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6 **BLANCA ORTEGA**

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CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO – HALL OF JUSTICE**

11 **BLANCA ORTEGA,**

12 Plaintiff,

13 v.

14 **CANDELAS ON THE BAY, and DOES 1**  
15 **through 100 inclusive**

16 Defendant.

Case No. **37-2018-00000107-CU-NP-CTL**

**COMPLAINT FOR STATUTORY  
VIOLATIONS, UNPAID WAGES,  
PENALTIES AND INJUNCTIVE RELIEF  
FOR:**

1. **WRONGFUL TERMINATION OF  
EMPLOYMENT IN VIOLATION OF  
PUBLIC POLICY;**
2. **UNFAIR BUSINESS PRACTICES;**
3. **LABOR CODE § § 226.7;**
4. **LABOR CODE § 226 AND § 226.3;**
5. **LABOR CODE §203 PENALTIES**

Judge:

Dept.:

22 **I. NATURE OF THE CASE**

23 1. Now comes Plaintiff **BLANCA ORTEGA** (hereinafter referred to as "Plaintiff"),  
24 individually, and in the interest of the General Public, and alleges against Defendant  
25 **CANDELAS ON THE BAY**, a California Corporation; and **DOES 1 through 100**, inclusive,  
26 violations of the California Labor Code, Civil Code, and Business and Professions Code.

27 2. This case involves a previous employee who performed labor at Candelas on the  
28 Bay. Plaintiff was a hardworking and dedicated full-time employee hired in June

1 2016 as a Manager, who was not paid for all hours worked, was not paid all applicable fringe  
2 benefits, and was not authorized or permitted to take 30-minute unpaid meal periods, when she  
3 worked five or more hours, or 10-minute unpaid rest breaks every four hours of labor or major  
4 fraction thereof. Plaintiff additionally objected to and complained to Defendant about unfair  
5 business practices Defendant was knowingly and intentionally practicing at the restaurant,  
6 including but not limited to hiring illegal aliens at the restaurant. Defendant intimidated and  
7 attempted to ignore Plaintiff's concerns and then retaliated against Plaintiff for her resistance  
8 by machinating the termination of her employment.

9 3. Defendant CANDELAS ON THE BAY, a California Corporation, and DOES 1  
10 through 100 are collectively identified and referred to as the CANDELAS ON THE BAY  
11 DEFENDANTS. As described below these individuals and entities hired, employed and  
12 benefited from the labor of PLAINTIFF such that they are responsible in whole or in part for  
13 the claims made. Claims are made against CANDELAS ON THE BAY DEFENDANTS on all  
14 the Causes of Action.

15 4. Plaintiff alleges that CANDELAS ON THE BAY failed to properly pay  
16 Plaintiff's straight time, overtime and weekend pay subject to California's wage and hour laws  
17 of the State of California. Plaintiff further allege that CANDELAS ON THE BAY failed to  
18 authorize or permit PLAINTIFF to take meal periods and rest breaks as mandated by law and  
19 described herein. Plaintiff seek recovery of unpaid wages, accrued interest and penalties,  
20 attorneys' fees and costs.

## 21 II. JURISDICTION

22 5. Plaintiff bring this action against Defendants pursuant to Civil Code §§ 3103  
23 and 3181 through 3184, California Labor Code §§ 200, 201, 202, 203, 203.1, 203.5, 218, 226,  
24 1194, 1194.2, and 1174; and California Business and Professions Code §§ 17200 et seq.

25 6. On July 20, 2017, Department of Fair Employment and Housing granted Ms.  
26 Blanca's Right to Sue notice, per DFEH Matter Number: 940168-301848. According to  
27 Government Code section 12965, subdivision (b), a civil action may be brought under the  
28 provisions of the Fair Employment and Housing Act against the person, employer, labor

1 organization or employment agency named in the above-referenced complaint. The civil action  
2 must be filed within one year from the date of this letter.

### 3 III. VENUE

4 7. Venue lies in San Diego County because the restaurant is located in the County  
5 of San Diego. Defendant's liability arises pursuant to the Defendant's employment of Plaintiff  
6 in the County of San Diego.

### 7 IV. PARTIES TO THE ACTION

8 8. Plaintiff BLANCA ORTEGA was and at all relevant times herein is, an  
9 individual over the age of eighteen and a resident of California.

10 9. Plaintiff is informed and believes and therefore alleges, that at all times  
11 mentioned herein CANDELAS ON THE BAY is an individual, corporation, or other entity  
12 authorized to conduct business in the State of California, doing business as a restaurant in San  
13 Diego, California.

14 10. Plaintiff was informed and believes and therefore alleges that CANDELAS ON  
15 THE BAY employed Plaintiff as a manager for the restaurant.

16 11. Plaintiff is informed and believes and therefore alleges that at all times herein  
17 mentioned, defendants DOES 1 through 100, and each of them, were at all relevant times  
18 herein the agents, servants and/or employees of each and every group of defendants, and that  
19 all acts and omissions herein complained of were performed within the course and scope of  
20 said employment, service and/or agency and with the consent of each of the defendants. All  
21 actions of each defendant herein alleged were ratified and approved by the directors, officers or  
22 managing agents of defendants.

23 12. The true names and capacities, whether individual, corporate, associate or  
24 otherwise of defendant DOES 1 through 100, inclusive, are unknown to Plaintiff who therefore  
25 sues said defendants by such fictitious names. Plaintiff will seek leave of court to amend this  
26 Complaint to show their true names and capacities when the same have been ascertained  
27 pursuant to Code Civil Procedure section 474.

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1 **V. GENERAL ALLEGATIONS**

2 13. CANDELAS ON THE BAY did not compensate Plaintiff for her labor by  
3 paying for all hours worked.

4 14. CANDELAS ON THE BAY did not authorize or permit Plaintiff to take 30-  
5 minute unpaid meal periods when she worked at least 5-hours and did not afford her a second  
6 meal when they worked 12-hour shifts.

7 15. CANDELAS ON THE BAY did not authorize or permit Plaintiff to take paid  
8 10-minute rest breaks when she worked 4-hours or a major fraction thereof.

9 **VI. DEFENDANT'S UNLAWFUL POLICIES AND PRACTICES**

10 16. Plaintiff is informed and believes and therefore alleges that between June 1,  
11 2016 through March 12, 2017, CANDELAS ON THE BAY and Does 1 through 100 employed  
12 plaintiff to provide managerial services at CANDELAS ON THE BAY.

13 17. Plaintiff is informed and believes and thereon alleges that at all relevant times,  
14 defendant failed to pay the wages she was entitled to under the California labor Code and  
15 applicable regulations, including failure to provide rest and meal period or one hour's wages in  
16 lieu thereof, and failure to provide accurate wage statements.

17 18. Labor Code section 226 require defendant to provide employees an accurate  
18 itemized statement showing (1) gross wages earned, (2) total hours worked by the employee,  
19 (3) the number of piece units and rates if applicable, (4) all deductions, (5) net wages earned,  
20 (6) the inclusive date of the period for which the employee is paid, (7) the name of the  
21 employee and his or her social security number, (8) the name and address of the legal entity  
22 that is the employer, and (9) all applicable hourly rates in effect and the corresponding number  
23 of hours worked. Plaintiff is informed, and believes, and thereon alleges that between  
24 June 1, 2016 to March 12, 2017, defendant failed to make appropriate wage deductions and  
25 failed to provide plaintiff with the required itemized wage statements.

26 19. Plaintiff is further informed and believes and therefore alleges that the  
27 defendant's misclassification of her employment as independent contractor was done to evade  
28 defendant's obligation to make required payments of payroll taxes, social security

1 contributions, Medicare contributions and other legal obligations associated with the  
2 employment of labor.

### 3 **VII. FIRST CAUSE OF ACTION**

#### 4 **WRONGFUL TERMINATION OF EMPLOYMENT IN** 5 **VIOLATION OF PUBLIC POLICY**

6 20. Plaintiff alleges and incorporate by this reference the allegations set forth in  
7 paragraphs 1 through 18, inclusive as though fully set forth below.

8 21. Plaintiff was a hardworking and dedicated full-time employee hired in June  
9 2016 as a Manager for Candelas located in Coronado, California.

10 22. Plaintiff dutifully served as the manager for the restaurant. Defendant required  
11 Plaintiff to work excessive hours above and beyond 8 hours a day. Plaintiff was made to work  
12 additional hours when she first started at the location, until she finally had to speak with  
13 management notifying them that working excessive hours for 7 days a week was extreme.  
14 Defendant failed and refused to provide lunch and meal breaks.

15 23. Plaintiff additionally objected to and complained to Defendant about unfair  
16 business practices Defendant was knowingly and intentionally practicing at the restaurant,  
17 including but not limited to hiring illegal aliens at the restaurant. Defendant intimidated and  
18 attempted to ignore Plaintiff's concerns and then retaliated against Plaintiff for her resistance  
19 by machinating the termination of her employment.

20 24. Defendant's unlawfully retaliated against, harassed, and then terminated the  
21 employment of Plaintiff because of her opposition and objections to Defendant's unlawful  
22 labor and business practices, her reporting of unsafe working conditions in the form of the  
23 excessive hours and days she was forced to work without breaks, time off or assistance, and her  
24 opposition and objections to Defendant's unlawful conduct such as attempting to hire illegal  
25 aliens. Defendant's retaliation and termination of Plaintiff's employment were in material  
26 violation of fundamental public policies and California law. Such policies are each substantial,  
27 and are tethered to constitutional, statutory and regulatory provisions, including, but not limited  
28 to, California Labor Code Sections 98.6, 226.7, 510, 512, 55, 552, 1102.5, 1174, 1194, 1198,  
6310, 6400 and such other statutory and regulatory provisions violated as alleged hereinabove,

1 the applicable California Code of Regulations, the California Constitution Article I, Section 8,  
2 California Business and Professions Code §§ 17200 et. seq. and California Government Code  
3 §§ 12940 et seq.

4 25. As a direct and proximate result of Defendants' unlawful conduct as described  
5 in this complaint, Plaintiff has sustained and will sustain damages in an amount within the  
6 jurisdiction of this Court, the exact amounts to be determined at trial according to proof. Such  
7 damages include loss of wages, premium pay, penalties, and other valuable employment  
8 benefits, prejudgment interest and interests on the sum of damages at the legal rate, and other  
9 consequential and/or incidental damages.

10 26. Defendant's conduct, as alleged herein, was intentional, malicious, despicable,  
11 and done with the improper purpose of injuring, maligning or otherwise damaging Plaintiff in  
12 her rights and interest, all in violation of California Civil Code § 3294. The wrongful conduct  
13 described herein was intentional and was undertaken, participated in by Defendant and  
14 managing agents, with callous indifference.

15 27. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiff seeks  
16 recovery of her costs and attorney's fees, as the prosecution of this action, if successful, will  
17 result in the enforcement of important rights affecting the public interest, the right to lawful,  
18 fair and timely compensation and healthful working conditions, and the right to retain  
19 employment and to enjoy the same terms, conditions and privileges as other employees free of  
20 discrimination, harassment, intimidation and retaliation. In such instance, the interests of  
21 justice require that the Plaintiff's costs and fees be paid by Defendant rather than out of a  
22 recovery in the litigation.

## 23 **VIII. SECOND CAUSE OF ACTION**

### 24 **UNFAIR BUSINESS PRACTICES**

25 28. Plaintiffs repeat, re-allege and incorporate by this reference the allegations set  
26 forth in paragraphs 1 through 26, inclusive as though fully set forth below.

27 29. Defendant engaged in unfair business practices every time they required  
28 Plaintiff to work excessive hours and days, failed to pay in full for all her time, failed to  
provide meal and rest breaks, and engaged in retaliation. Defendant unlawfully required

1 Plaintiff to work unlawful work weeks and without days' rest, and make it to so Plaintiff's  
2 time cards and wage statements concealed their unlawful practices. Defendant effectively  
3 threatened Plaintiff when she questioned, resisted or protested Defendant's unlawful practices.  
4 Defendant's acts are in violation of California Business & Professions Code, § § 17200, et. seq.

5 30. Business & Professions Code, § § 17200, et. seq. prohibits unlawful and unfair  
6 business practices. The conduct of Defendant as alleged in this Complaint was unfair, unlawful  
7 and harmful to Plaintiff. Providing employees with fair compensation and breaks are  
8 fundamental public policies of this State, and of the United States, Labor Code § 90.5 (a)  
9 articulates the public policies of this State to enforce vigorously minimum labor standards, to  
10 ensure that employees are not required or permitted to work under substandard and unlawful  
11 conditions, and to protect law-abiding employers and their employees from competitors who  
12 lower their costs by failing to comply with minimum labor standards.

13 31. Through the conduct alleged in this Complaint, Defendant has acted contrary to  
14 the public policies of the State of California, has violated specific provisions of the law,  
15 including Labor Code and Government Code provisions, and have engaged in other unlawful  
16 business practices in violation of Business & Profession Code §§ 17200, et. seq., depriving  
17 Plaintiff of rights, benefits, and privileges guaranteed to all employees under the law.  
18 Defendant's conduct, as alleged herein above, constitutes unfair competition in violation of §§  
19 17200, et. seq. of the Business & Professions Code. As a proximate result of the above  
20 mentioned acts of Defendant, Plaintiff will seek restitution in a sum as will be proven at the  
21 time of trial.

22 32. California Business & Professions Code § 17203 provides "[t]he court may  
23 make such orders or judgments...as may be necessary to prevent the use or employment by any  
24 person of any practice which constitutes unfair competition, as defined in this chapter, or as  
25 may be necessary to restore to any person in interest any money or property, real or personal,  
26 which may have been acquired by means of unfair competition." Plaintiff accordingly seeks all  
27 remedies available to her under the law.

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1 **VIX. THIRD CAUSE OF ACTION**

2 **WAGES FOR FAILURE TO PROVIDE REST & MEAL PERIODS –**  
3 **LABOR CODE SECTION 226.7**

4 33. Plaintiff alleges and incorporate by this reference the allegations set forth in  
5 paragraphs 1 through 31, inclusive as though fully set forth below.

6 34. California Labor Code 226.7(b) states:

7 (b) If an employer fails to provide an employee a meal period or  
8 rest period in accordance with an applicable order of the Industrial  
9 Welfare Commission, the employer shall pay the employee one  
10 additional hour of pay at the employee's regular rate of  
11 compensation for each work day that the meal or rest period is not  
12 provided.

13 35. CANDELAS ON THE BAY failed to provide the Plaintiff with a ten-minute  
14 rest period for every 4 hours of work in compliance with Labor Code §226.7.

15 36. CANDELAS ON THE BAY failed to provide the Plaintiff with a 30 minute  
16 unpaid meal period within the first 5 hours of work in compliance with Labor Code § 226.7.

17 37. As a result of CANDELAS ON THE BAY'S failure, Plaintiff is entitled to  
18 recover an amount to be proved at trial, of not less than one additional hour of pay at Plaintiff's  
19 regular rate of compensation for each workday that the meal period was not provided and one  
20 additional hour of pay at Plaintiff's regular rate of compensation for each workday that the rest  
21 period was not provided.

22 **X. FOURTH CAUSE OF ACTION**

23 **PENALTIES FOR FAILURE TO PROVIDE ACCURATE ITEMIZED**  
24 **STATEMENTS – LABOR CODE SECTIONS 226 AND 226.3**

25 38. Plaintiffs repeat, re-allege and incorporate by this reference the allegations set  
26 forth in paragraphs 1 through 23, inclusive as though fully set forth below.

27 39. California Labor Code § 226 requires defendants to provide employees an  
28 accurate itemized statement showing (1) gross wages earned, (2) total hours worked y the  
employee, (3) the number of piece units and rates if applicable, (4) all deductions, (5) net  
wages earned, (6) the inclusive date of the period for which the employee is paid, (7) the name

1 of the employee and his or her social security number, (8) the name and address of the legal  
2 entity that is the employer, and (9) all applicable hourly rates in effect and the corresponding  
3 number of hours worked.

4 40. Plaintiff alleges that defendant violated Labor Code § 226 by failing to provide  
5 an itemized statement with their wages.

6 41. Labor Code § 226.3 provides that any employer who violates subdivision (a) of  
7 the § 226 or who fails to keep the records required in subdivision (a) of § 226 shall be subject  
8 to a civil penalty in the amount of \$250 per employee per violation.

9 Wherefore, Plaintiffs pray judgment as set forth herein below.

#### 10 **XI. FIFTH CAUSE OF ACTION**

##### 11 **FAILURE TO PAY ALL WAGES AT TIME OF DISCHARGE IN VIOLATIONS OF** 12 **LABOR CODE § 201 AND 202 AND PENALTIES – LABOR CODE § 203**

13 42. Plaintiff repeats, re-alleges and incorporates by this reference the allegations set  
14 forth in paragraphs 1 through 27, inclusive as though fully set forth below.

15 43. Labor Code § 201 provides "If an employer discharges an employee, the wages  
16 earned and unpaid at the time of discharge are due and payable immediately."

17 44. On March 14, 2017 when defendant terminated plaintiff, has failed and refused  
18 and continues to fail and refuse to pay the final wages due and owing to plaintiff.

19 45. Defendant knowingly and willingly violated the laws, regulations and orders  
20 governing the wages of employees as described in the causes of actions above.

21 46. Pursuant to Labor Code § 203, Plaintiff is entitled to recover a penalty  
22 equivalent to the wages of from the due date at the rate of her daily rate of pay multiplied by 30  
23 days.

#### 24 **XII. ATTORNEY FEES AND COSTS**

25 47. Enforcement of statutory provisions enacted to protect workers and to ensure  
26 proper and prompt payment of wages due to employees is a fundamental public interest in  
27 California. Consequently, Plaintiff's success in this action will result in the enforcement of  
28 important rights affecting the public interest and will confer a significant benefit upon the

1 general public. Private enforcement of the rights enumerated herein is necessary as no public  
2 agency has pursued enforcement. Plaintiffs are incurring a financial burden in pursuing this  
3 action and it would be against the interest of justice to require the payment of any attorney's  
4 fees and costs from any recovery that might be obtained herein. As prayed for below, Plaintiff  
5 and her counsel of The Law Offices of Gregory A. Lutz, APC are entitled to and seeks an  
6 award of attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5, Labor Code  
7 §§ 1194, 1194.2 and other applicable laws.

8 **XIII. PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff prays for relief as follows:

- 10 1. For damages for unpaid compensation;
- 11 2. For General Damages and Special Damages as allowed by law;
- 12 3. For punitive damages according to proof thereof; for Defendant engaged in  
13 conduct that was "intentionally, maliciously, oppressively, and with a conscious disregard" of  
14 Plaintiff's rights.
- 15 4. For pre-judgment and post-judgment interest at the maximum legal rate;
- 16 5. For penalties pursuant to Labor Code § 203 in an amount equal to thirty days  
17 wages to Plaintiffs measured at the applicable prevailing wage rate;
- 18 6. For an award of reasonable attorney fees and costs of suit;
- 19 7. For an extra hour of pay for each day Plaintiffs were not authorized or permitted  
20 to take 30-minute meal periods and/or 10-minute rest breaks;
- 21 8. For any and all penalties allowable by law for the alleged conduct; and
- 22 9. For such other and further relief as the court may deem proper.

23  
24 Dated: January 2, 2018

The Law Offices of Gregory A. Lutz, APC

25  
26  
27 By: 

Gregory A. Lutz, Esq.  
Attorney for Blanca Ortega