1500, Glendale, California 91203. My electronic service address is demiah@boyamianlaw.com

On June 2, 2022, I served, in the manner indicated below, the foregoing document described as:

**COMPLAINT FOR CIVIL PENALTIES UNDER LABOR CODE PRIVATE
ATTORNEY'S GENERAL ACT OF 2004, LABOR CODE 2698, ET. ESQ**

For the following case: **Pereabras v. The Vasquez Company, Inc., et al.**
LWDA/Court Case No.: **LWDA-CM-866996-22**
 CIVSB2208345
 San Bernardino County Superior Court

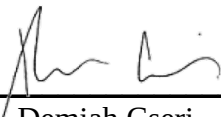
on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MC-55
Sacramento, California 95814

 X BY ELECTRONIC SERVICE: Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

 X STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 2, 2022 in Glendale, California.



Demiah Cseri