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Superior Court of California
County of Fresno
By: C. York, Deputy

12 Attorneys for: Plaintiff RODRIGO TOVAR

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF FRESNO, UNLIMITED CIVIL DIVISION

15 RODRIGO TOVAR,, on behalf of himself,)
16 and as an "Aggrieved Employee" on behalf)
17 of other "Aggrieved Employees" under the)
18 Labor Code Private Attorney General Act of)
19 2004)

20 Plaintiff,

21 v.

22 OLIVE/BROADWAY ENTERPRISES,)
23 INC., DBA BOBBY SALAZAR'S)
24 TAQUERIA, ROBERT "BOBBY")
25 SALAZAR; and DOES 1 through 20,)
26 inclusive,)

27 Defendants.)
28

Case No.20CECG00579

**SECOND AMENDED COMPLAINT AND
COMPLAINT FOR VIOLATIONS OF THE
LABOR CODE AND CIVIL PENALTIES
UNDER THE LABOR CODE PRIVATE
ATTORNEY GENERAL ACT OF 2004,
LABOR CODE SECTION 2698 ET SEQ.;
AND JURY DEMAND**

1 1. Plaintiff RODRIGO TOVAR ("Plaintiff") is an individual residing in
2 Fresno County, California. Plaintiff RODRIGO TOVAR was employed by Defendant BOBBY
3 SALAZAR'S TAQUERIA, INC. from approximately June 2009 through when he was
4 wrongfully terminated on January 22, 2020.

5 2. Defendant OLIVE/BROADWAY ENTERPRISES, INC. DBA BOBBY
6 SALAZAR'S TAQUERIA ("BST") is a California corporation which has done business and
7 continues to do business in Fresno County, California.

8 3. Defendant ROBERT "BOBBY" SALAZAR is an individual residing in
9 Fresno County, California. ROBERT SALAZAR was Plaintiff's manager and owns BST during
10 the relevant times and violated the fair employment and housing act with harassing and
11 discriminatory comments made to and about Plaintiff that violated the law. ROBERT
12 SALAZAR is further liable to Plaintiff individually under Labor Code Section 558.1.

13 4. The true names and capacities of the Defendants named herein as DOES 1
14 through 20, inclusive, whether an individual, corporation or otherwise are unknown to the
15 Plaintiff who, therefore, sues such Defendants by fictitious names pursuant to Code of Civil
16 Procedure §474. Alternatively, such DOE Defendants are persons whose identities are unknown
17 to Plaintiff, but about whom sufficient facts are not known that would support the assertion by
18 Plaintiff of a civil claim at this time. When Plaintiff obtains information supporting a claim
19 against any DOE Defendant, he will seek leave to amend this Complaint and will allege
20 appropriate charging allegations. Plaintiff is informed and believes, and thereon alleges, that the
21 Defendants, and each of them, are agents and/or employees and/or parents, subsidiaries or sister
22 corporations of each other, and are responsible for the acts complained of herein, unless
23 otherwise alleged in this Complaint.

24 5. Pursuant to California Labor Code section 2699.5, Plaintiff has exhausted
25 all administrative remedies and satisfied all private, administrative and judicial prerequisites to
26 the institution of this action, insofar as such prerequisites pertain to Plaintiff's cause of action
27 brought pursuant to the Private Attorney General's Act ("PAGA"), California Labor Code
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1 sections 2699 et seq. Plaintiff has complied with the procedures for bringing suit specified in
2 California Labor Code section 2699 .3. Plaintiff has given written notice, by certified mail, to the
3 Labor and Workforce Development Agency ("LWDA") and to Defendants of the specific
4 provisions of the California Labor Code alleged to have been violated, including the facts and
5 theories to support those violations. More than 65 days have passed, and no response has been
6 received from the LWDA. Accordingly, Plaintiff has satisfied all prerequisites to pursuing PAGA
7 claims.

8 **THE AGGRIEVED EMPLOYEES**

9 6. The "Aggrieved Employees" are all individuals that Defendants employed in
10 California who worked for Defendants as wage earners during the period of May 6, 2019 to the
11 present.

12 **SUMMARY OF FACTS.**

13 7. Plaintiff began working for BST in June 2009 as a night manager of the
14 BST restaurant in the Tower district in Fresno, Ca. Over the course of Plaintiff's tenure, Plaintiff
15 was consistently a good and reliable performer. Defendant SALAZAR referred to Plaintiff as his
16 second in command and one who "knows where the bodies are buried."

17 8. Defendant SALAZAR routinely told Plaintiff to keep African Americans
18 out of the restaurant. Defendant SALAZAR told Plaintiff "don't let no ghetto in here" referring
19 to African American patrons in the restaurant that had entered. When African American patrons
20 were in the restaurant, Plaintiff was castigated because he had "let the place get too dark."
21 Plaintiff objected, but needed the job and begrudgingly followed orders.

22 9. On January 20, 2020, Defendant SALAZAR terminated an African-
23 American employees. Defendant SALAZAR reported to Plaintiff that the night before the
24 African- American employee had been cleaning, and had been reportedly taking too long to
25 throw out the trash. Defendant SALAZAR claimed that he confronted the employee at the trash
26 disposal area, and said " what are you doing, snorting something back there...." suggesting that
27 the employee was doing drugs, which he was not. When the employee left to get protective
28 gloves to tamper down the trash, that set Defendant SALAZAR off and he "had to fire him."

1 Defendant SALAZAR told this story to Plaintiff as if exultant in having dismissed the black
2 employee with the false pretext that he was a drug addict and used drugs at work – which he was
3 not. Plaintiff expressed strong disapproval.

4 10. Plaintiff has diabetes. Defendant SALAZAR is aware of Plaintiff's
5 medical condition which requires Plaintiff to use the bathroom frequently. On January 22, 2019,
6 Defendant SALAZAR terminated employee, Roberto. Before the termination meeting, on
7 January 21, 2020, Defendant SALAZAR said to Plaintiff "What's going on with you and Berto?
8 You know he's doing this and that....you go to the bathroom together. He's going in there....you
9 guys touching each other's dicks or what?" Plaintiff replied that he was not and that he has a
10 medical condition and so does Berto – he has a bladder condition of which Defendant
11 SALAZAR knew. Defendant SALAZAR said that Roberto was doing drugs and selling drugs
12 out of the bathroom – which was the same false claim that had been made about the African
13 American employee. Defendant SALAZAR said: "You know someone is doing something
14 wrong here, you need to let me know....I don't trust you...you're going into the restroom together
15 and what do you do in there....touch each other's dick's in there." Plaintiff had no knowledge of
16 any drug sales in the bathroom or elsewhere and said he was unaware of any such activity.
17 Defendant SALAZAR replied, "I don't know if I can trust you. Let me think it over."

18 11. Thereafter, the following day, Defendant SALAZAR terminated Berto and
19 told Berto that he was terminating for selling drugs in the bathroom. Berto said that he was not
20 and that he had a bladder condition. Defendant SALAZAR replied he did not care. Then,
21 Defendant SALAZAR called Plaintiff into the office with another employee, Jack Norton.
22 Defendant SALAZAR asked Plaintiff to sign a paper admitting that he was selling drugs and that
23 he was being terminated for selling drugs. Plaintiff said the paper and claims were lies, and
24 refused to sign anything. Now, many people in the community have told Plaintiff that they're
25 aware that he was terminated for selling drugs – which is not true.

26 12. In the past, to provide a pretext for termination, Defendant SALAZAR had
27 claimed that African employees had stolen or engaged in drug use and sales. Another example
28 happened with an employee in 2016. This time, Plaintiff had objected to the termination of the

1 African-American individual a couple of days earlier, and was accused of engaging in
2 homosexual activities in the bathroom with Berto and of selling drugs with Berto – neither of
3 which are or were true ever.

4 13. Plaintiff filed a complaint for harassment, discrimination and termination,
5 among other things, with the California Department of Fair Employment and Housing. Plaintiff
6 has received a right to sue letter. After filing the lawsuit, Plaintiff came to learn that Bobby
7 Salazar had also falsely accused Plaintiff of having engaged in rape. This statement was made to
8 Adream Johnson in March 2020 when Mr. Salazar was asking Ms. Johnson to perjure herself in
9 this case in exchange for a cash payment.

10 **FIRST CAUSE OF ACTION**

11 **(Hostile Work Environment Harassment Based on Medical Condition**
12 **[Violation of Cal. Govt. Code §12940(j)(1)] against All Defendants,**
and Does 1 through 20)

13 14. Plaintiff incorporates each and every allegation contained in Paragraphs 1
14 through 13 above, as though fully set forth in this cause of action.

15 14. In violation of Cal. Govt. Code §12940(j)(1), Defendants subjected
16 Plaintiff to harassment based on his medical condition causing a hostile and/or abusive work
17 environment. The harassing conduct included, but was not limited to, a changed working
18 environment, failure to uniformly apply or adhere to the workplace policy, and failure to follow
19 and apply the law governing medical leaves. The conduct was so severe and pervasive that a
20 reasonable person in Plaintiff's circumstances would have found the work environment to be
21 hostile or abusive.

22 15. As a consequence, Plaintiff is entitled to recover compensatory damages
23 (for lost wages and benefits, past and future, damage to employability, and emotional distress
24 damages) and attorney's fees and costs, in an amount according to proof.

25 16. Because the conduct of Defendants was despicable, malicious and
26 intentional, Plaintiff is entitled to recover punitive damages in an amount according to proof.

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17. Plaintiff incorporates each and every allegation contained in Paragraphs 1 through 16 above, as though fully set forth in this cause of action.

19. In doing the things alleged herein, including harassing and terminating Plaintiff as a result of Plaintiff's medical condition, Defendants violated the California Fair Employment and Housing Act ("FEHA") and caused Plaintiff to suffer consequential damages, including lost wages, employment benefits and emotional distress damages (including emotional pain and suffering and mental anguish), in an amount according to proof, but not less than the jurisdictional limit of this Court.

21. In doing the things alleged herein, Defendants acted intentionally, maliciously, in conscious disregard of Plaintiff's rights, oppressively and despicably; as a consequence, Plaintiff is entitled to recover punitive damages against Defendants, in an amount according to proof.

1 **THIRD CAUSE OF ACTION**

2 **(Hostile Work Environment Harassment Based on FEHA Violations --Cal. Govt. Code**
3 **§12940(j)(1)] against all Defendants and Does 1 through 20)**

4 22. Plaintiff incorporates each and every allegation contained in Paragraphs 1
5 through 21 above, as though fully set forth in this cause of action.

6 23. In violation of Cal. Govt. Code §12940(j)(1), Defendants subjected
7 Plaintiff to harassment based on his race, national origin, perceived affiliation with a certain
8 national origin, and/or his medical condition. The harassing conduct included, but was not
9 limited to, a changed working environment, failure to uniformly apply or adhere to the workplace
10 policy, and failure to follow and apply the law governing medical leaves. The conduct was so
11 severe and pervasive that a reasonable person in Plaintiff's circumstances would have found the
12 work environment to be hostile or abusive.

13 24. As a consequence, Plaintiff is entitled to recover compensatory damages
14 (for lost wages and benefits, past and future, damage to employability, and emotional distress
15 damages) and attorney's fees and costs, in an amount according to proof.

16 25. Because the conduct of Defendants was despicable, malicious and
17 intentional, Plaintiff is entitled to recover punitive damages in an amount according to proof.

18 **FOURTH CAUSE OF ACTION**

19 **(Discrimination in Violation of FEHA**
20 **Against All Defendants)**

21 26. Plaintiff incorporates each and every allegation contained in Paragraphs 1
22 through 25 above, as though fully set forth in this cause of action.

23 27. Defendants terminated Plaintiff because of association with a protected
24 class perceived affiliation with a certain national origin, and/or and/or because of reasons
25 prohibited under FEHA including complaints about race discrimination, sexual orientation,
26 and/or medical condition. Defendants violated Plaintiff's rights by discriminating against
27 Plaintiff by treating Plaintiff disparately, and by wrongfully terminating Plaintiff from his
28 employment because of reasons that were in violation of the FEHA and/or because of his
objections to unlawful discrimination.

28. In doing the things alleged herein, including harassing and terminating Plaintiff, Defendants violated the California Fair Employment and Housing Act ("FEHA") and caused Plaintiff to suffer consequential damages, including lost wages, employment benefits and emotional distress damages (including emotional pain and suffering and mental anguish), in an amount according to proof, but not less than the jurisdictional limit of this Court.

29. Plaintiff is entitled to recover reasonable attorney's fees and costs incurred in connection with the prosecution of this action. Plaintiff has employed the Whelan Law Group to represent him in this case. Pursuant to his rights under FEHA, Plaintiff will seek recovery of attorney's fees and costs upon the conclusion of this lawsuit.

30. In doing the things alleged herein, Defendants acted intentionally, maliciously, in conscious disregard of Plaintiff's rights, oppressively and despicably; as a consequence, Plaintiff is entitled to recover punitive damages against Defendants, in an amount according to proof.

FIFTH CAUSE OF ACTION

**[Wrongful Termination in Violation of Public Policy
Against Employer Defendant - BST]**

31. Plaintiff incorporates each and every allegation contained in Paragraphs 1 through 30 above, as though fully set forth in this cause of action.

32. Plaintiff was terminated from his employment after being subjected to unlawful intimidation, discrimination, and harassment in the workplace about which he complained. Defendant refused to comply with the requirements of FEHA which, among other things, entitles a person to remain free of unlawful harassment, and discrimination. The termination was in violation of the public policy against discrimination and harassment on the basis of protected classes identified in FEHA and or perceived affiliations with those protected classes and in violation of Govt. Code §12945.

33. As a direct consequence of the wrongful termination in violation of public policy, Plaintiff has suffered, and will continue to suffer, compensatory damages, including lost wages (past and future), lost employee benefits (past and future) and emotional distress damages

1 (pain, suffering and mental anguish) in an amount according to proof, but not less than the
2 jurisdictional limit of this Court.

3 34. In doing the acts alleged herein, Defendant acted intentionally,
4 maliciously, in conscious disregard of Plaintiff's rights, oppressively and despicably; as a
5 consequence, Plaintiff is entitled to recover punitive damages against Defendant.

6 **SIXTH CAUSE OF ACTION**

7 **(Defamation, Against All Defendants)**

8 35. Plaintiff incorporates each and every allegation contained in Paragraphs 1
9 through 34 above, as though fully set forth in this cause of action.

10 36. Plaintiff is informed and believes, and thereon allege that Defendants by
11 the herein-described acts, conspired to, and in fact, did negligently, recklessly, and intentionally
12 cause excessive and unsolicited internal and external publications of defamation, of and
13 concerning Plaintiff, to third persons and to the community. These false and defamatory
14 statements included express and implied accusations that Plaintiff violated company policy,
15 engaged in criminal acts, sold drugs, used illegal drugs, was homosexual, engaged in homosexual
16 acts at work, and was an insubordinate employee expressly and impliedly accusing Plaintiff of
17 being lazy, incompetent, insubordinate, and a bad employee in addition to being a criminal. The
18 false statements tended to injure and did in fact injure Plaintiff in his occupation and exposed
19 Plaintiff to contempt, ridicule, or shame.

20 37. While the precise dates of these defamatory publications are not known to
21 Plaintiff, Plaintiff discovered some of them on or about January 22, 2020 in the termination
22 memo presented at the time of termination. Plaintiff also learned that in March 2020, Bobby
23 Salazar falsely accused Plaintiff of rape. This defamation was published by Defendants for the
24 improper purpose of justifying Plaintiff's termination and then to persuade witnesses to testify
25 falsely under oath.

26 38. These publications were outrageous, negligent, reckless, intentional, and
27 maliciously published and republished by Defendants by and through their agents and employees.
28 Plaintiff is informed and believes that the negligent, reckless, and intentional publications by

1 Defendants were and continue to be, foreseeably published and republished by Defendants, their
2 agents and employees, to recipients in the community. These foreseeable republications included
3 those that Plaintiff was forced and compelled to republish after his termination, in an attempt to
4 obtain an explanation of exactly what these allegations were based upon so that he could
5 hopefully refute these allegations and reverse the decision to terminate Plaintiff. Plaintiff hereby
6 seeks damages for these publications and all foreseeable republications discovered up to the time
7 of trial.

8 39. During the above-described time-frame, Defendants conspired to and did
9 negligently, recklessly, and intentionally cause excessive and unsolicited publication of
10 defamation, of and concerning Plaintiff, to third persons, who had no need or desire to know.
11 Those third person(s) to whom these Defendants published this defamation are believed to
12 include, but are not limited to, other agents and employees of Defendants and the community, all
13 of whom are known to Defendants but unknown at this time to Plaintiff.

14 40. The defamatory publications consisted of oral and written, knowingly false
15 and unprivileged communications, tending directly to injure Plaintiff and Plaintiff's personal,
16 business, and professional reputations. These publications included the following false and
17 defamatory statements (in violation of Civil Code §§45 and 46(3)(5)) within the meaning and/or
18 substance that Plaintiff violated Defendant Employers' policy, engaged in misconduct, and/or
19 insubordination. These and similar statements published by Defendants expressly and impliedly
20 published that Plaintiff was a criminal, incompetent, dishonest, engaged in dishonesty, and was a
21 poor employee.

22 41. Plaintiff believes and fears that these false and defamatory per se
23 statements will continue to be published by Defendants and will be foreseeably republished by
24 their recipients, all to the ongoing harm and injury to Plaintiff's business, professional, and
25 personal reputations. Plaintiff also seek redress in this action for all foreseeable republications,
26 including their own compelled self-publication of these defamatory statements.

27 42. The defamatory meaning of all of the above-described false and
28 defamatory statements and their reference to Plaintiff was understood by these above-referenced

1 third person recipients and other members of the community who are known to Defendants but
2 unknown to Plaintiff at this time.

3 43. None of Defendants' defamatory publications against Plaintiff referenced
4 above are true.

5 44. The above defamatory statements were understood as assertions of fact,
6 and not as opinion. Plaintiff is informed and believes this defamation will continue to be
7 negligently, recklessly, and intentionally published and foreseeably republished by Defendants
8 and foreseeably republished by recipients of Defendants' publications, thereby causing additional
9 injury and damages for which Plaintiff seeks redress by this action.

10 45. These publications of defamation were malicious.

11 46. Each of these defamatory publications by Defendants were made with
12 knowledge that no investigation supported the unsubstantiated and obviously false statements.
13 The Defendants published these statements knowing them to be false, unsubstantiated by any
14 reasonable investigation, and to be the product of hostile witnesses. These acts of publication
15 were known by Defendants to be negligent to such a degree as to be reckless. In fact, not only
16 did Defendants have no reasonable basis to believe these statements, but they also had no belief
17 in the truth of these statements, and, in fact, knew the statements to be false. Defendants
18 excessively, negligently, and recklessly published these statements to individuals with no need to
19 know, and who made no inquiry, and who had a mere general or idle curiosity regarding this
20 information.

21 47. The above complained-of publications by Defendants were made with
22 hatred and ill will towards Plaintiff and with the design and intent to injure Plaintiff's good name,
23 his reputation, and employability. Defendants published these statements, with an illegal
24 purpose, not with an intent to protect any interest intended to be protected by any privilege, but
25 with negligence, recklessness and/or an intent to injure Plaintiff and destroy his reputation.
26 Therefore, no privilege existed to protect any of the Defendants from liability for any of these
27 afore-mentioned publications or republications.

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1 48. As a proximate result of the publication and republication of these
2 defamatory statements by Defendants Plaintiff has suffered injury to his personal, business and
3 professional reputations including suffering embarrassment, humiliation, severe emotional
4 distress, shunning, anguish, fear, loss of employment, and employability, and significant
5 economic loss in the form of lost wages and future earnings, all to Plaintiff's economic,
6 emotional, and general damage in an amount according to proof.

7 49. Defendants committed the acts alleged herein recklessly, maliciously,
8 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff for an improper
9 and evil motive amounting to malice (as described above), and which abused and/or prevented
10 the existence of any conditional privilege, which in fact did not exist, and with a reckless and
11 conscious disregard of Plaintiff's rights. All actions of Defendants their agents and employees,
12 herein alleged were known, authorized, ratified and approved by the Defendants. Plaintiff thus
13 is entitled to recover punitive and exemplary damages from Defendants for these wanton,
14 obnoxious, and despicable acts, in an amount based on the wealth and ability to pay according to
15 proof, at the time of trial.

16 **SEVENTH CAUSE OF ACTION.**
17 **(Unfair Competition in Violation of Bus. and Prof. Code §17200**
18 **For Failure to Pay Wages as Required by**
19 **Industrial Welfare Commission Order Against Defendants.)**

20 50. Plaintiff incorporates each and every allegation contained in Paragraphs 1
21 through 49 above, as though fully set forth in this cause of action.

22 51. Plaintiff is informed and believes and thereon alleges that, during the four
23 years last past, Defendants systematically failed to pay Plaintiff and other similarly situated
24 employees wages that were earned, which Defendants intentionally declined to pay in violation
25 of the Labor Code and applicable Wage Orders.

26 52. Plaintiff was entitled to receive overtime compensation pursuant to the
27 applicable Wage Order and Labor Code §§226.7 and 1194. Plaintiff routinely worked more than
28 eight hours in a day and forty hours in a week. Further, Defendants did not compensate Plaintiff
correctly for the times when he was called back to work and paid less than the mandated
minimums for call back time. Further, Defendants did not even pay straight time wages to

1 Plaintiff when he worked late at night. Defendants' non-payment of Plaintiff's regular time and
2 overtime compensation constitutes an Unfair Business Practice in violation of Bus. and Prof.
3 Code §17200.

4 53. Plaintiff is informed and believes and thereon alleges that, at all times
5 relevant, Plaintiff worked a number of hours according to proof and in excess of 1200 hours of
6 overtime for which Plaintiff was not compensated at all and 600 hours of straight time wages that
7 were not compensated at all. At all relevant times, Plaintiff was not an overtime-exempt
8 employee. Defendants failed to pay overtime wages in an amount according to proof, but not
9 less than the minimum jurisdictional limit of this Court.

10 54. In addition, Defendants' failure to properly pay overtime wages to Plaintiff
11 was in willful violation of Labor Code §203 in that the failure to pay was willful. Accordingly,
12 Plaintiff is entitled to recover wage penalties in an amount according to proof.

13 55. Under Labor Code §1194, Plaintiff is also entitled to recover interest on
14 unpaid overtime wages, reasonable attorney's fees and costs of suit. Under Labor Code §1194.2,
15 Plaintiff is also entitled to recover liquidated damages. Plaintiff has retained the Whelan Law
16 Group to represent him in asserting claims for overtime wages. Therefore, Plaintiff additionally
17 seeks to recover interest, reasonable attorney's fees, and costs in an amount according to proof.

18 **EIGHTH CAUSE OF ACTION**

19 **[Claim for Violation of Labor Code §226.7 (Meal Breaks) -**

20 **Bus. and Prof. Code §17200]**

21 56. Plaintiff incorporates each and every allegation contained in Paragraphs 1
22 through 55 above, as though fully set forth in this cause of action.

23 57. During the time that Plaintiff was employed by Defendants he was not
24 permitted to take 30-minute meal breaks in violation of Labor Code §226.7. Defendants failed to
25 provide Plaintiff or other similarly situated employees with the opportunity to take meal breaks.
26 Pursuant to Labor Code §226.7, Plaintiff is entitled to one additional hour of pay at Plaintiff's
27 regular rate of compensation, for each day of work that Plaintiff worked for which a meal break
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1 was not taken. Defendants' violations as herein stated constitute an Unfair Business Practice in
2 violation of Bus. and Prof. Code §17200 thus extending the statute of limitations to four years.

3 58. As a result of Defendants' failure to provide meal breaks, as mandated by
4 the applicable order of the Industrial Wage Commission and pursuant to Labor Code §226.7,
5 Plaintiff has suffered damages in the form of unpaid wages and fines in an amount according to
6 proof.

7 **NINTH CAUSE OF ACTION**

8 **[Claim for Violation of Labor Code §226.7 (Rest Period Breaks)-**

9 **Bus. and Prof. Code §17200]**

10 59. Plaintiff incorporates each and every allegation contained in Paragraphs 1
11 through 58 above, as though fully set forth in this cause of action.

12 60. During the time that Plaintiff was employed by Defendants he was not
13 permitted to take rest period breaks in violation of Labor Code §226.7. Pursuant to Labor Code
14 §226.7, Plaintiff is entitled to one additional hour of pay at Plaintiff's regular rate of
15 compensation for each day of work that Plaintiff worked for which a rest period break was not
16 taken. Defendants' violations as herein stated constitute an Unfair Business Practice in violation
17 of Bus. and Prof. Code §17200 thus extending the statute of limitations to four years.

18 61. As a result of Defendants' failure to provide rest period breaks, as
19 mandated by the applicable order of the Industrial Wage Commission and pursuant to Labor
20 Code §226.7, Plaintiff has suffered damages in the form of unpaid wages and fines in an amount
21 according to proof.

22 **TENTH CAUSE OF ACTION**

23 **[Penalty Assessment Under Labor Code §§ 201, 202, 203, 226.3 and 226**

24 **Against Employer Defendants]**

25 62. Plaintiff incorporates each and every allegation contained in Paragraphs 1
26 through 61 above, as though fully set forth in this cause of action.

27 63. In addition to unpaid overtime wages, wages, interest, attorney's fees, and
28 costs, which Plaintiff seeks to recover under his Causes of Action herein stated, Plaintiff is also

1 entitled to recover wage penalties under Labor Code §§201,202, 203, 226.3 and 226(e) in an
2 amount according to proof.

3 **ELEVENTH CAUSE OF ACTION**
4 [Failure to Provide Accurate Itemized Statements
5 [Cal. Lab. Code § 226]
6 (By PLAINTIFF Against All Defendants)

7 64. Plaintiff incorporates each and every allegation contained in Paragraphs 1
8 through 63 above, as though fully set forth in this cause of action.

9 65. Cal. Labor Code § 226 provides that an employer must furnish employees
10 with an "accurate itemized" statement in writing showing:

- 11 1) gross wages earned,
- 12 2) total hours worked by the employee, except for any employee whose
13 compensation is solely based on a salary and who is exempt from payment
14 of overtime under subdivision (a) of Section 515 or any applicable order of
15 the Industrial Welfare Commission,
- 16 3) the number of piece rate units earned and any applicable piece rate
17 if the employee is paid on a piece-rate basis,
- 18 4) all deductions, provided that all deductions made on written orders
19 of the employee may be aggregated and shown as one item,
- 20 5) net wages earned,
- 21 6) the inclusive dates of the period for which the employee is paid
- 22 7) the name of the employee and his or her social security number,
23 except that by January 1, 2008, only the last four digits of his or her social
24 security number or an employee identification number other than a social
25 security number may be shown on the itemized statement,
- 26 8) the name and address of the legal entity that is the employer, and
- 27 9) all applicable hourly rates in effect during the pay period and the
28 corresponding number of hours worked at each hourly rate by the employee.

65. When Plaintiff and other employees worked overtime in the same pay

1 period they earned incentive wages and/or missed meal and rest breaks, Defendants failed to
2 provide Plaintiff with complete and accurate wage statements which failed to show, among other
3 things, the correct overtime rate for overtime worked, including, work performed in excess of
4 eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty
5 payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer
6 shall furnish each of his or her employees with an accurate itemized wage statement in writing
7 showing, among other things, gross wages earned and all applicable hourly rates in effect during
8 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from the
9 violations listed above in this paragraph, Defendants failed to issue to Plaintiff an itemized wage
10 statement that lists all the requirements under California Labor Code 226 et seq. As a result, from
11 time to time Defendants provided Plaintiff with wage statements which violated Cal. Lab. Code §
12 226.

13 67. Defendants knowingly and intentionally failed to comply with Cal. Labor
14 Code § 226, causing injury and damages to the Plaintiff. These damages include, but are not
15 limited to, costs expended calculating the correct rates for the overtime worked and the amount
16 of employment taxes which were not properly paid to state and federal tax authorities. These
17 damages are difficult to estimate. Therefore, Plaintiff may elect to recover liquidated damages
18 of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one
19 hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab.
20 Code § 226, in an amount according to proof at the time of trial (but in no event more than four
21 thousand dollars (\$4,000.00) for Plaintiff).

22 TWELFTH CAUSE OF ACTION

23 LABOR CODE PRIVATE ATTORNEY GENERAL ACT

24 (Lab. Code §§ 2698 et seq.)

25 (On behalf of Plaintiff and all Other Aggrieved Employees, against Defendants.)

26 68. Plaintiff incorporates in this cause of action each and every allegation of the
27 preceding paragraphs, with the same force and effect as though fully set forth herein.

28 69. Plaintiff provided written notice by certified mail to the Labor and

1 Workforce Development Agency of the specific provisions of this code alleged to have been violated
2 as required by Labor Code section 2699.3. More than sixty-five days have passed with no response.
3 As a result, Plaintiff may now commence a civil action pursuant to Labor Code section 2699.

4 70. The policies, acts and practices heretofore described violate the applicable
5 Labor Code sections listed in Labor Code section 2699.5 and thereby give rise to statutory penalties
6 as a result of such conduct. Plaintiff and all other aggrieved employees of Defendant hereby seek
7 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
8 on behalf of themselves and all other aggrieved employees against whom one or more of the
9 aforementioned violations of the Labor Code was committed and other applicable provisions of the
10 Employment Laws and Regulations in amounts to be established at trial, as well as attorneys' fees
11 and costs, pursuant to statute.

12 71. At all relevant times during the applicable limitations period, Plaintiff and
13 Aggrieved Employees have been employees of Defendant and entitled to the benefits and
14 protections of California Labor Code and the Wage Order. Defendant violated Labor Code §226.8
15 by intentionally and willfully failing to pay Plaintiff and other Aggrieved Employees in a manner
16 consistent with the labor code, including, but not limited to paying employees cash under the table
17 without regards to taxes, withholdings, or other reporting requirements that adversely impacted
18 employees when they were terminated on account of COVID. Additionally, as a direct and
19 proximate result of the unlawful acts and/or admissions of Defendant, Plaintiff is entitled to recover
20 damages in an amount to be determined. Plaintiff is informed and believes that Defendant engaged
21 in a pattern of misclassifying other employees as well. Plaintiff and Aggrieved Employees seek
22 recovery of civil penalties of not less than Ten Thousand and No/100 Dollars (\$10,000.00) and not
23 more than Twenty-Five Thousand and No/100 Dollars (\$25,000.00) for each violation of Labor Code
24 Section 226.8, in addition to any other penalties or fines permitted by law period as discussed herein.

25 **A. MEAL PERIODS**

26 72. Labor Code § 1198 states,

27 “The maximum hours of work and the standard conditions of labor
28 fixed by the commission shall be the maximum hours of work and the
standard conditions of labor for employees. The employment of any

employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

73. In relevant part, Labor Code Section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

75. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and Aggrieved Employees were entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours.

76. During the relevant time period, Defendant failed to provide Plaintiff with all required meal periods in accordance with California Labor Code § 512 and the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendant maintained a policy, practice, or a lack of a policy which resulted in Defendant not providing Aggrieved Employees with all meal periods required by California Labor

1 Code §512 and the Wage Order. In particular, Defendant failed to provide Aggrieved Employees
2 with a second 30-minute meal period before the end of the tenth hour when they worked in excess
3 of ten hours in a workday.

4 77. Defendant failed to pay Plaintiff the additional wages required by California
5 Labor Code § 226.7 for all meal periods not provided to them. Plaintiff is informed and believes and
6 thereon allege that, at relevant times within the applicable limitations period, Defendant has
7 maintained a policy, practice, or a lack of a policy which resulted in Defendant not providing
8 Aggrieved Employees with additional wages for all meal periods not provided to them as required
9 by California Labor Code § 226.7.

10 78. As a result of Defendant's unlawful conduct, Plaintiff and Aggrieved
11 Employees have suffered damages in amounts subject to proof to the extent they were not paid
12 additional wages owed for all meal periods not provided to them.

13 **B. REST PERIODS**

14 79. Labor Code § 1198 states,

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

19 80. In relevant part, Section 12 of the Wage Order states,

20 Rest Periods:

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

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

81. "[I]n the context of an eight-hour shift, '[a]s a general matter,' one rest break

1 should fall on either side of the meal break.” Brinker Rest. Corp. v. Superior Court (2012) 53 Cal.
2 4th 1004, 1032, 273 P.3d 513, 531.

3 82. In addition, Labor Code Section 226.7 states

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

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

12 83. Pursuant to the Wage Order, Plaintiff and Aggrieved Employees were
13 entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work,
14 or major fraction thereof.

15 84. Defendant failed to provide Plaintiff with all required rest breaks in
16 accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at
17 relevant times within the applicable limitations period, Defendant had a policy, practice, or a lack
18 of a policy which resulted in Defendant not providing Aggrieved Employees with all rest breaks
required by California law.

19 85. Defendant failed to pay Plaintiff the additional wages required by California
20 Labor Code § 226.7 for all rest breaks not provided to them. Plaintiff is informed and believe and
21 thereon allege that, at relevant times within the applicable limitations period, Defendant has
22 maintained a policy, practice, or a lack of a policy which resulted in Defendant not providing
23 Aggrieved Employees with additional wages for all rest breaks not provided to them as required by
24 California Labor Code § 226.7.

25 86. As a result of Defendant's unlawful conduct, Plaintiff and Aggrieved
26 Employees have suffered damages in amounts subject to proof to the extent they were not paid
27 additional wages owed for all rest breaks not provided to them.
28

1 **C. INCOMPLETE AND INACCURATE WAGE STATEMENTS**

2 87. Pursuant to California Labor Code section 226(a), Plaintiff and the
3 Aggrieved Employees were entitled to receive, semimonthly or at the time of each payment of
4 wages, an accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all
5 applicable hourly rates in effect during the pay period; and d) the corresponding number of hours
6 worked at each hourly rate by the employee.

7 88. Pursuant to California Labor Code section 226, an employee is deemed to
8 suffer injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
9 injury if the employer fails to provide accurate and complete information as required by California
10 Labor Code section 226(a) and the employee cannot "promptly and easily determine" from the wage
11 statement alone one or more of the following:

12 A. The amount of the gross wages or net wages paid to the employee
13 during the pay period or any of the other information required to be provided on the itemized wage
14 statement pursuant to California Labor Code § 226(a);

15 B. Which deductions the employer made from gross wages to determine
16 the net wages paid to the employee during the pay period;

17 C. The name and address of the employer and, if the employer is a farm
18 labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the
19 name and address of the legal entity that secured the services of the employer during the pay period;

20 D. The name of the employee and only the last four digits of his or her
21 social security number or an employee identification number other than a social security number;
22 and

23 E. The number of piece-rate units earned and the piece rate.

24 89. "Promptly and easily determine," as stated in California Labor Code section
25 226(6), means a reasonable person would be able to readily ascertain the information without
26 reference to other documents or information.

27 90. As alleged herein, Defendant failed to provide Plaintiff and Aggrieved
28

1 Employees all wages owed, including but not limited to, minimum wages and all premium wages
2 for unprovided rest and/or meal periods. As a result, Defendant has failed to properly and accurately
3 itemize each employee's gross wages earned, net wages earned, the total hours worked, the
4 corresponding number of hours worked by employees and other requirements of California Labor
5 Code § 226. As a result, Defendant has violated California Labor Code § 226.

6 91. Defendant's failure to provide Plaintiff and Aggrieved Employees with
7 accurate wage statements was knowing and intentional. Defendant had the ability to provide Plaintiff
8 and Aggrieved Employees with accurate wage statements but intentionally provided wage
9 statements that Defendant knew were not accurate.

10 92. As a result of being provided with inaccurate wage statements by
11 Defendant, Plaintiff and Aggrieved Employees have suffered injury. Their legal rights to receive
12 accurate wage statements were violated and they were misled about the amount of wages they had
13 actually earned and were owed. In addition, the absence of accurate information on their wage
14 statements prevented immediate challenges to Defendant's unlawful pay practices, has required
15 discovery and mathematical computations to determine the amounts of wages owed, has caused
16 difficulty and expense in attempting to reconstruct time and pay records and/of has led to the
17 submission of inaccurate information about wages to state and federal government agencies. Further,
18 Plaintiff and Aggrieved Employees were not able to ascertain from the wage statements whether
19 Defendant complied with their obligations under California Labor Code § 226(a).

20 **D. FAILURE TO TIMELY PAY WAGES**

21 93. Labor Code § 204 states

22 (a) All wages, other than those mentioned in Section 201, 201.3, 202,
23 204.1, or 204.2, earned by any person in any employment are due and
24 payable twice during each calendar month, on days designated in
25 advance by the employer as the regular paydays. Labor performed
26 between the 1st and 15th days, inclusive, of any calendar month shall
be paid for between the 16th and the 26th day of the month during
which the labor was performed, and labor performed between the
16th and the last day, inclusive, of any calendar month, shall be paid
for between the 1st and 10th day of the following month...

27 (b) (1) Notwithstanding any other provision of this section, all wages
28 earned for labor in excess of the normal work period shall be paid no
later than the payday for the next regular payroll period.

(2) An employer is in compliance With the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for Which the employee is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

94. Defendant failed to pay Plaintiff premium wages for all missed rest breaks and/or meal periods. On information and belief, Plaintiff alleges that Defendant also failed to pay the Aggrieved Employees premium wages for all missed rest breaks and/or meal periods. Therefore, Defendant failed to timely pay all wages due during employment within the time periods set by California Labor Code § 204.

E. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

95. Labor Code section 1174 states,

Every person employing labor in this state shall:

....

(c) Keep a record Showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to. and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

96. Labor Code section 1174.5 states, Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or

employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

97. Section 7 of Wage Order states,

(a) Every employer shall keep accurate information with respect to each employee including the following:

1. Full name, home address, occupation and social security number.
2. Birth date, if under 18 years, and designation as a minor.
3. Time records showing When the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
4. Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
5. Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
6. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

98. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

99. On information and belief, Plaintiff allege that Defendant has willfully failed to maintain accurate employment records for Plaintiff and the Aggrieved Employees required by § 1174 and the Wage Order, including but not limited to, the total premium wages earned for missed meal and rest periods.

F. CIVIL PENALTIES SOUGHT

100. During the applicable time period, Defendant violated California Labor Code §§ 204, 226, 226.7, 226.8, 512, 1174, 1194, and 1198.

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

102. Pursuant to California Labor Code § 2699, subdivisions (a) and (f), Plaintiff

1 and the Aggrieved Employees are entitled to recover civil penalties for each of Defendant's
2 violations of California Labor Code §§ 204, 226, 226.7, 512, 1174, 1194, and 1198 during the
3 applicable limitations period in the following amounts:

4 A. For violations of California Labor Code § 204, one hundred dollars
5 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00)
6 for Each aggrieved employee (penalty amounts established by California Labor Code § 210).

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

11 C. For violations of California Labor Code § 226.7, one hundred dollars
12 (\$100) for each aggrieved employee for each initial Violation and two hundred dollars (\$200) for
13 each aggrieved employee for each subsequent Violation, per pay period (penalties set by California
14 Labor Code § 2699(f)(2));

15 D. For violations of California Labor Code § 226.8, with a penalty of not
16 less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
17 each violation, in addition to any other penalties or fines permitted by law. Further, upon a finding
18 of a pattern or practice of these violations, a civil penalty of not less than ten thousand dollars
19 (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition
20 to any other penalties or fines permitted by law.

21 E. For violations of California Labor Code § 512, fifty dollars (\$50) for
22 each aggrieved employee for each initial violation and one hundred dollars (\$100) for each aggrieved
23 employee for each subsequent violation (penalties set by California Labor Code § 558);

24 F. For the violations of California Labor Code § 1174, not less than five
25 hundred dollars (\$500) for each aggrieved employee for each violation (penalty amounts established
26 by California Labor Code § 1174.5)

27 G. For violations of California Labor Code §§ 1194 and 1198, not less
28 than 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 § 2699(f)(2)).

G. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANT

103. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code section 2699.3. By letters dated November 12, 2019, Plaintiff gave written notice by Certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged Violations. Plaintiff notified the LWDA of Defendant's Labor Code Violations on November 12, 2019. True and correct copies of Plaintiff's notice to the LWDA are attached hereto as Exhibit A. The LWDA has not responded.

104. The LWDA has not responded to Plaintiff's letter.

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

106. PLAINTIFF brings this Representative Action on behalf of the State of California with respect to himself and all other individuals who are or previously were employed by DEFENDANT in California paid on commission basis during the applicable statutory period (the "AGGRIEVED EMPLOYEES").

107. At all relevant times, PLAINTIFF and similarly situated employees were aggrieved employees of DEFENDANT under Labor Code Section 2699.

108. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, on behalf of himself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

109. Plaintiff has complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By certified letter, return receipt requested, dated November 12, 2019, Plaintiff gave written notice to the Labor and Workforce Development Agency ("LWDA") and to Defendant of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of this letter is attached

1 hereto as Exhibit A.

2 110. As of May 19, 2020 more than sixty-five (66) days after serving the LWDA
3 with notice of Defendant's violations, the LWDA has not provided any notice by certified mail of
4 its intent to investigate the Defendant's alleged violations as mandated by Labor Code Section
5 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, Plaintiff may
6 commence and is authorized to pursue this cause of action. [Further, by operation of emergency
7 orders of the State of California all statutes of limitations have been tolled during the COVID-19
8 emergency pandemic. Emergency Rule No. 9.]

9 111. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and similarly
10 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANT'S violations of
11 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 226.8, 510, 512,
12 558, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2804 in amounts consistent
13 with Labor Code Section 2699 et seq.

14 112. For all provisions of the Labor Code for which civil penalty is not
15 specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred
16 dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two
17 hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent
18 violation. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable
19 attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code
20 Section 2699(g)(1).

21 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of
22 them, as follows:

23 1. For compensatory damages relating to past and future lost wages, past and
24 future lost employee benefits, damages relating to unpaid wages (overtime and straight time),
25 interest on said amounts, diminished employability, other economic injury, and emotional
26 distress damages, all in an amount according to proof but not less than \$3,250,000.00;

27 2. For punitive damages in an amount according to proof;

28

1 3. Reasonable attorney's fees and costs under any applicable statutory
2 authority, including, but not limited to, Govt. Code §§ 12965 & 12945.2;

3 4. For prejudgment interest under Civil Code §3288, CCP §998, and any
4 other applicable statutory authority;

5 5. For wage penalties under any and all available code sections including, but
6 not limited to, Labor Code §§ Sections 2699(a) and (f), for DEFENDANTS' violations of
7 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 226.8, 510,
8 512, 558, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2804 in amounts
9 consistent with Labor Code Section 2699 et seq and according to proof;

10 6. For unpaid wages in an amount according to proof; and

11 7. For all other relief as shall be deemed by the Court to be proper.

12 Dated: August 19, 2020

13 WHELAN LAW GROUP,
14 A Professional Corporation

15 By Brian D. Whelan,
16 Attorneys for Plaintiff RODRIGO TOVAR

17 **JURY DEMAND**

18 Plaintiff requests that each and every factual issue raised by each and every cause
19 of action alleged above be tried by a jury.

20
21 Dated: August 19, 2020

22 WHELAN LAW GROUP,
23 A Professional Corporation

24 By Brian D. Whelan,
25 Attorneys for Plaintiff RODRIGO TOVAR
26
27
28

EXHIBIT A



Walter W. Whelan
Brian D. Whelan
Lucas C. Whelan

walt@whelanlawgroup.com
brian@whelanlawgroup.com
lucas@whelanlawgroup.com

May 5, 2020

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

Bobby Salazar's Taqueria, Inc.
c/o Bobby Salazar
725 E. Olive Avenue
Fresno, CA 93728
Certified Mail No. 7006 0100 0000 6601 8430

Re: Notice of Violations of California Labor Code Sections §§ 201, 202, 203, 204, 226(a), 226.8, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, and 2802, Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/Madam:

This office represents Rodrigo Tovar (the "Plaintiff" or "Claimant"), against Bobby Salazar and Bobby Salazar's Taqueria, Inc., (collectively "Defendant"). The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with applicable Labor Code sections, including section 2699.3.

Plaintiff was employed by Defendant at one of Defendant's restaurants in California from June 2009 until his wrongful termination in January 2020. Plaintiff was paid on an hourly basis, and entitled to legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff and all those similarly situated, with all legally mandated for off-duty meal and rest periods, and failed to pay overtime wages. Additionally, Defendant intentionally, knowingly and systematically failed to reimburse and indemnify Plaintiff, and those similarly situated, for required business expenses incurred in direct consequence of discharging his duties on behalf of Defendant. Specifically, Defendants required Plaintiff to use his own personal cellular phones in furtherance of his job duties but was not reimbursed or indemnified for the cost associated with the use of his personal cellular phones. As

a result, in the course of his employment with Defendant, Plaintiff incurred unreimbursed business expenses which included, but were not limited to, costs related to the use of his personal cellular phones all on behalf of and for the benefit of Defendant.

As a consequence, Plaintiff contends that Defendant failed to fully compensate him, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Plaintiff contends that Defendants' conduct violated Labor Code sections §§ 201, 202, 203, 204, 226(a), § 226.8, 226.7, 406, 510, 512, 558, 1174, 1194, 1197, 1197 .1, 1198, 2802 and applicable wage orders, and is therefore actionable pursuant to section 2698 et seq.

A lawsuit has already been filed in Fresno County. Upon learning additional information supporting new claims, the parties stipulated that an amended complaint may be filed. A true and correct copy of the proposed first amended complaint ("Complaint") is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

As a consequence, Plaintiff contends that Defendant failed to fully compensate him, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Plaintiff contends that Defendant's conduct violated Labor Code sections §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1174, 1194, 1197, 1197 .1, 1198, 2802 and applicable wage orders, and is therefore actionable pursuant to section 2698 et seq.

In the event that the Labor and Work Force Development Agency does not respond or take action within the appropriate time period, Plaintiff will amend his civil complaint, which he may do so as a matter of right, to include a cause of action pursuant to PAGA, Labor Code §2699, et seq.

The Claimant, may be contacted through this office.

This action includes claims for penalties for violations of the Labor Code which may be covered by Labor Code §2699 et seq. This letter is sent in compliance with the reporting requirement of §2699.3. The Claimant and other similarly situated individuals may also be entitled to further penalties pursuant to Labor Code §2699 et seq.

If the agency needs any further information, please do not hesitate to contact me. The PAGA portion of the lawsuit will cover all aggrieved employees during the relevant PAGA period. As counsel, our intention is to vigorously prosecute the claims on behalf of all aggrieved PAGA claimants, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Regards,



Brian Whelan

CC: Jacqueline V. McCalla (Counsel for Defendants)

1 **PROOF OF SERVICE**

2 I am employed in the County of Fresno, State of California. I am over the age of
3 18 years and not a party to this action. My business address is: Whelan Law Group, A
4 Professional Corporation, 1827 East Fir Avenue, Suite 110, Fresno, California 93720. On
5 August 19, 2020, I caused to be served the within document(s): **SECOND AMENDED
COMPLAINT AND COMPLAINT FOR VIOLATIONS OF THE LABOR CODE AND
CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL
ACT OF 2004, LABOR CODE SECTION 2698 ET SEQ.; AND JURY DEMAND**

- 6 () **VIA FAX:** by causing to be transmitted via facsimile the document(s) listed above to
7 the fax number(s) set forth below on this date.
- 8 () **BY HAND DELIVERY:** by causing to be personally delivered the document(s) listed
9 above to the person(s) at the address(es) set forth below on this date.
- 10 () **BY MAIL:** by placing the envelope, addressed to addresses below, for collection and
11 mailing on the date following our ordinary business practices. I am readily familiar with
12 this business' practice for collecting and processing correspondence for mailing. On the
13 same day that correspondence is placed for collection and mailing, it is deposited in the
14 ordinary course of business with the United States Postal Service in a sealed envelope
15 with postage fully paid.
- 16 () **BY PERSONAL SERVICE:** by causing document(s) listed above to be personally
17 served to the person(s) at the address(es) set forth below.
- 18 () **BY EXPRESS MAIL DELIVERY:** by causing document(s) listed above to be
19 deposited with the United States Express Mail Service for delivery to the person(s) at the
20 address(es) set forth below.
- 21 (X) **BY ELECTRONIC SERVICE:** by causing document(s) listed above to be
22 electronically mailed to the e-mail addresses listed below.

23 Jacqueline V. McCalla
24 Wood, Smith, Henning & Berman LLP
25 1401 Willow Pass Road, Suite 700
26 Concord, CA 94520
27 T: (925) 222-3311
28 M: (925) 464-0970
E-Mail: jmccalla@wshblaw.com

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

Executed on August 19, 2020, at Fresno, California.


STACEY VUE