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13 NORMA RODRIGUEZ and ANTELMA MARTINEZ

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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Patrick Gonzaga, Deputy Clerk

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

16 NORMA RODRIGUEZ, and
17 ANTELMA MARTINEZ,
18 individually and on behalf of others similarly
19 situated,

20 Plaintiffs,

21 vs.

22 THE CHEESECAKE FACTORY
23 RESTAURANTS, INC., a California
24 corporation, and
25 DOES 1 – 100,

26 Defendants.

Case No.: 37-2017-00006571-CU-OE-CTL

CLASS ACTION

COMPLAINT FOR:

- 1) **FAILURE TO PAY OVERTIME WAGES;**
- 2) **FAILURE TO FURNISH WAGE STATEMENTS;**
- 3) **FAILURE TO KEEP ACCURATE PAYROLL RECORDS OF DAILY HOURS WORKED;**
- 4) **FAILURE TO PAY ALL WAGES TWICE EACH CALENDAR MONTH;**
- 5) **FAILURE TO ENFORCE MAXIMUM HOURS OF WORK;**
- 6) **UNFAIR BUSINESS PRACTICES IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTIONS 17200 ET SEQ.; and**

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7) **PRIVATE ATTORNEYS GENERAL
ACT CLAIM FOR CIVIL
PENALTIES.**

[JURY TRIAL DEMANDED]

COMES NOW PLAINTIFFS NORMA RODRIGUEZ and ANTELMA MARTINEZ (collectively referred to as the “Plaintiffs”), on behalf of themselves and all other persons similarly situated, and allege as follows:

I. INTRODUCTION

1) Plaintiffs bring this class action on behalf of themselves and all of the kitchen prep cooks and cooks employed by Defendant THE CHEESECAKE FACTORY RESTAURANTS, INC., and DOES 1-100 (collectively referred to herein as “CHEESECAKE FACTORY” or “Defendants”) in California (collectively referred to as “Class Members” from the date four (4) years prior to the filing of this Complaint through the date of trial in this action.

2) Defendants violated California law by requiring that Plaintiffs and Class Members work full shifts, in excess of five (5) hours and up to and/or in excess of (8) hours without any breaks, including bathroom and lunch breaks, and refused their requests for such breaks. Defendant CHEESECAKE FACTORY through its management personnel, employees, and/or agents maintain a policy of discouraging employees, including Plaintiffs and Class Members, from requesting bathroom and lunch breaks while openly degrading them based upon their ethnicity, national origin and/or race. Defendant CHEESECAKE FACTORY further required that Class Members work in excess of seven (7) consecutive days. As a result, Defendants have violated numerous provisions of the California Labor Code, including failure to provide rest periods and meal periods, and failing to properly compensate Plaintiffs and Class Members for all hours worked related to requiring Class Members to work in excess of seven (7) consecutive days. Plaintiffs also claim civil penalties for the above acts, under the Private Attorneys General Act (“PAGA”). Lab. Code. § 2698 *et seq.*

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1 provided written notice to the Labor and Workforce Development Agency, and by certified mail
2 to the employer of the specific provisions of the Labor Code that Plaintiffs allege
3 CHEESECKAE FACTORY violated, including the facts and theories to support the alleged
4 violation. Attached hereto as Exhibit “A,” is a copy of said correspondence. More than sixty-
5 five (65) days have passed from the postmark date on the notice, and the Labor and Workforce
6 Development Agency did not provide any notice that it would take action. Accordingly,
7 Plaintiffs may commence this action pursuant to Labor Code 2699. Lab. Code § 2699.3.

8 **V. CLASS ACTION ALLEGATIONS**

9 11) This action is maintainable as a representative action pursuant to Code of Civil
10 Procedure Section 382 as to violations of Wage Order 5-2001 and California Labor Code for
11 unpaid overtime wages, failure to furnish timely, itemized wage statements, failure to maintain
12 accurate payroll records of daily hours worked, failure to pay all wages twice each calendar
13 month, and failure to enforce maximum hours of work, attorneys’ fees and costs. Plaintiffs are
14 representative of other kitchen prep cooks and cooks and are acting on behalf of their interests.
15 The similarly situated employees are known to Defendant CHEESECAKE FACTORY and are
16 readily identifiable and locatable through Defendant’s own employment records. The Class that
17 Plaintiffs seek to represent is defined as:

18 **All persons who worked as prep cooks and/or cooks for THE CHEESCAKE**
19 **FACTORY RESTAURANTS, INC. in California at any time from four (4)**
20 **years prior to the date of filing of this action through the date of trial.**

21 12) The individuals included within the alleged Class are so numerous that joinder of
22 each of them would be impracticable, and the disposition of their claims in a class action, rather
23 than in numerous individual actions, will benefit the parties, the Court, and the interests of
24 justice.

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1 16) California Labor Code Section 510 entitles non-exempt employees to one and on-
2 half (1 ½) times their hourly pay for any and all hours worked in excess of eight (8) hours in any
3 workday, for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a
4 workweek, and for any work in excess of forty (40) hours in any single workweek. Employees
5 are entitled to double the employee's regular rate of pay for all work in excess of twelve (12)
6 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th)
7 consecutive day of work in a workweek.

8 17) Plaintiffs and Class Members regularly worked in excess of eight (8) hours per
9 day and/or forty (40) hours per week without overtime compensation.

10 18) By failing to pay overtime compensation to Plaintiffs and Class Members,
11 Defendants violated California Labor Code Sections 204, 510 and 1194.

12 19) As a result of Defendants' unlawful acts, Plaintiffs and Class Members have been
13 deprived of overtime compensation in an amount to be determined at trial, and are entitled to
14 recovery of such amounts, plus interest thereon, attorneys' fees and costs, under California Labor
15 Code Section 1194.

16 20) Plaintiffs, on behalf of themselves and Class Members, also request further relief
17 as described below.

18 **VII. SECOND CAUSE OF ACTION – FAILURE TO**
19 **FURNISH WAGE STATEMENTS**
20 (AGAINST ALL DEFENDANTS)

21 21) Plaintiff MARTINEZ incorporates herein each paragraph of this Complaint and
22 incorporates them by reference as though fully set forth herein.

23 22) California Labor Code Section 226 requires an employer to furnish its employees
24 with an accurate itemized statement in writing showing, among other things: (a) all applicable
25 hourly rates in effect during each respective pay period and the corresponding number of hours
26 worked by each respective individual; (b) total hours worked by each respective individual; (c)
27 gross wages earned; (d) net wages earned; (e) all deductions; (f) inclusive dates of the period for
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1 which the employee is paid; (g) the name of the employee and an employee identification or
2 social security number; and (h) the name and address of the legal entity that is the employer.

3 23) As a pattern and practice, in violation of California Labor Code Section 226(a),
4 Defendant CHEESECAKE FACTORY did not provide Plaintiffs or Class Members with
5 accurate itemized wage statements in writing showing: (a) all applicable hourly rates in effect
6 during each respective pay period and the corresponding number of hours worked by each
7 respective individual; (b) total hours worked by each respective individual; (c) gross wages
8 earned; (d) net wages earned; (e) all deductions; (f) inclusive dates of the period for which the
9 employee is paid; (g) the name of the employee and an employee identification or social security
10 number; and (h) the name and address of the legal entity that is the employer.

11 24) As a result of Defendant CHEESECAKE FACTORY's failure to provide accurate
12 itemized wages statements, Plaintiff MARTINEZ and Class Members suffered actual damages
13 and harm by being unable to determine their applicable hourly rate or the amount of overtime
14 worked each pay period, which prevented them from becoming aware of these violations and
15 asserting their statutory protections under California law.

16 25) Defendant CHEESECAKE FACTORY has knowingly and intentionally failed to
17 comply with California Labor Code Section 226(a) on each and every wage statement provided
18 to Plaintiff MARTINEZ and Class Members.

19 26) Pursuant to California Labor Code Section 226(e), Plaintiff MARTINEZ and
20 Class Members are entitled to recover the greater of all actual damages or fifty dollars (\$50.00)
21 for the initial pay period in which a violation occurs and one hundred dollars (\$100.00) per
22 employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of
23 four thousand dollars (\$4,000.00).

24 27) Plaintiff MARTINEZ and Class Members are entitled to an award of costs and
25 reasonable attorneys' fees under California Labor Code Section 226(h).

26 28) Plaintiff MARTINEZ, on behalf of herself and Class Members, also request relief
27 as described below.

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1 **VIII. THIRD CAUSE OF ACTION – FAILURE TO KEEP ACCURATE PAYROLL**

2 **RECORDS OF DAILY HOURS WORKED**

3 (AGAINST ALL DEFENDANTS)

4 29) Plaintiff MARTINEZ incorporate herein each paragraph of this Complaint and
5 incorporates them by reference as though fully set forth herein.

6 30) California Labor Code Section 1174 requires an employer to keep, at a central
7 location, payroll records showing the hours worked daily by and the wages paid to any
8 employee.

9 31) As a pattern and practice, in violation of California Labor Code Section 1174,
10 Defendant CHEESECAKE FACTORY did not and/or does not keep payroll records showing the
11 hours worked daily by Plaintiff MARTINEZ and Class Members and the wages paid to Plaintiff
12 MARTINEZ and Class Members.

13 32) As a result of Defendant CHEESECAKE FACTORY's failure to keep and
14 maintain accurate time records reflecting hours worked and wages paid to Plaintiff MARTINEZ
15 and Class Members, Plaintiff MARTINEZ and Class Members were prevented from becoming
16 aware of these violations and asserting their statutory protections under California law.

17 33) Defendant CHEESECAKE FACTORY has knowingly and intentionally failed to
18 comply with California Labor Code Section 1174 by failing to keep and maintain accurate time
19 records reflecting hours worked and wages paid to Plaintiff MARTINEZ and Class Members.

20 34) Pursuant to California Labor Code Section 1174.5, Plaintiff MARTINEZ and
21 Class Members are entitled to a civil penalty of five hundred dollars (\$500.00).

22 35) Plaintiff MARTINEZ, on behalf of themselves and Class Members, also request
23 relief as described below.

24 **IX. FOURTH CAUSE OF ACTION – FAILURE TO PAY ALL WAGES TWICE**

25 **EACH CALENDAR MONTH**

26 (AGAINST ALL DEFENDANTS)

27 36) Plaintiff MARTINEZ incorporate herein each paragraph of this Complaint and
28 incorporates them by reference as though fully set forth herein.

1 37) California Labor Code Section 204 provides in part that “all wages, ... earned by
2 any person in any employment are due and payable twice during each calendar month, on days
3 designated in advance by the employer as the regular pay days.”

4 38) Plaintiff MARTINEZ and Class Members are informed and believe, and on such
5 information and belief, allege that Defendant CHEESECAKE FACTORY failed to accurately
6 track the time each worked, and were therefore not paid all earned wages, including overtime
7 and/or double-time, on regularly established pay days.

8 39) In violation of Labor Code Section 204, Defendant CHEESECAKE FACTORY
9 knowingly and willfully refused to perform their obligations to compensate their employees,
10 including Plaintiff MARTINEZ and Class Members, for all wages earned at least three (3) years
11 prior to the filing of this Complaint.

12 40) Pursuant to Labor Code Section 210, Plaintiff MARTINEZ and Class Members
13 are entitled to recover a civil penalty of one hundred dollars (\$100.00) for the initial failure to
14 timely pay each employee all of the wages earned, and two hundred dollars (\$200.00) for each
15 subsequent failure to pay each employee all of the wages earned. In addition, pursuant to
16 California Labor Code Section 210, for each subsequent failure to pay in compliance with
17 Section 204, Plaintiffs and Class Members are entitled to recover an additional amount equal to
18 twenty-five percent (25%) of the unlawfully withheld wages.

19 41) Plaintiff MARTINEZ, on behalf of herself and Class Members, also request relief
20 as described below.

21 **X. FIFTH CAUSE OF ACTION – FAILURE TO ENFORCE**
22 **MAXIMUM HOURS OF WORK**
23 (AGAINST ALL DEFENDANTS)

24 42) Plaintiffs incorporate herein each paragraph of this Complaint and incorporates
25 them by reference as though fully set forth herein.

26 43) California Labor Code Section 1198 provides that, “the maximum hours of work
27 and the standard conditions of labor fixed by the commission shall be the maximum hours of
28 work and the standard conditions of labor for employees. The employment of any employee for

1 longer than those fixed by the order or under conditions of labor prohibited by the order is
2 unlawful.”

3 44) California Labor Code Section 510 entitles non-exempt employees to one and on-
4 half (1 ½) times their hourly pay for any and all hours worked in excess of eight (8) hours in any
5 workday, for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a
6 workweek, and for any work in excess of forty (40) hours in any single workweek. Employees
7 are entitled to double the employee’s regular rate of pay for all work in excess of twelve (12)
8 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th)
9 consecutive day of work in a workweek.

10 45) Plaintiffs and Class Members regularly worked in excess of eight (8) hours per
11 day and/or forty (40) hours per week without overtime compensation, and without being
12 prevented from working in excess of eight (8) hours and/or forty (40) hours per week.

13 46) By failing to pay overtime compensation and without preventing Plaintiffs and
14 Class Members from working in excess of eight (8) hours and/or forty (40) hours per week,
15 Defendants violated California Labor Code Section 1198.

16 47) As a result of Defendants’ unlawful acts, Plaintiffs and Class Members have been
17 deprived of overtime compensation in an amount to be determined at trial, and are entitled to
18 recovery of such amounts, plus interest thereon, attorneys’ fees and costs, under California Labor
19 Code Section 1194.

20 48) As a result of Defendants’ unlawful acts, Plaintiffs and Class Members are further
21 entitled to a civil penalty of fifty dollars (\$50.00) for the initial violation of each underpaid
22 employee for each pay period during which the employee was underpaid; and one hundred
23 dollars (\$100.00) for each subsequent violation.

24 49) Plaintiffs, on behalf of themselves and Class Members, also request relief as
25 described below.

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1 **XII. SEVENTH CAUSE OF ACTION – PRIVATE ATTORNEYS GENERAL ACT**

2 **CLAIM FOR CIVIL PENALTIES**

3 (AGAINST ALL DEFENDANTS)

4 58) Plaintiff MARTINEZ incorporate herein each paragraph of this Complaint and
5 incorporates them by reference as though fully set forth herein.

6 59) Plaintiff MARTINEZ is an “aggrieved employee” under PAGA, as she has been
7 employed by Defendant CHEESECAKE FACTORY during the applicable statutory period and
8 suffered one or more of the California Labor Code violations herein. As such, she seeks to
9 recover, on behalf of herself and all other current and former aggrieved employees of Defendant
10 CHEESECAKE FACTORY, the civil penalties provided by PAGA, plus reasonable attorneys’
11 fees and costs.

12 60) Plaintiff MARTINEZ seeks to recover the PAGA civil penalties through a
13 representative action permitted by PAGA and the California Supreme Court in *Arias v. Sup. Ct.*
14 (*Angelo Dairy, et al.*) (2009) 46 Cal.4th 969. Therefore, class certification of the PAGA claims
15 is not required, but Plaintiff MARTINEZ may choose to seek certification of the PAGA claims.

16 61) Plaintiff MARTINEZ seeks to pursue remedies to pursuant to PAGA for the
17 following reasons:

18 62) California Labor Code Section 226.3 imposes a civil penalty in addition to any
19 other penalty provided by law of two hundred fifty dollars (\$250.00) per aggrieved employee for
20 the first violation, and one thousand dollars (\$1,000.00) per aggrieved employee for each
21 subsequent violation of California Labor Code Section 226(a).

22 63) Pursuant to California Labor Code Section 203, for an employer who willfully
23 fails to pay any wages of an employee who is discharged or quits, that employee’s wages shall
24 continue as a penalty from the due date at the same rate until paid, but shall not continue for
25 more than thirty (30) days. Section 256 of the California Labor Code imposes a civil penalty in
26 an amount not exceeding thirty (30) days’ pay as waiting time under the terms of California
27 Labor Code Section 203.

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H. An award of reasonable attorneys' fees and costs, pursuant to Code of Civil Procedure Section 1021.5, and California Labor Code Sections 226, 226.7, 1194, 2699(g) and/or other applicable law;

I. For costs of suit incurred herein; and

J. For such other and further relief as the Court may deem proper.

Dated: February 22, 2017

LAW OFFICES OF SEAN D. STEPHENS

By: *Sean D. Stephens*

Sean D. Stephens, Esq.
Attorney for Plaintiffs
Norma Rodriguez and
Antelma Martinez

EXHIBIT A

SEAN D. STEPHENS

**LAW OFFICES OF
SEAN D. STEPHENS**

ATTORNEYS AT LAW

E-mail:
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A PROFESSIONAL CORPORATION

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TELEPHONE: (619) 838-5211
FACSIMILE: (619) 239-0216

September 30, 2016

California Labor & Workforce
Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814

VIA E-MAIL: PAGAfilings@dir.ca.gov ONLY

Mr. David M. Gordon, President
The Cheesecake Factory Restaurants, Inc.
26901 Malibu Hills Road
Calabasas Hills, CA 91301

VIA CERTIFIED U.S. MAIL ONLY

**Re: Private Attorney General's Act Notice
Pursuant to California Labor Code § 2699
Our Clients: Norma Rodriguez, Antelma Martinez, Jorge Barcelata
Our File No.: 1609.050.001**

Dear Sir or Madam:

Please be advised that Norma Rodriguez, Antelma Martinez and Jorge Barcelata have retained the Law Offices of Sean D. Stephens and the Law Offices of Anthony P. Bienes to represent them individually and on behalf of other similarly aggrieved former / current employees (collectively referred to as the "Plaintiffs") for wage and hour claims against their former / current employer, The Cheesecake Factory Restaurants, Inc. (hereinafter referred to "The Cheesecake Factory").

The Cheesecake Factory is a California corporation, with its primary place of business in Calabasas Hills, California. However, The Cheesecake Factory has multiple retail restaurants throughout California and the world. The Cheesecake Factory employs numerous individuals in various capacities and positions relating to food and beverage service at its restaurants.

Plaintiffs Norma Rodriguez, Antelma Martinez and Jorge Barcelata worked in various food preparation positions while employed at The Cheesecake Factory restaurant located at 789 W. Harbor Drive, San Diego, California near the area of Seaport Village.

The Cheesecake Factory has violated, and/or caused to be violated, several Labor Code provisions, and is therefore liable for civil penalties under California Labor Code Section 2698, *et seq.* We request that your agency investigate the claims alleged against The Cheesecake Factory as set forth below. This letter will serve as notice of these allegations pursuant to the Private Attorney General Act of 2004 (“PAGA”). Lab. Code § 2699.3.

UNLAWFUL ACTS

I. UNLAWFUL REQUIREMENT DENYING EMPLOYEES BREAKS WHILE WORKING

Management at The Cheesecake Factory restaurant at Seaport Village required / requires employees, including Plaintiffs Norma Rodriguez, Antelma Martinez and Jorge Barcelata, to work full shifts in excess of five (5) hours and up to eight (8) hours without any breaks, including bathroom and lunch breaks and refused employees’ repeated requests for such breaks. Further, management personnel at The Cheesecake Factory maintained / maintains a policy of discouraging employees, including Plaintiffs, from requesting bathroom and lunch breaks while openly degrading them based upon their ethnicity.

In addition, The Cheesecake Factory failed / fails to pay associated premiums when Plaintiffs were / are not provided the requisite off duty break and meal periods.

As a result of these violations of California Labor Code Sections 226.7 and 512 as well as California Industrial Welfare Commission Order No.5-2001, The Cheesecake Factory is liable for civil penalties pursuant to California Labor Code Sections 558 and 2698, *et seq.*

II. UNLAWFUL REQUIREMENT THAT EMPLOYEES WORK IN EXCESS OF SEVEN (7) CONSECUTIVE DAYS

In addition to the actions set forth above, management at the The Cheesecake Factory restaurant at Seaport Village required employees, including Norma Rodriguez, Antelma Martinez and Jorge Barcelata, to work in excess of seven (7) consecutive days or more than one (1) occasion and sometimes up to ten (10) consecutive days.

As a result of these violations of California Labor Code Sections 551 and 552, The Cheesecake Factory is liable for civil penalties pursuant to California Labor Code Sections 558 and 2698, *et seq.*

III. UNLAWFUL VIOLATION OF CALIFORNIA LABOR CODE SECTION 1199

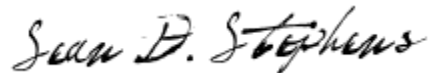
Under California Labor Code Sections 1199(c) and 2699.5 *et seq.*, an employer who “violates or refuses or neglects to comply with any provision of” the Labor Code regarding employees’ wages, hours, and working conditions, is subject to PAGA penalties. As described above, The Cheesecake Factory at Seaport Village required Plaintiffs to work shifts in excess of five (5) hours and up to eight (8) hours without any breaks, including bathroom and lunch breaks and has violated numerous provisions of the Labor Code pertaining to employee hours. Accordingly, The Cheesecake Factory is liable for civil penalties pursuant to California Labor Code Section 2698 *et seq.*

IV. CONCLUSION

The Cheesecake Factory has violated or has caused to be violated a number of California labor laws. Plaintiffs respectfully request the agency investigate the above allegations and provide notice of the allegations pursuant to PAGA’s provisions. Alternatively, Plaintiffs request the agency inform them if it does not intend to investigate these violations so that they may file an appropriate lawsuit alleging the violations discussed in this letter.

Respectfully submitted,

LAW OFFICES OF SEAN D. STEPHENS



Sean D. Stephens, Esq.

SDS:tba

cc: Clients
Anthony P. Bienes, Esq.