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Individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

Don Vasquez, Individually And On Behalf
Of All Others Similarly Situated,

Plaintiff,

vs.

Milk Specialties Company dba Milk
Specialties Global; And Does 1 Through 20,
Inclusive,

Defendants.

Case No. VCU282778

Hon. Judge Nathan D. Ide – Dept. 2

[Filed as a matter of right pursuant to Labor Code
§ 2699.3(a)(2)(C)]

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Timely Pay All Earned Wages;
4. Unlawful Deduction of Wages;
5. Failure to Provide Meal Periods;
6. Failure to Permit Rest Breaks;
7. Failure to Provide Accurate Itemized Wage Statements;
8. Failure to Pay All Wages Due Upon Separation of Employment;
9. Violation of Business and Professions Code §§ 17200, *et seq.*; and
10. Enforcement of Labor Code § 2698 *et. seq.* (“PAGA”)

DEMAND FOR JURY TRIAL

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

JUL 22 2020

STEPHANIE CAMERON, CLERK
BY: Leticia Hernandez-Sandoval

FAXED

1 Plaintiff Don Vasquez, individually and on behalf of others similarly situated, alleges as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Don Vasquez (“Plaintiff”) brings this putative class action against
5 defendants Milk Specialties Company dba Milk Specialties Global and DOES 1 through 20,
6 inclusive (collectively, “Defendants”), on behalf of himself individually and a putative class of
7 non-exempt employees employed by Defendants at their California facilities.

8 2. Defendants operate facilities which manufacture and package dairy products.

9 3. Through this action, Plaintiff alleges that Defendants have engaged in a
10 systematic pattern of wage and hour violations under the California Labor Code and Industrial
11 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
12 unfair competition.

13 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
14 increased their profits by violating state wage and hour laws by, among other things:

15 (a) Failing to pay all wages for all hours worked, including minimum and overtime
16 wages;

17 (b) Failing to pay overtime and doubletime wages at the proper rates;

18 (c) Failing to timely pay all earned wages;

19 (d) Unlawfully deducting from the wages of employees;

20 (e) Failing to provide meal periods or compensation in lieu thereof;

21 (f) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;

22 (g) Failing to provide accurate itemized wage statements; and

23 (h) Failing to pay all wages due upon separation of employment.

24 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on
25 behalf of himself and all others similarly situated in California to recover, among other things,
26 unpaid wages and benefits, interest, attorneys’ fees, costs and expenses and penalties pursuant
27 to Labor Code §§ 201-203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 510, 511, 512, 558, 1174,
28 1174.5, 1182.12 1194, 1194.2, 1197, 1197.1, and 1198.

JURISDICTION AND VENUE

6. This is a class action, pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business or have offices in this county and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during the Class Period in California.

11. Plaintiff is informed and believes, and thereon alleges, that Defendants at all times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and IWC Wage Orders, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

13. Plaintiff is informed and believes, and thereon alleges, that each defendant acted

1 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
2 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant
3 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
4 the employer and/or joint employer of Plaintiff and the class members.

5 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the
6 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
7 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
8 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
9 the official policy of Defendants.

10 15. At all relevant times, Defendants, and each of them, acted within the scope of
11 such agency or employment, or ratified each and every act or omission complained of herein.
12 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
13 each and all the other Defendants in proximately causing the damages herein alleged.

14 16. Plaintiff is informed and believes, and thereon alleges, that each of said
15 Defendants is in some manner intentionally, negligently or otherwise responsible for the acts,
16 omissions, occurrences and transactions alleged herein.

17 **CLASS ACTION ALLEGATIONS**

18 17. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
19 himself and all others similarly situated who were affected by Defendants' Labor Code,
20 Business and Professions Code §§ 17200 and IWC Wage Order violations.

21 18. All claims alleged herein arise under California law for which Plaintiff seeks
22 relief authorized by California law.

23 19. Plaintiff's proposed Class consists of and is defined as follows:

24 Class

25 All current or former non-exempt California employees of Defendants from April
26 6, 2016 to the date the class is certified.¹

27 ¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I,
28 Emergency Rule No. 9.

1 20. Plaintiff also seeks to certify the following Subclass of employees:

2 Waiting Time Subclass

3 All members of the Class who separated their employment from Defendants from
4 April 6, 2017 to the date the class is certified.

5 21. Members of the Class and Subclass described above will be collectively referred
6 to as “class members.” Plaintiff reserves the right to establish other or additional subclasses, or
7 modify any Class or Subclass definition, as appropriate based on investigation, discovery and
8 specific theories of liability.

9 22. This action has been brought and may properly be maintained as a class action
10 under the California Code of Civil Procedure § 382 because there are common questions of law
11 and fact as to the Class that predominate over questions affecting only individual members
12 including, but not limited to:

- 13 (a) Whether Defendants failed to compensate Plaintiff and class members to work off-
14 the-clock, resulting in a failure to pay all minimum wages and overtime wages;
- 15 (b) Whether Defendants paid Plaintiff and class members overtime and doubletime
16 compensation at the proper rates;
- 17 (c) Whether Defendants failed to timely pay all wages earned by Plaintiff and class
18 members;
- 19 (d) Whether Defendants made unlawful deductions from the wages of Plaintiff and
20 class members;
- 21 (e) Whether Defendants deprived Plaintiff and class members of compliant meal
22 periods or required Plaintiff and class members to work through meal periods
23 without compensation;
- 24 (f) Whether Defendants deprived Plaintiff and class members of compliant rest
25 breaks;
- 26 (g) Whether Defendants failed to timely pay Plaintiff and former class members all
27 wages due upon termination or within 72 hours of resignation;
- 28 (h) Whether Defendants failed to furnish Plaintiff and class members with accurate,
 itemized wage statements; and

(i) Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*

23. There is a well-defined community of interest in this litigation and the Class is readily ascertainable:

(a) Numerosity: The members of the Class are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiff at this time, on information and belief, the Class is estimated to be greater than 100 individuals. The identity of the class members are readily ascertainable by inspection of Defendants' employment and payroll records.

(b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims (or defenses, if any) of the Class because Defendants' failure to comply with the provisions of California wage and hour laws entitled each class member to similar pay, benefits and other relief. The injuries sustained by Plaintiff are also typical of the injuries sustained by the Class because they arise out of and are caused by Defendants' common course of conduct as alleged herein.

(c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent and protect the interests of all members of the Class because it is in his best interest to prosecute the claims alleged herein to obtain full compensation and penalties due to him and the Class. Plaintiff's attorneys, as proposed class counsel, are competent and experienced in litigating large employment class actions and are versed in the rules governing class action discovery, certification and settlement. Plaintiff has incurred and, throughout the duration of this action, will continue to incur attorneys' fees and costs that have been and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action

1 adjudication superior to other methods. A class action will achieve
2 economies of time, effort and expense as compared with separate lawsuits,
3 and will avoid inconsistent outcomes because the same issues can be
4 adjudicated in the same manner and at the same time for each Class. If
5 appropriate this Court can, and is empowered to, fashion methods to
6 efficiently manage this case as a class action.

7 (e) Public Policy Considerations: Employers in the State of California and
8 other states violate employment and labor laws every day. Current
9 employees are often afraid to assert their rights out of fear of direct or
10 indirect retaliation. Former employees are fearful of bringing actions
11 because they believe their former employers might damage their future
12 endeavors through negative references and/or other means. Class actions
13 provide the class members who are not named in the complaint with a
14 type of anonymity that allows for the vindication of their rights at the
15 same time as affording them privacy protections.

16 **GENERAL ALLEGATIONS**

17 24. At all relevant times mentioned herein, Defendants employed Plaintiff and other
18 persons as non-exempt employees at their California facilities.

19 25. Plaintiff was employed in a non-exempt position at one of Defendants'
20 California facilities.

21 26. Defendants continue to employ non-exempt employees at their California
22 facilities.

23 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants were advised by skilled lawyers, employees and other professionals
25 who were knowledgeable about California's wage and hour laws, employment and personnel
26 practices and the requirements of California law.

27 28. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to receive wages for all hours

1 worked and that they were not receiving all wages earned for work that was required to be
2 performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class members
3 were not paid wages (including minimum wages and overtime wages) when Defendants
4 required Plaintiff and class members to undergo “security checks” when entering Defendants’
5 facility. Although Plaintiff and class members were under Defendants’ control while waiting in
6 line for and undergoing these security checks, Defendants did not compensate Plaintiffs and
7 class members for this time worked. Defendants also required Plaintiff and class members to
8 work during meal periods, and Plaintiff and class members were not properly paid for this off-
9 the-clock work.

10 29. Plaintiff is informed and believes, and thereon alleges, that Defendants
11 improperly calculated the overtime and doubletime rate of pay for Plaintiff and class members
12 because the rates did not include non-discretionary wages, including, but not limited to, shift
13 premiums, and/or other incentive pay into the computation of their regular rate of pay for
14 purposes of calculating the overtime and doubletime rate of pay.

15 30. Plaintiff is informed and believes, that Defendants knew or should have known
16 that they were prohibited from withholding amounts from the wages of Plaintiff and other
17 members of the Class, aside for certain statutory exceptions. In violation of the Labor Code,
18 Defendants made unlawful deductions from Plaintiff’s and class members’ wages including, for
19 example, deducting the value of advanced sick pay from the final wages of Plaintiff and class
20 members.

21 31. Plaintiff is informed and believes, and thereon alleges, Defendants failed to
22 provide Plaintiff and class members timely, uninterrupted, off-duty meal periods of no less than
23 thirty minutes before their fifth hour of work. Plaintiff and class members would also often be
24 required to work through meal periods. Defendants routinely failed to provide Plaintiff and
25 class members with a second, off-the-clock meal break for shifts lasting ten hours or longer.
26 Defendants also forced Plaintiff and class members to go through security checks when
27 entering the facility, including during meal periods. The security checks, coupled with
28 Defendants’ other meal period policies, shorten the class members meal periods to less than the

1 thirty minutes required under California law. These policies, among others, have resulted in a
2 denial of these employees' rights to 30-minute meal periods in violation of California law.

3 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to receive all required meal
5 periods or payment of one (1) additional hour of pay at Plaintiff and class members' regular
6 rate of pay when they did not receive a timely meal period. In violation of the Labor Code and
7 IWC Wage Orders, Plaintiff and class members did not receive all timely meal periods or
8 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay
9 when they did not receive a timely, uninterrupted meal periods.

10 33. Upon information and belief, Defendants failed to provide Plaintiff and class
11 members timely, uninterrupted, on-the-clock rest period of no less than ten minutes for every
12 four hours worked, or every major fraction thereof. Defendants also routinely failed to provide
13 Plaintiff and class members with a second rest period for shifts lasting longer than six hours, or
14 a third rest period for shifts lasting longer than ten hours. These policies, among others, have
15 resulted in a denial of these employees' rights to a ten-minute rest period in violation of
16 California law.

17 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to receive all rest breaks or
19 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay
20 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
21 and class members did not receive all rest breaks or payment of one (1) additional hour of pay
22 at Plaintiff and class members' regular rate of pay when a rest break was missed.

23 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to receive itemized wage
25 statements that accurately showed their gross and net wages earned, inclusive dates of pay
26 periods, total hours worked and all applicable hourly rates in effect and the number of hours
27 worked at each hourly rate in accordance with California law. In violation of the Labor Code,
28 Plaintiff and class members were not provided with accurate itemized wage statements.

1 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and Waiting Time Subclass members were entitled to timely
3 payment of wages due upon separation of employment. In violation of the Labor Code,
4 Plaintiff and Waiting Time Subclass members did not receive payment of all wages within
5 permissible time periods.

6 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known they had a duty to compensate Plaintiff and class members, and Defendants
8 had the financial ability to pay such compensation but willfully, knowingly and intentionally
9 failed to do so all in order to increase Defendants' profits.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY MINIMUM WAGES**

12 **(Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197; Violation of IWC Wage Order § 3)**

13 38. Plaintiff hereby re-allege and incorporate by reference all paragraphs above as
14 though fully set forth herein.

15 39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
16 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
17 wage than the minimum so fixed is unlawful.

18 40. During the relevant time period, Defendants paid Plaintiff and class members
19 less than minimum wages when, for example, Defendants required Plaintiff and class members
20 to work off-the-clock during meal breaks, and during security checks when Plaintiff and class
21 members were under Defendants' control. To the extent these hours do not qualify for the
22 payment of overtime or doubletime, Plaintiff and class members were not being paid at least
23 minimum wage for their work.

24 41. During the relevant time period, Defendants regularly failed to pay at least
25 minimum wage to Plaintiff and class members for all hours worked pursuant to Labor Code
26 §§ 1194 and 1197.

27 42. Defendants' failure to pay Plaintiff and class members the minimum wage as
28 required violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and class

1 members are entitled to recover the unpaid balance of their minimum wage compensation as
2 well as interest, costs and attorney's fees.

3 43. Pursuant to Labor Code § 1194.2, Plaintiff and class members are entitled to
4 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
5 thereon.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME WAGES**

8 **(Violation of Labor Code §§ 510, 511, 1194 and 1198; Violation of IWC Wage Order)**

9 44. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
10 though fully set forth herein.

11 45. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
12 unlawful to employ persons without compensating them at a rate of pay either one and one-half
13 or two times the person's regular rate of pay, depending on the number of hours worked by the
14 person on a daily or weekly basis.

15 46. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time
16 period, Defendants were required to compensate Plaintiff and class members for all overtime
17 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours
18 worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first
19 eight (8) hours of the seventh consecutive work day, with doubletime after eight (8) hours on
20 the seventh day of any work week, or after twelve (12) hours in any work day.

21 47. Plaintiff and class members were non-exempt employees entitled to the
22 protections of California Labor Code §§ 510, 511 and 1194.

23 48. During the relevant time period, Defendants failed to pay Plaintiff and class
24 members overtime and doubletime wages at the correct rate because they failed to include non-
25 discretionary wages, including, but not limited to, shift premiums, and/or other incentive pay in
26 the computation of their overtime and doubletime rate of pay, which caused Plaintiff and Class
27 Members to not be paid all overtime and doubletime wages owed. Defendants also failed to
28 pay Plaintiffs and class members overtime and doubletime wages for all overtime hours

1 worked when they required Plaintiffs and class members to work off-the-clock during meal
2 breaks, or for work performed during off-the-clock security checks. Because Plaintiff and
3 class members worked shifts of eight hours or more, and twelve hours or more, this unpaid
4 time qualified for overtime premium payment, and doubletime premium payment.

5 49. In violation of state law, Defendants have knowingly and willfully refused to
6 perform their obligations and compensate Plaintiff and class members for all wages earned as
7 alleged above.

8 50. Defendants' failure to pay Plaintiff and class members the unpaid balance of
9 overtime and doubletime compensation, as required by California law, violates the provisions
10 of Labor Code §§ 510, 511 and 1198, and is therefore unlawful.

11 51. Pursuant to Labor Code § 1194, Plaintiff and class members are entitled to
12 recover their unpaid overtime and doubletime compensation as well as interest, costs and
13 attorneys' fees.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO TIMELY PAY ALL EARNED WAGES**

16 **(Violation of Labor Code §§ 204 and 210; Violation of IWC Wage Order)**

17 52. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
18 though fully set forth herein.

19 53. Labor Code § 204 provides that all wages earned by an employee are due and
20 payable twice during each calendar month.

21 54. Defendants failed to timely pay Plaintiff and class members all of their earned
22 wages as required by Labor Code Section 204.

23 55. Plaintiff and class members have been deprived of their rightfully earned wages as
24 a direct and proximate result of Defendants' failure to pay said compensation. Plaintiff and class
25 members are entitled to recover such amounts, plus interest thereon, attorney's fees and costs.

26 56. In addition, Plaintiff and class members are entitled to penalties pursuant to Labor
27 Code § 210 as follows: (1) for Defendants' initial violation, \$100 for each failure to pay each
28 Class Member; and (2) for each of Defendants' subsequent violations, or any willful or

1 intentional violation, \$200 for each failure to pay each Class Member, plus 25 percent of the
2 amount unlawfully held.

3 **FOURTH CAUSE OF ACTION**

4 **UNLAWFUL DEDUCTION OF WAGES**

5 **(Violation of Labor Code § 221)**

6 57. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
7 though fully set forth herein.

8 58. Labor Code § 221 provides, in pertinent part, “[i]t shall be unlawful for any
9 employer to collect or receive from an employee any part of wages theretofore paid by said
10 employer to said employee.”

11 59. During the relevant time period, Defendants made unlawful deductions from
12 Plaintiff’s and class members’ wages by deducting, for example, the value of advanced sick
13 pay from the final wages of Plaintiff and class members.

14 60. Defendants’ violation of Labor Code § 221 caused Plaintiffs and class members
15 to suffer substantial monetary losses, and expenses and attorney’s fees in seeking to compel
16 Defendants to fully perform their obligations under California law, as a result Plaintiff and
17 class members suffered and continue to suffer a loss of wages and compensation.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE MEAL PERIODS**

20 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

21 61. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
22 though fully set forth herein.

23 62. Labor Code § 226.7 provides that no employer shall require an employee to work
24 during any meal period mandated by the IWC Wage Orders.

25 63. Section 11 of the applicable IWC Wage Order states, “no employer shall employ
26 any person for a work period of more than five (5) hours without a meal period of not less than
27 30 minutes, except that when a work period of not more than six (6) hours will complete the
28 day’s work the meal period may be waived by mutual consent of the employer and the

1 employee.”

2 64. Labor Code § 512(a) provides that an employer may not require, cause or permit
3 an employee to work for a period of more than five (5) hours per day without providing the
4 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
5 the total work period per day of the employee is not more than six (6) hours, the meal period
6 may be waived by mutual consent of both the employer and the employee.

7 65. Labor Code § 512(a) also provides that an employer may not employ an
8 employee for a work period of more than ten (10) hours per day without providing the employee
9 with a second meal period of not less than thirty (30) minutes, except that if the total hours
10 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
11 consent of the employer and the employee only if the first meal period was not waived.

12 66. During the relevant time period, Plaintiff and class members did not receive
13 compliant meal periods for each five hours worked per day. Defendants routinely failed to
14 provide Plaintiff and class members with a second, off-the-clock meal break for shifts lasting
15 longer than ten hours.

16 67. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
17 an employer to pay an employee one additional hour of pay at the employee’s regular rate of
18 compensation for each work day that a meal period is not provided.

19 68. At all relevant times, Defendants failed to pay Plaintiff and class members all
20 meal period premiums due for meal period violations pursuant to Labor Code § 226.7(b) and
21 section 11 of the applicable IWC Wage Order.

22 69. As a result of Defendants’ failure to pay Plaintiff and class members an
23 additional hour of pay for each day a meal period was not provided, Plaintiff and class members
24 suffered and continue to suffer a loss of wages and compensation.

25 **SIXTH CAUSE OF ACTION**

26 **FAILURE TO PERMIT REST BREAKS**

27 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order)**

28 70. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as

1 though fully set forth herein.

2 71. Labor Code § 226.7(a) provides that no employer shall require an employee to
3 work during any rest period mandated by the IWC Wage Orders.

4 72. Section 12 of the applicable IWC Wage Order states “every employer shall
5 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
6 the middle of each work period” and the “authorized rest period time shall be based on the total
7 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
8 fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

9 73. During the relevant time period, Plaintiff and class members did not receive a ten
10 (10) minute rest period for every four (4) hours or major fraction thereof worked. Defendants
11 routinely failed to provide Plaintiff and class members with a second rest period for shifts
12 lasting eight hours or longer, or a third rest period for shifts lasting twelve hours or longer.

13 74. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
14 requires an employer to pay an employee one additional hour of pay at the employee’s regular
15 rate of compensation for each workday that the rest period is not provided.

16 75. At all relevant times, Defendants failed to pay Plaintiff and class members all
17 rest period premiums due for rest period violations pursuant to Labor Code § 226.7(b) and
18 section 12 of the applicable IWC Wage Order.

19 76. As a result of Defendants’ failure to pay Plaintiff and class members an
20 additional hour of pay for each day a rest period was not provided, Plaintiff and class members
21 suffered and continue to suffer a loss of wages and compensation.

22 **SEVENTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

24 **(Violation of Labor Code § 226; Violation of IWC Wage Order)**

25 77. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
26 though fully set forth herein.

27 78. Labor Code § 226(a) requires Defendants to provide each employee with an
28 accurate wage statement in writing showing nine pieces of information, including: (1) gross

1 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
2 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
3 deductions, provided that all deductions made on written orders of the employee may be
4 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
5 for which the employee is paid, (7) the name of the employee and the last four digits of his or
6 her social security number or an employee identification number other than a social security
7 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable
8 hourly rates in effect during the pay period and the corresponding number of hours worked at
9 each hourly rate by the employee.

10 79. During the relevant time period, Defendants have knowingly and intentionally
11 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
12 and class members. The deficiencies include, among other things, the failure to correctly state
13 the gross and net wages earned, the total hours worked and all applicable hourly rates in effect,
14 and the number of hours worked at each hourly rate by Plaintiff and class members.

15 80. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff
16 and class members have suffered injury and damage to their statutorily protected rights.
17 Specifically, Plaintiff and class members have been injured by Defendants' intentional
18 violation of California Labor Code § 226(a) because they were denied both their legal right to
19 receive, and their protected interest in receiving, accurate itemized wage statements under
20 California Labor Code § 226(a). Plaintiff has had to file this lawsuit in order to determine the
21 extent of the underpayment of wages, thereby causing Plaintiff to incur expenses and lost time.
22 Plaintiff would not have had to engage in these efforts and incur these costs had Defendants
23 provided the accurate wages earned. This has also delayed Plaintiff's ability to demand and
24 recover the underpayment of wages from Defendants.

25 81. California Labor Code § 226(a) requires an employer to pay the greater of all
26 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred,
27 and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods,
28 plus attorney's fees and costs, to each employee who was injured by the employer's failure to

1 comply with California Labor Code § 226(a).

2 82. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff
3 and class members from knowing, understanding and disputing the wages paid to them, and
4 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants'
5 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and
6 class members have suffered an injury, and the exact amount of damages and/or penalties is all
7 in an amount to be shown according to proof at trial.

8 83. Plaintiff and class members are also entitled to injunctive relief under California
9 Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226, and
10 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

11 **EIGHTH CAUSE OF ACTION**

12 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT AND**

13 **WITHIN THE REQUIRED TIME**

14 **(Violation of Labor Code §§ 201, 202 and 203; Violation of IWC Wage Order)**

15 84. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
16 though fully set forth herein.

17 85. California Labor Code §§ 201 and 202 provide that if an employer discharges an
18 employee, the wages earned and unpaid at the time of discharge are due and payable
19 immediately, and that if an employee voluntarily leaves his employment, his wages shall
20 become due and payable not later than seventy-two (72) hours thereafter, unless the employee
21 has given seventy-two (72) hours previous notice of his intention to quit, in which case the
22 employee is entitled to his wages at the time of quitting.

23 86. During the relevant time period, Defendants willfully failed to pay Plaintiff and
24 Waiting Time Subclass members all their earned wages upon termination including, but not
25 limited to, proper minimum wages and overtime and doubletime compensation, either at the
26 time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

27 87. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all
28 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving

1 Defendants' employ is in violation of Labor Code §§ 201 and 202.

2 88. California Labor Code § 203 provides that if an employer willfully fails to pay
3 wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201
4 and 202, then the wages of the employee shall continue as a penalty from the due date at the
5 same rate until paid or until an action is commenced; but the wages shall not continue for more
6 than thirty (30) days.

7 89. Plaintiff and Waiting Time Subclass members are entitled to recover from
8 Defendants the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass
9 members' regular daily wages for each day they were not paid, at their regular hourly rate of
10 pay, up to a thirty (30) day maximum pursuant to Labor Code § 203.

11 **NINTH CAUSE OF ACTION**

12 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

13 90. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
14 though fully set forth herein.

15 91. Defendants' conduct, as alleged herein, has been and continues to be unfair,
16 unlawful and harmful to Plaintiff and class members. Plaintiff seek to enforce important rights
17 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

18 92. Defendants' activities, as alleged herein, violate California law and constitute
19 unlawful business acts or practices in violation of California Business and Professions Code
20 §§ 17200, *et seq.*

21 93. A violation of Business and Professions Code §§ 17200, *et seq.* may be
22 predicated on the violation of any state or federal law.

23 94. Defendants' policies and practices have violated state law in at least the
24 following respects:

25 (a) Failing to pay all minimum wages owed to Plaintiff and class members
26 in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;

27 (b) Failing to pay all overtime and doubletime wages to Plaintiff and class
28 members in violation of Labor Code §§ 510, 511, 1194 and 1198;

- 1 (c) Failing to timely pay all wages earned by Plaintiff and class members in
2 violation of Labor Code §§ 204, and 210;
- 3 (d) Deducting the wages of Plaintiff and class members in violation of Labor
4 Code § 221;
- 5 (e) Failing to provide timely meal periods without paying Plaintiff and class
6 members premium wages for every day said meal periods were not
7 provided in violation of Labor Code §§ 226.7 and 512;
- 8 (f) Failing to authorize or permit rest breaks without paying Plaintiff and
9 class members premium wages for every day said rest breaks were not
10 authorized or permitted in violation of Labor Code § 226.7;
- 11 (g) Failing to provide Plaintiff and class members with accurate itemized
12 wage statements in violation of Labor Code § 226; and
- 13 (e) Failing to timely pay all earned wages to Plaintiff and Waiting Time
14 Subclass members upon separation of employment in violation of Labor
15 Code §§ 201, 202 and 203.

16 95. Defendants intentionally avoided paying Plaintiff and class members' wages and
17 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
18 undercut their competitors and establish and gain a greater foothold in the marketplace.

19 96. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and class
20 members are entitled to restitution of the wages unlawfully withheld and retained by
21 Defendants during a period that commences four years prior to the filing of the Complaint; an
22 award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable
23 laws; and an award of costs.

24 **TENTH CAUSE OF ACTION**

25 **ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")**

26 97. Plaintiff hereby re-alleges and incorporate by reference all paragraphs above as
27 though fully set forth herein.
28

1 98. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
2 for a civil penalty to be assessed and collected by the Labor and Workforce Development
3 Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies or
4 employees for violation of the code may, as an alternative, be recovered through a civil action
5 brought by an aggrieved employee on behalf of himself and other current or former employees
6 pursuant to the procedures specified in Labor Code § 2699.3.

7 99. Defendants’ conduct violates numerous Labor Code sections including, but not
8 limited to, the following:

9 (a) Violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 511, 558,
10 1182.12, 1194, 1197 and 1198 for failure to timely pay all earned wages (including
11 minimum wages and overtime wages) owed to Plaintiffs and other aggrieved employees
12 during employment and upon separation of employment as herein alleged;

13 (b) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal
14 periods to Plaintiffs and other aggrieved employees and failure to pay premium wages
15 for missed meal periods as herein alleged;

16 (c) Violation of Labor Code § 226.7 for failure to permit rest breaks to
17 Plaintiffs and other aggrieved employees and failure to pay premium wages for missed
18 rest periods as herein alleged;

19 (d) Violation of Labor Code §§ 226 and 226.3 for failure to provide accurate
20 itemized wage statements to Plaintiffs and other aggrieved employees as herein alleged;

21 (e) Violation of Labor Code §§ 221 and 225.5 for the unlawful deduction of
22 wages; and

23 (f) Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
24 accurate records.

25 100. Plaintiff is an “aggrieved employee” because he was employed by the alleged
26 violator and had one or more of the alleged violations committed against them, and therefore is
27 properly suited to represent the interests of all other aggrieved employees.
28

101. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

102. PAGA imposes a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation.

103. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

104. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiff, on his own behalf and on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification of this action as a class action, including certifying the Class and Subclass alleged by Plaintiff;

2. For appointment of Don Vasquez as the class representatives;

3. For appointment of Lebe Law, APLC, and Aegis Law Firm, PC as class counsel for all purposes;

4. For compensatory damages in an amount according to proof with interest thereon;

5. For economic and/or special damages in an amount according to proof with interest thereon;

6. For reasonable attorneys' fees, costs of suit and interest to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 226(e) and 1194;

7. For statutory penalties to the extent permitted by law, including those pursuant

1 to the Labor Code and IWC Wage Orders;

2 8. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

3 9. For an order requiring Defendants to restore and disgorge all funds to each
4 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair
5 or fraudulent and, therefore, constituting unfair competition under Business and Professions
6 Code §§ 17200, *et seq.*;

7 10. For an award of damages in the amount of unpaid compensation including, but
8 not limited to, unpaid wages, benefits and penalties, including interest thereon;

9 11. For pre-judgment interest;

10 12. For civil penalties; and

11 13. For such other relief as the Court deems just and proper.

12 Dated: July 17, 2020

LEBE LAW, APLC

13
14
15 By: _____



Jonathan M. Lebe

16 Attorney for Plaintiff Don Vasquez
17 Individually and on behalf of all others similarly
18 situated

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

21 Dated: July 17, 2020

LEBE LAW, APLC

22
23 By: _____



Jonathan M. Lebe

24 Attorney for Plaintiff Don Vasquez
25 Individually and on behalf of all others similarly
26 situated
27
28

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On July 22, 2020, I served the foregoing document entitled:

5 • **[Filed as a matter of right pursuant to Labor Code § 2699.3(a)(2)(C)] FIRST**
6 **AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT**
on all the appearing and/or interested parties in this action by delivering ☐ *the original*
7 ☒ *a true copy* thereof on the party(ies) addressed below as follows:

8 James L. Morris
9 Brian C. Sinclair
10 RUTAN & TUCKER, LLP
11 611 Anton Boulevard, Suite 1400
12 Costa Mesa, CA 92626-1931
13 T: 714.641.5100
14 F: 714.546.9035
jmorris@rutan.com
bsinclair@rutan.com

15 *Attorneys for Defendant:*
16 MILK SPECIALTIES CO.

LEBE LAW, APLC
JONATHAN M. LEBE (State Bar No. 284605)
Jon@lebelaw.com
777 S. Alameda Street, Second Floor
Los Angeles, CA 90021
Telephone: (213) 358-7046
Facsimile: (310) 820-1258

Co-Counsel for Plaintiff

17 ☒ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
18 correspondence for mailing. Under that practice it would be deposited with the U.S.
Postal Service on that same day with postage thereon fully prepaid at Irvine, California
19 in the ordinary course of business. I am aware that on motion of the party served, service
20 is presumed invalid if postage cancellation date or postage meter date is more than one
day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc. § 1013(a); Fed.*
R. Civ. Proc. 5(a); Fed. R. Civ. Proc. 5(c).)

21 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
22 practice of Aegis Law Firm PC for collection and processing correspondence for
23 overnight delivery, and I caused such document(s) described herein to be deposited for
delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); Fed. R. Civ. Proc. 5(c).)

24 ☐ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
25 electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); Fed. R. Civ. Proc. 5(b)(2)(E); Fed. R. Civ. Proc. 5(b)(3).)

26 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
27 the addressed named above. (*Cal Code Civ. Proc. § 1011; Fed. R. Civ. Proc.*
5(b)(2)(A).)

28 ///

///

///

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

3 Executed on July 22, 2020, at Irvine, California.



4
5 _____
6 Andrea Drocco
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JONATHAN M. LEBE
LEBE LAW, APLC
777 S. Alameda Street Floor Second
Los Angeles CA 90021-1657

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