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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SONOMA

14 MARIA AYALA, an individual, on
15 behalf of herself and on behalf of all
16 persons similarly situated,

17 Plaintiff,

18 v.

19 OCTAVIO DIAZ, an individual,
20 GONZALO DIAZ, an individual,
21 DIEGO DIAZ, an individual,
22 MEHMET KIRMITCI, an individual,
23 AGAVE MEXICAN RESTAURANT &
24 BAR, INC., a California corporation,
25 EL FAROLITO MEXICAN
26 RESTAURANT & BAR #2, INC., a
27 California corporation, EL
28 FAROLITO ENTERPRISES, INC., a
California corporation doing business
as GALLINA D'ORO;
NOTRE MERE, INC., a California
corporation doing business as
MITOTE FOOD PARK; and DOES 1-
50,

Defendants.

Case No. 24CV04291

[Unlimited Civil]

CLASS ACTION COMPLAINT

[Cal. Code Civ. Proc § 382]

1. Failure to Pay for All Hours Worked
2. Failure to Provide Accurate, Written Wage Statements in Violation of Labor Code § 226;
3. Failure to Reimburse All Necessary Business Expenses in Violation of Labor Code § 2802;
4. Failure to Provide Meal Periods;
5. Failure to Provide Rest Breaks;
6. Failure to Provide All Gratuity in Violation of Labor Code § 351
7. Failure to Timely Pay Wages in Violation of Labor Code § 204
8. Unlawful Wage Deductions in Violation of Labor Code § 221
9. Racial Discrimination in Violation of Labor Code § 1197.5;
10. Unfair Competition in Violation of California Business and Professions Code § 17200, *et seq.*
11. Wage Theft in Violation of California Labor Code § 558.1
12. Retaliation in Violation of California Labor Code §§ 1102.5 and 98.6

JURY TRIAL DEMANDED

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Plaintiff MARIA AYALA, on behalf of herself and all others similarly situated and/or aggrieved employees of Defendants OCTAVIO DIAZ, an individual, GONZALO DIAZ, an individual, DIEGO DIAZ, an individual, MEHMET KIRMITCI, an individual, AGAVE MEXICAN RESTAURANT & BAR, INC., a California corporation, EL FAROLITO MEXICAN RESTAURANT & BAR #2, INC., a California corporation, EL FAROLITO ENTERPRISES, INC., a California corporation doing business as GALLINA D'ORO, NOTRE MERE, INC., a California Corporation doing business as Mitote Food Park, and DOES 1 through 50, inclusive, alleges as follows:

I. INTRODUCTION

1. Plaintiff MARIA AYALA (hereinafter "Plaintiff") brings this individual and putative class action complaint against Defendants OCTAVIO DIAZ, GONZALO DIAZ, DIEGO DIAZ, MEHMET KIRMITCI, AGAVE MEXICAN RESTAURANT & BAR, INC., EL FAROLITO MEXICAN RESTAURANT & BAR #2, INC., EL FAROLITO ENTERPRISES, INC., dba GALLINA D'ORO, NOTRE MERE, INC., a California Corporation doing business as Mitote Food Park, and DOES 1 through 50, inclusive (collectively "Defendants"), for engaging in a pattern of wage and hour violations under the California Labor Code, Business and Professions Code, and IWC Wage Orders. Plaintiff brings this action on behalf of all current and former non-exempt employees who were employed by Defendants in the State of California during the applicable relevant time period (hereinafter "similarly situated and/or aggrieved employees").

2. Plaintiff is informed and believes, and thereon alleges, that Defendants decreased their employment-related costs by deliberately violating California's wage and hour laws, which contributed to Defendants' unfair competition under Business and Professions Code section 17200, *et seq.*

3. Defendants' systematic pattern of wage and hour violations toward Plaintiff and all other similarly situated and/or aggrieved employees in California

1 include, *inter alia*: failure to pay for all hours worked; failure to provide accurate,
2 written wage statements; failure to timely pay all wages due during employment;
3 and failure to authorize and permit uninterrupted 30-minute meal and 10-minute
4 rest breaks.

5 4. Plaintiff brings this lawsuit against Defendants seeking restitution,
6 declaratory judgment, injunctive relief, and monetary relief on behalf of all other
7 similarly situated and/or aggrieved employees of Defendants in California. Plaintiff
8 seeks to recover, *inter alia*, unpaid wages, unreimbursed expenses, interest,
9 liquidated damages, attorney's fees, damages, penalties, and costs pursuant to
10 California Labor Code sections 226, 226.7, 512, 588, 2802, *et seq.* and California
11 Business and Professions Code section 17200, *et seq.*

12 5. The "Class Period" is designated as the period from four years prior to
13 the filing of this Complaint through the present. The violations of California's wage
14 and hour laws, as described more fully below, have been ongoing for years prior to
15 the filing of this action, are continuing at present, and will continue unless and
16 until enjoined by the Court.

17 6. Plaintiff reserves the right to name additional representatives.

18 II. THE PARTIES

19 7. Plaintiff is an individual over the age of eighteen (18) residing and
20 employed in Sonoma County, California. Plaintiff was at all times relevant hereto,
21 a server at Agave Mexican Restaurant and Bar, Inc., a restaurant/bar in
22 Healdsburg, California, County of Sonoma.

23 8. At all relevant times, Plaintiff and, on information and belief, other
24 similarly situated and/or aggrieved employees of Defendants in California were
25 subject to the same policies, practices, and procedures governing their
26 employment and their payment of wages earned and hours worked.

27 9. Defendant Agave Mexican Restaurant & Bar, Inc. is a California
28 corporation with its principal place of business in Healdsburg, California.

1 10. Defendant El Farolito Mexican Restaurant & Bar #2, Inc. is a
2 California corporation with its principal place of business in Windsor, California.

3 11. Defendant El Farolito Enterprises, Inc. dba Gallina D'Oro is a
4 California corporation with its principal place of business in Healdsburg,
5 California.

6 12. Defendant Notre Mere, Inc., dba Mitote Food Park is a California
7 Corporation with its principal place of business in Santa Rosa, California.

8 13. Defendant Octavio Diaz, an individual over the age of eighteen (18),
9 is and at all times relevant hereto was, the owner, director, officer, or managing
10 agent of numerous restaurants in the County of Sonoma in the State of California,
11 including but not limited to: Agave Mexican Restaurant & Bar, Inc., El Farolito
12 Mexican Restaurant & Bar #2, Inc., El Farolito Enterprises, Inc., dba Gallina
13 D'Oro, and Notre Mere, Inc., dba Mitote Food Park (collectively, the
14 "Restaurants").

15 14. Plaintiff is informed and believes that Defendant Gonzalo Diaz, an
16 individual over the age of eighteen (18) is and at all times relevant hereto was,
17 the manager of one or more of the Restaurants.

18 15. Plaintiff is informed and believes that Defendant Diego Diaz, an
19 individual over the age of eighteen (18) is and at all times relevant hereto was,
20 the manager of one or more of the Restaurants.

21 16. Plaintiff is informed and believes that Defendant Mehmet Kiritci,
22 an individual over the age of eighteen (18) is and at all times relevant hereto was,
23 the manager of one or more of the Restaurants.

24 17. Pursuant to Labor Code section 558.1, any employer or other person
25 acting on behalf of an employer, who violates, or causes to be violated, any
26 provision regulating minimum wages or hours and days of work in any order of
27 the Industrial Welfare Commission, or violates, or causes to be violated, Labor
28 Code sections 226, 226.7, or 2802, may be held liable as the employer for such

1 violation. As such, Gonzalo Diaz, Diego Diaz, and Mehmet Kiritci are named for
2 their violation of the Labor Code provisions asserted herein.

3 18. Plaintiff is informed and believes that at all times relevant hereto,
4 each of the Defendants were the agents, partners, joint venturers, joint
5 employers, representatives, servants, employees, successors-in-interest, co-
6 conspirators and/or assigns of each of the other Defendants.

7 19. Plaintiff is informed and believes that at all times relevant hereto,
8 each of the Defendants directly or indirectly controlled or affected the working
9 conditions, wages, working hours, and conditions of employment of Plaintiff and
10 other similarly situated and/or aggrieved employees within Sonoma County so as
11 to make each of the Defendants liable under the statutory provisions set forth
12 herein as joint employers.

13 20. Plaintiff is informed, believes and alleges that the above-mentioned
14 Defendants violated and/or caused to be violated Labor Code and IWC Wage
15 Order provisions with respect to the Class of aggrieved employees. As a result,
16 they may be held personally liable under Labor Code sections 558. (*See, e.g.,*
17 *Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.)

18 21. Plaintiff does not currently know the names of DOES 1 through 50
19 and, therefore, sues said defendants by such fictitious names. Plaintiff alleges
20 that each of those defendants is in some way liable and at fault for the
21 occurrences alleged herein, and each defendant is responsible for the damages
22 incurred by Plaintiff and similarly situated and/or aggrieved employees, as
23 hereinafter alleged. Plaintiff will amend this Complaint to allege the defendants'
24 true names and capacities when ascertained.

25 22. Plaintiff is informed, and believes, and thereupon alleges that each
26 defendant designated as a DOE is responsible negligently, intentionally,
27 contractually, or in some other actionable manner for the events and happenings
28 hereinafter referred to, and thereby proximately caused injuries and damages to

Plaintiff and similarly situated and/or aggrieved employees as hereinafter alleged, either through said defendants' own wrongful conduct or through the conduct of their agents, servants, employees, representatives, officers or attorneys, or in some other manner.

III. JURISDICTION AND VENUE

23. This Court has subject matter jurisdiction over this matter as the aggregate amount of the claims asserted exceeds \$35,000.

24. The Court has personal jurisdiction over Defendants pursuant to Code of Civil Procedure § 410.10 as each of them is domiciled and/or doing business in California.

25. This Court has jurisdiction over the claims brought under the California Labor Code and California's Unfair Competition Law, Business & Professions Code § 17200, *et seq.*

26. Venue is proper in Sonoma County pursuant to Code of Civil Procedure sections 395(a) and 395.5 because Defendants transact substantial business, employ Plaintiff and other similarly situated and/or aggrieved employees in Sonoma County, many of the unlawful acts allege herein arose in Sonoma County and have a direct effect on Plaintiff and other similarly situated and/or aggrieved employees within Sonoma County, and Defendants have their principal place of business in Sonoma County as designated with the California Secretary of State.

IV. FACTUAL BACKGROUND

27. Plaintiff is a non-exempt hourly employee of Defendants. Defendants hired Plaintiff in 2023 as a server at Agave Mexican Restaurant & Bar, Inc.

28. Plaintiff is informed and believes that at the time of her hiring, Defendant Octavio Diaz was the owner of Agave Mexican Restaurant & Bar, Inc. When Plaintiff was first hired, Defendant Gonzalo Diaz was the manager of Agave Mexican Restaurant & Bar, Inc. A few months later, Defendants Diego Diaz and Mehmet Kirmitci took over the management position.

1 29. Defendants systematically failed to schedule meal periods for
2 Plaintiff and all other similarly situated and/or aggrieved employees, which
3 discouraged and prevented them from taking all timely, uninterrupted thirty (30)
4 minute meal periods, and led them to working through their meal periods in order
5 to continue serving customers.

6 30. Furthermore, Defendants systematically failed to schedule rest
7 breaks for Plaintiff and all other similarly situated and/or aggrieved employees,
8 which discouraged and prevented them from taking all timely, uninterrupted ten
9 (10) minute rest periods for each four hours of work and led to them working
10 during rest periods to continue serving customers.

11 31. In light of the requirements of the job, as the Restaurants were
12 habitually busy, a meal period or rest break was not always feasible for Plaintiff
13 and all other similarly situated and/or aggrieved employees. As a result,
14 Defendants failed to relieve Plaintiff and all other similarly situated and/or
15 aggrieved employees of all duties such that they could take full 30-minute meal
16 periods and 10-minute rest periods. Additionally, there is not a designated rest
17 area for Plaintiff and other similarly situated and/or aggrieved employees and
18 they are instructed not to sit in the customer area of the restaurants.

19 32. Plaintiff and, on information and belief, other similarly situated
20 and/or aggrieved employees of Defendants were required by Defendants to clock
21 out after four hours of work and immediately clock back in. As a result, Plaintiff
22 and all other similarly situated and/or aggrieved employees were unable to take a
23 meal break and were denied overtime pay that would result from working a shift
24 without a meal break.

25 33. Plaintiff and, on information and belief, other similarly situated
26 and/or aggrieved employees of Defendants incurred expenses in direct
27 consequence of the discharge of their duties of employment, but Defendants failed
28 to fully indemnify them for such expenses. For example, Plaintiff and other

1 similarly situated and/or aggrieved employees were required to wear a uniform.
2 Plaintiff and other similarly situated and/or aggrieved employees had to purchase
3 the uniform and were not reimbursed for these expenses, in violation of Labor
4 Code section 2802.

5 34. Plaintiff and, on information and belief, other similarly situated
6 and/or aggrieved employees used a computer system to “clock-in” and “clock-out”
7 of their shift. The hours Plaintiff and other similarly situated and/or aggrieved
8 employees worked was not always accurately reflected on their wage statements.
9 The wage statements often showed Plaintiff and other similarly situated and/or
10 aggrieved employees worked fewer hours than they actually had. Defendants
11 failed to reimburse Plaintiff and other similarly situated and/or aggrieved
12 employees for the discrepancies on wage statements for the hours actually
13 worked.

14 35. Defendants knowingly and intentionally provided Plaintiff and other
15 similarly situated and/or aggrieved employees with incomplete and inaccurate
16 wage statements. Specifically, Defendants did not accurately record the time
17 Plaintiff and other similarly situated and/or aggrieved employees spent working,
18 which resulted in an unlawful deduction of wages earned. Thus, Defendants did
19 not furnish wage statements to Plaintiff and other similarly situated and/or
20 aggrieved employees containing accurate totals of: the gross wages earned, the
21 hours worked, net wages earned, and the number of hours worked at each hourly
22 rate.

23 36. Defendants’ wage statement issues described above rendered the
24 wage statements inaccurate and confusing to Plaintiff and other similarly
25 situated and/or aggrieved employees, concealing the underpayments and
26 presenting a false portrayal of accuracy on the wage statements relied upon by
27 Plaintiff and other similarly situated and/or aggrieved employees as the sole
28 documentary evidence of their respective earnings.

1 37. Further, Plaintiff, and on information and belief, other similarly
2 situated and/or aggrieved employees of Defendants had to attend mandatory
3 trainings and meetings. Defendants failed to compensate Plaintiff and other
4 similarly situated and/or aggrieved employees for the time spent at these
5 trainings and meetings.

6 38. Plaintiff, and on information and belief, other similarly situated
7 and/or aggrieved employees of Defendants were to be paid wages twice during
8 each calendar month on days designated in advance as regular paydays.
9 Defendants failed to pay Plaintiff and other similarly situated and/or aggrieved
10 employees all wages due to them, within any time period specified by Labor Code
11 section 204.

12 39. Plaintiff, and on information and belief, other similarly situated
13 and/or aggrieved employees, received gratuity from customers. Plaintiff and other
14 similarly situated and/or aggrieved employees did not “pool” the gratuity into a
15 collective source. Plaintiff and other similarly situated and/or aggrieved
16 employees had to give 20% of the cash gratuity earned to dishwashers and 10% of
17 the cash gratuity earned to bartenders. Defendants caused Plaintiff and other
18 similarly situated and/or aggrieved employees to relinquish 30% of the cash
19 gratuity that was their sole property, in violation of Labor Code section 351.
20 Additionally, Plaintiff and other similarly situated and/or aggrieved employees
21 are required by Defendants to bring \$100 of their own cash to make change for
22 customers who pay in cash.

23 40. Even though Plaintiff, and on information and belief, other similarly
24 situated and/or aggrieved employees, had to relinquish 30% of the cash gratuity
25 earned, their wage statements reflect they received 100% of the gratuity and had
26 to pay taxes on 100% of the gratuity. Additionally, Plaintiff and other similarly
27 situated and/or aggrieved employees are required to share their tips with
28 management, including Defendants.

1 41. Plaintiff, and on information and belief, other similarly situated
2 and/or aggrieved employees received credit card gratuity as well as cash gratuity.
3 The credit card gratuity was paid to Plaintiff and other similarly situated and/or
4 aggrieved employees by cash or check. However, Plaintiff and other similarly
5 situated and/or aggrieved employees were not always paid for the credit card
6 gratuity they earned. Defendants would at times decline to compensate Plaintiff
7 and other similarly situated and/or aggrieved employees for credit card gratuity
8 that was their sole property.

9 42. Plaintiff, and on information and belief, other similarly situated
10 and/or aggrieved employees were forced to pay for incorrect orders brought out to
11 customers or for orders sent back because they were not to the customer's liking.
12 Plaintiff and other similarly situated and/or aggrieved employees had to pay from
13 their wages for the returned orders.

14 43. Defendants reduce the wages of Plaintiff and other similarly situated
15 and/or aggrieved employees for glasses and plates that are broken regardless of
16 the cause of the broken or damaged glasses and plates.

17 44. Based on the foregoing violations of the applicable Labor Code,
18 Defendants engaged in unfair business practices in California and willingly and
19 knowingly engaged in employment patters and practices that violated Business &
20 Professions Code section 17200, *et seq.*, and Plaintiff, and on information and
21 belief, other similarly situated and/or aggrieved employees suffered damages due
22 to Defendants' unfair, unlawful, and/or fraudulent actions.

23 45. Plaintiff, and on information and belief, other similarly situated
24 and/or aggrieved employees are of Central American and South American
25 ancestry and are able to speak Spanish. Defendants Diego Diaz and Mehmet
26 Kiritci yell at these servers and instruct them to learn English, even though
27 they have a knowledge of English and there is no interference with their job
28 duties. These servers are paid less than the newly hired waitresses who are not

1 Central American or South American. Defendants discriminate against Plaintiff
2 and other similarly situated and/or aggrieved employees in violation of Labor
3 Code section 1197.5.

4 46. In or around February 2024, the U.S. Department of Labor Wage
5 and Hour Division (“Department of Labor”) began investigating Defendants.
6 Despite being told by the investigator not to change the schedule, Defendant
7 Octavio Diaz began cutting hours and taking tables from employees he believed
8 were cooperating with the Department of Labor’s investigation.

9 47. Following the commencement of the Department of Labor’s
10 investigation, Defendants gave Plaintiff and other similarly situated and/or
11 aggrieved employees a meal break waiver agreement in English only and told
12 them they had to sign it. Defendants refused to translate the agreement for
13 primarily Spanish speaking employees despite being told they could not read
14 English.

15 48. During the course of the investigation by the Department of Labor,
16 Defendant Octavio Diaz told Plaintiff and other similarly situated and/or
17 aggrieved employees that if they spoke with the investigator for the Labor
18 Commissioner, they would be deported.

19 49. During the course of the investigation by the Department of Labor,
20 Defendants told Plaintiff and other similarly situated and/or aggrieved employees
21 that they could not use sick time despite the fact that they had notes from their
22 doctor’s indicating they could not work.

23 50. Despite being advised not to change schedules of employees during
24 the investigation by the Department of Labor, Defendants changed Plaintiff and
25 other similarly situated and/or aggrieved employees to days and times were
26 unavailable, as was known to Defendants. Additionally, Defendants would alter
27 the schedule in the middle of the night prior to the shift Plaintiff and other
28 similarly situated and/or aggrieved employees were scheduled to work.

51. After significantly reducing the hours of Plaintiff and other similarly situated and/or aggrieved employees, Defendant Octavio Diaz said if Plaintiff came in for the scheduled shift they would be sent home.

V. CLASS ACTION ALLEGATIONS

52. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

53. Plaintiff brings Causes of Action One through Ten as a Class Action pursuant to California Code of Civil Procedure section 382, on behalf of all current and former non-exempt employees of Defendants in California who were affected by Defendants' Labor Code, Business and Professions Code, and IWC Wage Order violations, as alleged herein.

54. The Class, and Subclasses, that Plaintiff seeks to represent is composed of and define as follows:

"All current and former non-exempt employees who performed work as a server at a restaurant and/or bar of which Octavio Diaz was the owner, director, officer, or managing agent, in the County of Sonoma, California at any time from four years prior to the filing of this action through the date of the Court's granting of class certification." (hereinafter the "Class" or "Class Members")

Plaintiff further alleges the following Subclasses pursuant to Labor Code section 2802:

Unpaid Wage Subclass

"All Class Members who were not paid all regular, overtime, or minimum wages for all hours worked each pay period."

Wage Statement Subclass

"All Class Members who received a wage statement from Defendants during the period beginning four years before the filing of this action and ending when final judgment is entered."

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1 Reimbursement Subclass

2 “All Class Members who incurred necessary business
3 expenses during their employment and who were not
 indemnified by Defendants for those expenses.”

4 Meal Period Subclass

5 “All Class Members who worked shifts of five hours or more
6 without a duty-free meal period of at least 30 minutes, who
 were not paid one hour of pay at the regular rate of
 compensation for each of those days.”

7 Rest Period Subclass

8 “All Class Members who worked shifts of four hours or a
9 major fraction thereof without being authorized or
10 permitted an uninterrupted rest period of at least 10
11 minutes, who were not paid one hour at the regular rate of
 compensation for each of those days.”

12 Gratuity Subclass

13 “All Class Members who did not receive payment for all
 gratuities left for them.”

14 Regular Pay Subclass

15 “All Class Members who did not receive the wages earned
16 twice during each calendar month on days designated in
 advance by the employer as the regular paydays.”

17 Deduction Subclass

18 “All Class Members who were subject to deductions from
19 their wages.”

20 Lower Wage Subclass

21 “All Class Members who received lower wages than other
22 employees based on their racial background or ethnicity for
 substantially similar work.”

23 Pursuant to California Rule of Court 3.765(b), Plaintiff reserves the right to
24 modify the Class definition with greater specificity or further division into
25 subclasses or limitation to particular issues.

26 This action has been brought and may properly be maintained as a class
27 action under Code of Civil Procedure section 382 because there is a well-defined
28 community of interest in the litigation, the proposed class is easily ascertainable,

1 and Plaintiff is a proper representative of the Class and Subclasses:

2 a. **Numerosity:** The potential members of the Class as defined are
3 numerous and therefore joinder of all the members of the Class is
4 impracticable. While the precise number of servers has not been
5 determined at this time, Plaintiff is informed and believes that
6 Defendants have employed over 50 servers in Sonoma County,
7 California. This information is easily ascertainable from
8 Defendants' payroll records and other personnel records.

9 b. **Commonality:** There are questions of law and fact common to
10 Plaintiff and the Class that predominate over any questions affecting
11 only individual members of the Class. These common questions of
12 law and fact include, but are not limited to, the following:

- 13 i. Whether Defendants failed to pay Class Members all
14 minimum and regular wages owed for all hours or fraction of
15 an hour that they were suffered or permitted to work and/or
16 remain under the control of Defendants;
- 17 ii. Whether Defendants failed to properly and accurately
18 record and maintain records of all hours worked and wages
19 earned by Class Members;
- 20 iii. Whether Defendants failed to provide Class Members with
21 accurate itemized wage statements because Defendants
22 provided Class Members with wage statements that did not
23 depict the correct amount of gratuity earned;
- 24 iv. Whether Defendants applied policies and practices that
25 resulted in late and/or incomplete payment of wages to Class
26 Members during their employment; and
- 27 v. Whether Defendants failed to reimburse Class Members for
28 business expenses incurred in direct consequence of the

1 discharge of their duties of employment because Class
2 Members were required to purchase and maintain uniforms
3 for work related duties, for which Defendants provided no
4 reimbursement.

5 c. **Typicality:** Plaintiff's claims are typical of the claims of the Class
6 and Subclasses. Plaintiff and other similarly situated and/or
7 aggrieved employees sustained injuries and damages, and were
8 deprived of property rightly belonging to them, arising out of and
9 caused by Defendants' common course of conduct in violation of law
10 as alleged herein, in similar ways and for the same types of
11 expenses.

12 d. **Adequacy of Representation:** Plaintiff has no conflicts of
13 interest with the Class she wishes to represent and will fairly and
14 adequately protect the interests of Class Members because it is in
15 Plaintiff's best interest to prosecute the claims alleged herein to
16 obtain full compensation and penalties due to her and the Class. In
17 addition, Plaintiff has retained counsel highly experienced in labor
18 and employment litigation, with significant wage and hour class
19 action experience.

20 e. **Superiority of Class Action:** A class action is superior to all
21 other available means for the fair and efficient adjudication of this
22 controversy, as individual joinder of all Class Members would create
23 a danger of inconsistent or contradictory judgments arising from the
24 same set of facts. Class action treatment presents no unusual
25 management difficulties and will allow similarly situated employees
26 to litigate their claims in the manner that is most efficient and
27 economical for the parties and the judicial system.

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VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Failure to Pay for All Hours Worked

(Alleged by Plaintiff individually and on behalf of the Class and Unpaid Wage Subclass against all Defendants)

55. Plaintiff and other similarly situated and/or aggrieved employees re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

56. Plaintiff and members of the Class are/were non-exempt employees of Defendants within the meaning of the Labor Code.

57. Wage Order 5, section 4, subparagraph (B) provides: “Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period...”

58. Labor Code section 1197 provides, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

59. Plaintiff and other similarly situated and/or aggrieved employees used a computer system to clock-in and clock-out of work. On many occasions, the hours Plaintiff and other similarly situated and/or aggrieved employees actually worked were not reflected accurately on their wage statements. Plaintiff and other similarly situated and/or aggrieved employees were not paid for all regular hours worked, at the proper rate of pay.

60. Additionally, Plaintiff and other similarly situated and/or aggrieved employees were required to attend trainings and meetings at times they were not scheduled to work. Plaintiff and other similarly situated and/or aggrieved employees were not paid for attendance at these mandatory trainings and meetings.

61. Plaintiff on behalf of herself and all other similarly situated and/or aggrieved employees are owed wages for the violations above and are entitled to payment of those wages under Labor Code section 1197.

62. Plaintiff and other similarly situated and/or aggrieved employees request relief described herein, including unpaid wages, interest, attorneys' fees and costs of suit.

SECOND CAUSE OF ACTION

Failure to Provide Accurate, Written Wage Statements in Violation of Labor Code § 226

(Alleged by Plaintiff individually and on behalf of the Class and Wage Statement Subclass against all Defendants)

63. Plaintiff and other similarly situated and/or aggrieved employees re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

64. Labor Code section 226(a) provides, "An employer, semimonthly or at the time of each payment of wages, shall furnish to their employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of their social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and

1 address of the legal entity that secured the services of the employer, and (9) all
2 applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee...”

4 65. Specifically, Labor Code section 226(a)(1) requires that every
5 employer show the gross wages earned by the employee.

6 66. Plaintiff and other similarly situated and/or aggrieved employees
7 were issued wage statements that did not contain the correct gross wages earned
8 by the employee as a higher amount of gratuity was reflected on the wage
9 statements than what the employee earned. As a result, Plaintiff and other
10 similarly situated and/or aggrieved employees were not promptly and easily able
11 to determine from the wage statements alone the correct amount of wages they
12 should have received.

13 67. Likewise, Labor Code section 226(a)(2) requires that every employer
14 show the total hours worked by the employee. As a result of the wage statements
15 reflecting the incorrect hours worked by the employee and Defendants’ failure to
16 issue meal and rest periods, Plaintiff and other similarly situated and/or
17 aggrieved employees were not promptly and easily able to determine from the
18 wage statements alone the total hours worked.

19 68. Plaintiff and other similarly situated and/or aggrieved employees
20 suffered injury as a result of the above failure to provide accurate wage
21 statements, including the inability to promptly and easily determine from the
22 wage statement alone the total hours worked or the gross pay they should have
23 received during the pay period.

24 69. Labor Code section 226 provides remedies for violations described
25 above, including penalties, damages, and injunctive relief.

26 70. Plaintiff and other similarly situated and/or aggrieved employees
27 seek damages and penalties in amounts to be determined at trial, as well as costs
28 of suit, attorneys’ fees and injunctive relief pursuant to Labor Code section 226.

THIRD CAUSE OF ACTION

**Failure to Reimburse All Necessary Business Expenses in Violation of
Labor Code § 2802**

**(Alleged by Plaintiff individually and on behalf of the Class and
Reimbursement Subclass against all Defendants)**

71. Plaintiff and other similarly situated and/or aggrieved employees re-
allege and incorporate by reference the allegations contained in the paragraphs
above, as though fully set forth herein.

72. Labor Code section 2699.5 provides, in relevant part, “The provisions
of subdivision (a) of Section 2699.3 apply to any alleged violation of the following
provisions ... Section ... 2802 ...”

73. Labor Code section 2802(a) provides, “[a]n employer shall indemnify
his or her employee for all necessary expenditures or losses incurred by the
employee in direct consequence of the discharge of his or her duties, or of his or
her obedience to the directions of the employer, even though unlawful, unless the
employee, at the time of obeying the directions, believed them to be unlawful.”

74. Labor Code section 2802(c) explains, “[f]or purposes of this section,
the term “necessary expenditures or losses” shall include all reasonable costs,
including, but not limited to, attorneys’ fees incurred by the employee enforcing
the rights granted by this section.”

75. While discharging their duties for Defendants, Plaintiff and other
similarly situated and/or aggrieved employees incurred necessary work-related
expenses. Plaintiff and other similarly situated and/or aggrieved employees were
required to purchase a uniform to wear.

76. Despite Defendants’ requirement that employees purchase and wear
a uniform to discharge their duties, Defendants failed to reimburse Plaintiff and
other similarly situated and/or aggrieved employees for this necessary business
expense.

77. Defendants failed to indemnify or in any manner reimburse Plaintiff and other similarly situated and/or aggrieved employees for these expenditures and losses.

78. By requiring their employees to pay expenses and cover losses incurred in direct consequence of the discharge of their duties for Defendants and/or in obedience of Defendants' direction or expectations, Defendants violated and continue to violate Labor Code section 2802.

79. By unlawfully failing to indemnify Plaintiff and other similarly situated and/or aggrieved employees, Defendants are liable for reasonable attorneys' fees and costs under Labor Code section 2802(c).

80. As a direct and proximate result of Defendants' conduct, Plaintiff and other similarly situated and/or aggrieved employees suffered substantial losses according to proof, as well as pre-judgment interest and costs for the prosecution of this action.

81. Plaintiff and other similarly situated and/or aggrieved employees request relief as described below.

FOURTH CAUSE OF ACTION

Failure to Provide Meal Periods

(Alleged by Plaintiff individually and on behalf of the Class and Meal Period Subclass against all Defendants)

82. Plaintiff and other similarly situated and/or aggrieved employees re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

83. Labor Code section 512 provides in pertinent part: "(a) An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer

1 and employee. An employer shall not employ an employee for a work period of
2 more than 10 hours per day without providing the employee with a second meal
3 period of not less than 30 minutes, except that if the total hours worked is no
4 more than 12 hours, the second meal period may be waived by mutual consent of
5 the employer and the employee only if the first meal period was not waived.”

6 84. Wage Order 5, at subdivision 11, provides in pertinent part: “(A) No
7 employer shall employ any person for a work period of more than five (5) hours
8 without a meal period of not less than 30 minutes, except that when a work period
9 of not more than six (6) hours will complete the day’s work the meal period may
10 be waived by mutual consent of the employer and the employee... (D) If an
11 employer fails to provide an employee a meal period in accordance with the
12 applicable provisions of this order, the employer shall pay the employee one (1)
13 hour of pay at the employee’s regular rate of compensation for each workday that
14 the meal period is not provided.”

15 85. Labor Code section 226.7 states that, “(a) No employer shall require
16 any employee to work during any meal or rest period mandated by an applicable
17 order of the Industrial Welfare Commission. (b) If an employer fails to provide an
18 employee a meal period or rest period in accordance with an applicable order of
19 the Industrial Welfare Commission, the employer shall pay the employee one
20 additional hour of pay at the employee s regular rate of compensation for each
21 work day that the meal or rest period is not provided.”

22 86. Defendants were required to provide Plaintiff and other similarly
23 situated and/or aggrieved employees with meal periods pursuant to Wage Order
24 5.

25 87. In light of the requirements of the job, Plaintiff and other similarly
26 situated and/or aggrieved employees routinely worked more than five hours
27 without being provided a 30-minute, uninterrupted, duty-free meal break.
28 Plaintiff and other similarly situated and/or aggrieved employees allege that

Defendants did not have a lawful meal break policy or practice. Defendants had a generally applicable policy and practice of not providing meal breaks as required under California law. Plaintiff, and upon information and belief, other similarly situated and/or aggrieved employees, did not “waive” any meal periods or agree to on-duty meal periods.

88. Plaintiff, and upon information and belief, other similarly situated and/or aggrieved employees, were not paid the “premium” payment as provided for under Labor Code section 226.7 for missed, late, uninterrupted, or otherwise noncompliant meal breaks. Plaintiff and other similarly situated and/or aggrieved employees allege that Defendants had a uniformly applied policy of not providing meal period premiums for noncompliant meal periods pursuant to section 226.7.

89. Plaintiff and other similarly situated and/or aggrieved employees request relief described herein, including unpaid additional and premium wages, interest, attorneys’ fees, and costs of suit.

FIFTH CAUSE OF ACTION

Failure to Provide Rest Breaks

(Alleged by Plaintiff individually and on behalf of the Class and Rest Period Subclass against all Defendants)

90. Plaintiff and other similarly situated and/or aggrieved employees re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

91. Wage Order 5, at subdivision 12, provides in pertinent part: “(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (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

1 time shall be counted as hours worked for which there shall be no deduction from
2 wages. (B) If an employer fails to provide an employee a rest period in accordance
3 with the applicable provisions of this order, the employer shall pay the employee
4 one (1) hour of pay at the employee's regular rate of compensation for each
5 workday that the rest period is not provided."

6 92. Labor Code section 226.7 states that, "(a) No employer shall require
7 any employee to work during any meal or rest period mandated by an applicable
8 order of the Industrial Welfare Commission. (b) If an employer fails to provide an
9 employee a meal period or rest period in accordance with an applicable order of
10 the Industrial Welfare Commission, the employer shall pay the employee one
11 additional hour of pay at the employee's regular rate of compensation for each
12 work day that the meal or rest period is not provided."

13 93. Defendants were required to authorize and permit Plaintiff and
14 other similarly situated and/or aggrieved employees rest periods pursuant to
15 Labor Code section 226.7 and Wage Order 5.

16 94. In light of the requirements of the job, Plaintiff and other similarly
17 situated and/or aggrieved employees routinely worked for more than four hours or
18 a major fraction thereof without being authorized or permitted to take 10-minute
19 rest breaks. Plaintiff and other similarly situated and/or aggrieved employees
20 allege that Defendants did not have a lawful rest break policy or practice.

21 Defendants had a generally applicable policy and practice of not authorizing and
22 permitting rest breaks as required under California law. Plaintiff and other
23 similarly situated and/or aggrieved employees did not "waive" any rest periods.

24 95. Plaintiff, and upon information and belief, other similarly situated
25 and/or aggrieved employees, were never paid the "premium" payment as provided
26 for under Labor Code section 226.7 for missed, late, interrupted, or otherwise
27 noncompliant rest breaks. Plaintiff and other similarly situated and/or aggrieved
28 employees allege that Defendants had a uniformly applied policy of not paying

rest period premiums for noncompliant rest periods pursuant to section 226.7.

96. Plaintiff and other similarly situated and/or aggrieved employees request relief described herein, including unpaid additional and premium wages, interest, attorneys' fees and costs of suit.

SIXTH CAUSE OF ACTION

Failure to Provide All Gratuity in Violation of Labor Code § 351 (Alleged by Plaintiff individually and on behalf of the Class and Gratuity Subclass against all Defendants)

97. Plaintiff and other similarly situated and/or aggrieved employees re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

98. Labor Code section 351 provides: "No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment."

99. Specifically, Labor Code section 351 requires that employees receive all gratuity earned and the employer cannot collect any portion thereof.

100. Plaintiff, and on information and belief, other similarly situated

1 and/or aggrieved employees had to relinquish 30% of the cash gratuity they
2 earned to dishwashers and bar tenders. As a result, Plaintiff and other similarly
3 situated and/or aggrieved employees were not permitted to retain 100% of the
4 gratuity they earned.

5 101. Additionally, Labor Code section 351 requires an employer to pay the
6 employee the full amount of credit card gratuity that was earned.

7 102. Plaintiff, and on information and belief, other similarly situated
8 and/or aggrieved employees were not always compensated for the credit card
9 gratuities they earned. Defendants would fail to reimburse Plaintiff and other
10 similarly situated and/or aggrieved employees for credit card gratuities on
11 occasion.

12 103. Plaintiff and other similarly situated and/or aggrieved employees
13 suffered injury as a result of the above failure to allow employees to retain 100%
14 of the gratuity they earned.

15 104. Plaintiff and other similarly situated and/or aggrieved employees
16 request relief as described below.

17 **SEVENTH CAUSE OF ACTION**

18 **Failure to Timely Pay Wages in Violation of Labor Code § 204**
19 **(Alleged by Plaintiff individually and on behalf of the Class and Regular**
20 **Pay Subclass against all Defendants)**

21 105. Plaintiff and other similarly situated and/or aggrieved employees re-
22 allege and incorporate by reference the allegations contained in the paragraphs
23 above, as though fully set forth herein.

24 106. Labor Code § 204 provides that, “[a]ll wages ... earned by any person
25 in any employment are due and payable twice during each calendar month on
26 days designated in advance by the employer as the regular paydays.”

27 107. Plaintiff, and on information and belief, other similarly situated
28 and/or aggrieved employees were not always paid at regular intervals. Defendants

1 often provided wages outside of the designated payday and had to be reminded by
2 employees that they were due their wages.

3 108. Plaintiff and other similarly situated and/or aggrieved employees
4 suffered injury as a result of the above failure to provide wages twice a month on
5 days designated in advance, including the inability to know when they would
6 receive their wages and how long they would have to wait for their wages.

7 109. Plaintiff and other similarly situated and/or aggrieved employees
8 request relief described herein, including unpaid wages, interest, attorneys' fees
9 and costs of suit.

10 **EIGHTH CAUSE OF ACTION**

11 **Unlawful Wage Deductions in Violation of Labor Code § 221** 12 **(Alleged by Plaintiff individually and on behalf of the Class and** 13 **Deduction Subclass against all Defendants)**

14 110. Plaintiff and other similarly situated and/or aggrieved employees re-
15 allege and incorporate by reference the allegations contained in the paragraphs
16 above, as though fully set forth herein.

17 111. Labor Code § 221 provides, "It shall be unlawful for any employer to
18 collect or receive from an employee any part of wages theretofore paid by said
19 employer to said employee."

20 112. Employers are not permitted to take back any part of an employee's
21 wages, including deductions for financial losses caused by an employee, unless the
22 loss was due to gross negligence or a willful act.

23 113. Plaintiff, and on information and belief, other similarly situated
24 and/or aggrieved employees were subject to deductions from their compensation
25 for the cost of any orders returned by customers. If the wrong menu item was
26 given to a customer or if the customer was not satisfied with their order and
27 returned it, Plaintiff and other similarly situated and/or aggrieved employees
28 would have to pay for the cost of the order from their wages.

114. Defendants maintained a policy and practice to recover costs and expenses directly from servers for orders returned by customers, even though such losses and expenses are an ordinary cost of doing business and are reasonably incurred by servers as a result of carrying out the essential functions of their positions.

115. Defendants unlawfully charged fees and expenses for returned orders in violation of Labor Code section 221 and Plaintiff and other similarly situated and/or aggrieved employees are entitled to reimbursement for, and repayment of, these deductions, plus interest and attorneys' fees and costs.

116. Plaintiff and other similarly situated and/or aggrieved employees request relief as described below.

NINTH CAUSE OF ACTION

Racial Discrimination in Violation of Labor Code § 1197.5

(Alleged by Plaintiff individually and on behalf of the Class and Lower Wage Subclass against all Defendants)

117. Plaintiff and other similarly situated and/or aggrieved employees re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

118. Labor Code section 1197.5(b) states: "An employer shall not pay any of its employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work..."

119. Plaintiff, and on information and belief, other similarly situated and/or aggrieved employees are Central American and South American and are paid minimum wage. Newly hired servers are not of Central American and South American ethnicity and are paid more than minimum wage.

120. Pursuant to Labor Code section 1197.5(b)(1), a wage differential is allowable if it is based on one or more of the following factors: 1) a seniority system; 2) a merit system; 3) a system that measures earnings by quantity or

quality of production; and 4) a bona fide factor other than race or ethnicity, such as education, training, or experience.

121. Plaintiff other similarly situated and/or aggrieved employees have been employed by Defendants for a longer period of time than servers not of Central American or South American ethnicity. Plaintiff other similarly situated and/or aggrieved employees excel at their jobs, continuously serve customers, and have extensive experience as servers. Servers not of Central American or South American ethnicity perform less work, serve fewer customers, and do not have extensive experience or training.

122. Defendants maintained a policy and practice to discriminate against servers of Central American and South American ethnicity and pay them minimum wage while those servers not of Central American and South American ethnicity earn more than minimum wage.

123. Defendants unlawfully pay servers of Central American and South American ethnicity lower wages than those servers of other ethnicities, in violation of Labor Code section 1197.5 and Plaintiff other similarly situated and/or aggrieved employees are entitled to reimbursement for, and repayment of, these wages, and interest thereon, plus liquidated damages.

TENTH CAUSE OF ACTION

Unfair Competition in Violation of California Business and Professions

Code § 17200, *et seq.*

(Alleged by Plaintiff individually and on behalf of the Class against all Defendants)

124. Plaintiff and other similarly situated and/or aggrieved employees re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

125. The conduct described herein constitutes unlawful, fraudulent, or unfair business practices within the meaning of Business & Professions Code

1 section 17200, *et seq.* including: (a) failure to pay for all hours worked as required
2 by Labor Code section 1197; (b) failure to provide accurate wage statements in
3 violation of Labor Code section 226; (c) failure to reimburse employees for all
4 necessary expenditures in violation of Labor Code section 2802; (d) failure to
5 reimburse employees for all gratuity earned in violation of Labor Code section
6 351; (e) failure to timely pay wages in violation of Labor Code section 204; (f)
7 unlawfully deducting from employees' wages in violation of Labor Code section
8 221; and (g) paying certain employees wage rates less than the rates paid to
9 employees of another race or ethnicity for substantially similar work.

10 126. The activities described herein demonstrate that all defendants
11 engaged in conspiracy to violate labor laws.

12 127. The activities described herein constitute unfair practices in
13 violation of California Business & Professions Code section 17200, *et seq.*

14 128. Business & Professions Code section 17204 allows "any person who
15 has suffered injury in fact and has lost money or property" to prosecute a civil
16 action for violation of the Unfair Competition Law.

17 129. Beginning at an exact date unknown to Plaintiff, but at least four
18 years prior to the filing of this action, and continuing to the present, Defendants
19 committed unlawful, unfair, and/or fraudulent business acts and practices as
20 defined by Business & Professions Code section 17200, *et seq.* by failing to
21 compensate Plaintiff and other similarly situated and/or aggrieved employees
22 with pay for all hours worked.

23 130. Likewise, Defendants' failure to provide reimbursement for
24 necessary business expenses, namely the requirement to purchase uniforms,
25 constitutes additional violations under the Unfair Competition Law.

26 131. As a direct and proximate result of Defendants' unlawful, unfair,
27 and/or fraudulent acts and practices described herein, Defendants have received
28 and continue to hold ill-gotten gains belonging to Plaintiff and other similarly

1 situated and/or aggrieved employees in the form of unpaid wages and unpaid
2 necessary business expenses incurred. As a direct and proximate result of
3 Defendants' unlawful business practices, Plaintiff and other similarly situated
4 and/or aggrieved employees have suffered economic injuries including, but not
5 limited to, unlawful forfeiture of wages and unlawful deductions, resulting
6 reductions and/or off-sets to earned compensation, and unlawful withholding of
7 wages. Defendants have profited from their unlawful, unfair, and/or fraudulent
8 acts and practices in the amount of those forfeitures and deductions and interest
9 accrued thereon.

10 132. Plaintiff and other similarly situated and/or aggrieved employees are
11 entitled to restitution pursuant to Business & Professions Code sections 17203
12 and 17208 for all unlawful forfeitures, unlawful deductions, and interest thereon
13 accruing, from four years prior to the filing of this action to the date of such
14 restitution, and Defendants should be required to disgorge all the profits and
15 gains they have reaped and restore such profits and gains to Plaintiff and other
16 similarly situated and/or aggrieved employees, from whom they were unlawfully
17 taken.

18 133. Injunctive relief is necessary and appropriate to prevent Defendants
19 from continuing and repeating their unlawful, unfair, and fraudulent business
20 acts and practices as alleged above.

21 134. Plaintiff has assumed the responsibility of enforcement of the laws
22 and public policies specified herein by suing on behalf of herself and other
23 similarly situated members of the public previously and presently employed by
24 Defendants in California. Plaintiff's success in this action will enforce important
25 rights affecting the public interest. Plaintiff will incur a financial burden in
26 pursuing this action in the public interest. Therefore, an award of reasonable
27 attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure
28 section 1021.5.

Wage Theft in Violation of California Labor Code § 558.1

**(Alleged by Plaintiff individually and on behalf of the Class against
Octavio Diaz, Gonzalo Diaz, Diego Diaz and Mehmet Kiritci)**

136. Plaintiff and other similarly situated and/or aggrieved employees re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

137. Pursuant to California Labor Code §558.1(a) any employer or any person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code §§ 226, 1193, 1194 or 2802 may be held liable for such violation.

138. The conduct described herein constitutes nonpayment of wages in violation of California Labor Code §§ 226 and 2802.

139. Defendants Octavio Diaz, Gonzalo Diaz, Diego Diaz and Mehmet Kiritci are liable to Plaintiff and other similarly situated and/or aggrieved employees for unpaid wages pursuant to California Labor Code § 558.1.

140. As a direct and proximate result of the unlawful actions of Defendants Octavio Diaz, Gonzalo Diaz, Diego Diaz and Mehmet Kiritci, Plaintiff and other similarly situated and/or aggrieved employees have suffered

**Retaliation in Violation of California Labor Code §§ 1102.5 and 98.6
(Against all Defendants)**

141. Plaintiff and other similarly situated and/or aggrieved employees re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

143. California Labor Code section 98.6(a) prohibits an employer from discharging or discriminating against an employee for political activities; for complaining that he or she is owed unpaid wages, for whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion, suspension, or discharge for lawful conduct occurring during nonworking hours; for filing a complaint with the Labor Commissioner or testifying in such proceedings.

15 144. Plaintiff and other similarly situated and/or aggrieved employees are
16 informed and believe that hours were cut and employees were retaliated against
17 as a result of the investigation by the Labor Commissioner.

18 145. Defendants willfully disregarded instruction from the Labor
19 Commissioner and retaliated against Plaintiff and other similarly situated and/or
20 aggrieved employees in an effort to thwart the investigation by the Labor
21 Commissioner.

146. As a direct and proximate result of Defendants' violations of Labor Code §§ 1102.5(b) and 98.6 Plaintiff and other similarly situated and/or aggrieved employees suffered damages.

25 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

26 PRAYER FOR RELIEF

27 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 28 1. For actual damages, compensatory damages, liquidated statutory

1 damages, specific damages, general damages, penalties, and other such
2 relief provided by statute;

3 2. For restitution damages and reliance damages;

4 3. For back pay;

5 4. For the costs of bringing this suit, and reasonable attorneys' fees;

6 5. For interest;

7 6. For an injunction prohibiting Defendants from continuing the unlawful
8 conduct described herein;

9 7. For declaratory judgment that Defendants violated the rights of
10 Plaintiff and other aggrieved employees under the Labor Code;

11 8. For Defendants to be ordered and enjoined to make restitution to
12 Plaintiff and other aggrieved employees; and

13 9. For all other legal and equitable relief as deemed just and proper by
14 this Court.

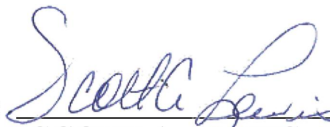
15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby respectfully requests a jury trial on all claims so triable.

17 PERRY, JOHNSON, ANDERSON,
18 MILLER & MOSKOWITZ, LLP

19 DATED: July 22, 2024

20 Bv:



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