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Attorney for Plaintiff
DONIS ESTRADA, an individual

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DONIS ESTRADA, an individual

Plaintiff,

v.

CALI-FAME OF LOS ANGELES, INC.,
a California corporation; BRIAN
KENNEDY, an individual and DOES 1
through 50, Inclusive,

Defendants.

Case No.: 20STCV45821
Dept.: 47
Judge: Hon. Theresa M. Traber

FIRST AMENDED COMPLAINT FOR:

- 1. Discrimination (Govt. Code § 12940(a))**
- 2. Retaliation (Govt. Code § 12940(h))**
- 3. Harassment (Gov't Code § 12940 (k))**
- 4. Retaliation (Labor Code § 1102.5)**
- 5. Wrongful Termination in Violation of Public Policy**
- 6. Unpaid Wages (Labor Code § 201)**
- 7. Failure to Provide Meal Periods (Labor Code §§ 226.7 and 512)**
- 8. Failure to Provide Rest Periods (Labor Code § 226.7)**
- 9. Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226)**
- 10. Unfair Business Practices (Business and Professions Code § 17200)**
- 11. Failure to Produce Personnel and Payroll Records (Labor Code § 1198.5)**
- 12. Penalties Pursuant to the California Private Attorneys General Act (Labor Code § 2699 et seq.)**

DEMAND FOR JURY TRIAL

FILED
Superior Court of California
County of Los Angeles
02/10/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: I. Flores Deputy

Plaintiff, DONIS ESTRADA, by and through his attorney of record, Chami Law, PC, hereby complains against CALI-FAME OF LOS ANGELES, INC., a California corporation, BRIAN KENNEDY, an individual and DOES 1 through 50, inclusive, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over Defendants as it is a resident of, has contacts with, and/or is doing business in the State of California.

2. Venue is proper in this Court as Defendants is an individual residing in the County of Los Angeles, State of California and/or a California corporation with its principal place of business in the County of Los Angeles, State of California.

PARTIES

3. Plaintiff DONIS ESTRADA (hereinafter “Mr. Estrada” or “Plaintiff”) is an individual residing in the County of Los Angeles, State of California.

4. Defendant CALI-FAME OF LOS ANGELES, INC., a California corporation (hereinafter “Cali-Fame” or “Defendant”) in the city of Carson, County of Los Angeles, State of California.

5. Defendant BRIAN KENNEDY (hereinafter “Mr. Kennedy”) is an individual residing in the County of Los Angeles, State of California.

6. The true names and capacities of Defendant DOES 1 through 50 (“DOES”) are unknown to Plaintiff, and Plaintiff will seek leave of Court to amend his Complaint to allege such names and capacities as soon as they are ascertained.

7. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each Defendant designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

1 8. Plaintiff is informed and believes, and based thereon allege, that each Defendant
2 acted in all respects pertinent to this action as the agent and/or the alter-ego of the other
3 Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto,
4 and the acts of each Defendant are legally attributable to the other Defendants.

5 9. Furthermore, Defendants, and each of them, acted in all respects as the employers
6 or joint employers of Plaintiffs. Defendants, and each of them, exercised control over the wages,
7 hours or working conditions of Plaintiffs, or suffered or permitted Plaintiffs to work, or engaged,
8 thereby creating a common law employment relationship, with Plaintiffs. Therefore, Defendants,
9 and each of them, employed or jointly employed Plaintiffs.

10 10. Plaintiff is informed and believes, and based thereon alleges, that at all relevant
11 times, each Defendant, including DOES 1 through 50, was and is the agent, servant,
12 representative, independent contractor, partner, joint venturer, alter ego and/or employee of each
13 or some of the other co-defendants, and in doing these acts herein referred to, each Defendant was
14 acting within the course and scope of his authority as such agent, servant, representative,
15 independent contractor, partner, co-conspirator, joint employer, alter ego and/or employee with
16 the express and/or implied approval, permission, knowledge, consent, and/or ratification of other
17 co-defendants, and are in some manner responsible for the occurrences hereinafter alleged and as
18 such, Defendants are jointly and severally liable for the injuries and damages hereinafter
19 described.

20 11. At all times relevant to this Complaint, Defendant Cali-Fame was an employer
21 subject to the California Fair Employment and Housing Act ("FEHA"), the California Family
22 Rights Act ("CFRA"), California Government Code §§ 12900 et. seq., 12940 et. seq., and Article
23 1, Section 8 of the California Constitution, which prohibit discrimination, harassment and
24 retaliation in employment on the basis of disability.

25 12. On or about August 19, 2020, Plaintiff filed a timely complaint with the California
26 Department of Fair Employment and Housing ("DFEH") against Defendants alleging disability
27 discrimination, harassment, retaliation, and related claims. Plaintiff has obtained a timely "right
28 to sue" letter and has exhausted his administrative remedies.

13. In addition to his individual claims, Plaintiff hereby brings a representative action pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code § 2699 et seq. on behalf of himself and the State of California, as well as on behalf of a group of aggrieved employees defined as: All individuals hired as general laborers, or a similar title, for Cali-Fame in the State of California who worked one or more pay periods since one (1) year prior to the date Plaintiff filed and served his PAGA notice on August 19, 2020 and continuing to the present (hereinafter “aggrieved employees”).

DEFENDANTS’ ILLEGAL CONDUCT

14. Plaintiff Donis Estrada was hired by Cali-Fame in May 2019 as a general laborer earning \$15.00 per hour.

15. Mr. Estrada, and other aggrieved employees, worked long hours and were denied a myriad of wage entitlements by Cali-Fame, and at the direction of Brian Kennedy.

16. Mr. Estrada, and other aggrieved employees, would often be forced to work through meal and rest periods due to the demands of Cali-Fame and Kennedy.

17. For instance, when delivery drivers would arrive at Cali-Fame, Mr. Estrada and other aggrieved employees, would be forced to forego his and their rest or meal breaks or continue working after clocking-out for a break, as the company did not want to pay additional waiting time fees to delivery drivers, and would instead require their employees to miss their meal and/or rest periods.

18. However, Defendants would not pay Mr. Estrada, and other aggrieved employees, for their missed meal and rest periods, and they were denied premium pay for missed meal and rest periods throughout their employment.

19. Making matters worse, Cali-Fame had an illegal meal period policy which required employees to miss at least 3-5 minutes from each of their meal periods.

20. As part of Cali-Fame’s meal period policy, a bell would ring precisely at 11:30 a.m., every workday in the company’s warehouse, and on the wall there was an electronic countdown timer, that would countdown from 30-minutes, representing the time that the employees were permitted to take their meal period.

21. At 11:30 a.m., when the bell rang, the countdown timer had already began and was often two to three minutes in, (leaving no more than 27 or 28 minutes for each employee to take their meal period, if they were not called back due to a delivery arriving). Additionally, Plaintiff and other aggrieved employees would often be required to stay at their workstation and finish a pending assignment prior to taking their 11:30 a.m. meal period. Even if they began their meal period after 11:30 a.m., Plaintiff and the aggrieved employees would still be required to be back at their work station and ready to begin work prior to the 12:00 p.m., bell ringing. This practice resulted in Plaintiff and the aggrieved employees being denied full, uninterrupted meal periods for the majority of their employment.

22. Once the bell rang, all fifty (50) Cali-Fame employees, including Mr. Estrada, were required to take a meal period, and share a few microwaves, leaving many employees unable to sit or rest or even heat their food.

23. As soon as the bell rang again, indicating the end of the meal period, the employees were expected to already be back at their workstations, and engaged in work. This meal-period policy resulted in Cali-Fame employees, including Plaintiff and the aggrieved employees, being denied a 30-minute uninterrupted meal period throughout his and their employment.

24. As a result of Cali-Fame's illegal meal period policy, Plaintiff and the other aggrieved employees were denied wage statements that accurately reflected the total number of hours that he and they worked in any given pay period.

25. In or around July 2019, Mr. Estrada complained to Brian Kennedy about the illegal working conditions at Cali-Fame, including Cali-Fame's illegal policy denying employees like Mr. Estrade, full, uninterrupted, meal and rest periods. Mr. Kennedy responded by making derogatory remarks to Mr. Estrada and called him "mentally retarded."

26. Mr. Kennedy would also harass Mr. Estrada by often asking him degrading questions such as, "don't you have a brain" or "How is it this difficult for you to understand things?"

27. On or about August 12, 2019, Mr. Estrada complained to Mr. Kennedy about the

1 remarks he had been making to Mr. Estrada about his mental capacity and also about pain he was
2 having in his shoulders and back as a result of heavy lifting he had been required of Plaintiff due
3 to understaffing at Cali-Fame. Plaintiff told Mr. Kennedy: "I am your employee, but I am human
4 too. You humiliate people and that is not right." In that conversation, Mr. Estrada informed Mr.
5 Kennedy that his treatment amounted to employment harassment and requested additional help so
6 that Plaintiff could complete his work and also receive regular meal and rest breaks. Mr.
7 Kennedy responded by telling Mr. Estrada, "just talk to Paul," referring to another supervisor,
8 Paul Witter.

9 28. On or about August 13, 2019, Mr. Estrada called Paul Witter and complained to
10 Mr. Witter about feeling ill, and suffering severe pain in his neck, back and shoulder, as well as
11 feeling excessive anxiety and stress from working with Mr. Kennedy at Cal-Fame.

12 29. In that conversation, as well as other conversations with Mr. Witter in August
13 2019, Mr. Estrada informed Mr. Witter that the company was understaffed and that he and other
14 aggrieved employees were being denied full, uninterrupted, meal and rest breaks due to the
15 demands of management. Mr. Estrada explained that as soon as the 11:30 a.m. bell rang,
16 employees were expected to stop working, but in actuality, this was not possible, due to the
17 demands of management. By the time that employees, like Mr. Estrada were actually able to
18 begin their meal periods, at least 5 to 7 minutes had passed, and they were expected to be back at
19 their work-stations before the 12:00 p.m. bell rang. Mr. Estrada informed Mr. Witter that he was
20 seeking medical attention, and required a brief medical leave. Mr. Witter responded by texting
21 Mr. Estrada and telling him, "ok, I hope you feel better."

22 30. On August 30, 2019, Mr. Estrada was called to Mr. Witter's office and informed
23 that he was terminated per the instructions of Brian Kennedy. The reason for his termination was
24 allegedly that Mr. Estrada was allegedly "not able to perform the job."

25 31. Recognizing that the decision to terminate Mr. Estrada's employment had nothing
26 to do with his ability to perform his job, Mr. Witter provided Mr. Estrada a letter of
27 recommendation on September 8, 2019, referring to Mr. Estrada as a "complete package" and a
28 "wonderful asset to whoever he chooses to work for."

32. Plaintiff was provided this glowing letter of recommendation despite being told by Cali-Fame and Brian Kennedy that he lacked the mental capacity to work at Cali-Fame and that he was unable to perform his job properly.

33. In reality, Mr. Estrada believes he was terminated as a result of his need for a brief medical leave and in retaliation for his internal complaints of the illegal activity at Cali-Fame, including his complaints of Cali-Fame's illegal employment practices and his complaints about the harassment and abuse he was enduring from Brian Kennedy.

34. On September 23, 2019, Plaintiff, through his counsel, requested the production of Plaintiff's personnel and payroll records from Defendants. Defendants ignored Plaintiff's request.

35. Defendants have not yet produced a complete copy of Plaintiff's payroll records and the corresponding penalty for its failure to produce records within 30 days under Labor Code section 1198.5 is \$750.00.

FIRST CAUSE OF ACTION

[Discrimination (Govt. Code § 12940, et seq.)]

(Against Cali-Fame and DOES 1 through 10)

36. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

37. At all times relevant, Cali-Fame, knew or perceived that Plaintiff had a serious medical condition, which limited a major life activity or was regarded by his employer as having an impairment which limited a major life activity.

38. Plaintiff was qualified and able to perform his essential job duties with or without a reasonable accommodation.

39. Defendants unlawfully discriminated against Plaintiff because of his disability, by, among other things, terminating his employment.

40. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered and will continue to suffer pain and suffering and mental anguish and emotional distress. Plaintiff has suffered and continues to suffer a loss of earnings and other employment benefits.

1 Plaintiff is thereby entitled to general and compensatory damages in amounts to be proven at the
2 time of trial.

3 41. As a direct and proximate cause of the acts alleged above, Plaintiff has had to hire
4 the services of an attorney. Plaintiff has incurred and continues to incur legal expenses, costs, and
5 attorneys' fees, and is entitled to an award of attorneys' fees and costs pursuant to Government
6 Code § 12965(b).

7 42. The conduct of Defendants described above was malicious, fraudulent, oppressive,
8 done with reckless indifference and/or done with a willful and conscious disregard for Plaintiff's
9 rights and for the deleterious consequences of Defendants' actions. Defendants and its
10 agents/employees or supervisors, authorized, condoned, and ratified the unlawful conduct of each
11 other. Consequently, Plaintiff is entitled to punitive damages against Defendants.

12 **SECOND CAUSE OF ACTION**

13 **Retaliation in violation of FEHA (Govt. Code § 12940(h))**

14 **(Against Cali-Fame and DOES 1 through 10)**

15 43. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
16 this Complaint as if the same were set forth at length herein.

17 44. At all times relevant, Defendants knew or perceived that Plaintiff had a serious
18 medical condition which limited a major life activity or was regarded by his employer as having
19 an impairment which limited a major life activity.

20 45. Defendants retaliated against Plaintiff shortly after he notified Cali-Fame that he
21 had severe pain in his head, neck, and shoulders, as well as excessive stress and anxiety, and
22 required a brief medical leave and his complaints to Cali-Fame management concerning abuse
23 and harassment by Brian Kennedy. Specifically, Cali-Fame immediately terminated Plaintiff
24 almost immediately following his return from a brief medical leave.

25 46. Plaintiff's request for medical leave and complaints were the reason for Cali-
26 Fame's retaliatory decision to terminate Plaintiff.

27 47. Defendants' conduct legally and directly caused Plaintiff to suffer damages,
28 including but not limited to emotional distress, lost current and future wages, lost fringe benefits,

1 and medical expenses (past and future) according to proof.

2 48. The above described acts of Cali-Fame, by and through its managing agents,
3 officers or directors, were engaged in with a deliberate, cold, callous, fraudulent and intentional
4 manner in order to injure and damage Plaintiff and/or with a conscious disregard of Plaintiff and
5 his rights. Such acts were despicable, and constitute malice, fraud and/or oppression within the
6 meaning of Civil Code section 3294. Plaintiff requests an assessment of punitive damages
7 against Cali-Fame, in an amount to be proven at time of trial. Plaintiff is entitled to recover
8 attorneys' fees pursuant to Government Code §12940 et seq.

9 **THIRD CAUSE OF ACTION**

10 **[Harassment based on Disability (Govt. Code § 12940, et seq.)]**

11 **(Against Defendants Cali-Fame, Kennedy and DOES 1-10)**

12 49. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
13 this Complaint as if the same were set forth at length herein.

14 50. At all relevant times, during Plaintiff's employment at Cali-Fame, Plaintiff was
15 supervised by Defendant Kennedy.

16 51. At all times relevant, Defendants knew or perceived that Plaintiff had a serious
17 medical condition which limited a major life activity or was regarded by his employer and Mr.
18 Kennedy as having an impairment which limited a major life activity.

19 52. Throughout Plaintiff's employment, and as alleged above, Kennedy harassed
20 Plaintiff based on his perceived disability.

21 53. Plaintiff was consistently subjected to derogatory comments based upon his actual
22 or perceived disability.

23 54. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has
24 suffered, and continues to suffer damages in an amount according to proof at trial.

25 55. Plaintiff is informed and believes and thereon alleges that the Defendants, and
26 their managing agents, by engaging in the aforementioned acts and/or in authorizing and/or
27 ratifying such acts, engaged in willful, malicious, intentional, oppressive, fraudulent and
28 despicable conduct, and acted in willful and conscious disregard of the rights, welfare and safety

1 of Plaintiff, thereby justifying the award of punitive and exemplary damages in an amount to be
2 determined at trial.

3 56. As a result of Defendants' conduct, as alleged herein, Plaintiff is entitled to costs
4 of suit, including reasonable attorneys' fees pursuant to Government Code § 12965.

5 **FOURTH CAUSE OF ACTION**

6 **[Retaliation in Violation of California Labor Code § 1102.5 et seq.]**

7 **(Against Cali-Fame and DOES 1 through 10)**

8 57. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
9 this Complaint as if the same were set forth at length herein.

10 58. Plaintiff's employment was terminated in violation of California Labor Code
11 section 1102.5 et seq. because he disclosed information that he had reasonable cause to believe
12 constituted a violation of state or federal law to his employer and/or that his employer feared he
13 would report to a government or law enforcement agency, and/or because Plaintiff might refuse to
14 participate in activity that would result in violations of state or federal law.

15 59. Defendants' conduct as alleged above constituted unlawful retaliation in
16 employment on account of Plaintiff's protected activity in violation of California Labor Code
17 section 1102.5 et seq.

18 60. As a proximate result of the aforesaid acts of Defendants, Plaintiff has suffered
19 actual, consequential and incidental financial losses, including without limitation, loss of salary
20 and benefits, and the intangible loss of employment related opportunities in his field and damage
21 to his professional reputation, all in an amount subject to proof at the time of trial. Plaintiff
22 claims such amounts as damages pursuant to California Civil Code sections 3287, 3288 and/or
23 any other provision of law providing for prejudgment interest.

24 61. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
25 and continues to suffer emotional distress, humiliation, mental anguish and embarrassment, as
26 well as the manifestation of physical symptoms. Plaintiff is informed and believes and thereupon
27 alleges that he will continue to experience said physical and emotional suffering for a period in
28 the future not presently ascertainable, all in an amount subject to proof at the time of trial.

62. The acts taken toward Plaintiff were carried out by Defendant's officers, directors, and/or managing agents acting in a despicable, oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner and in conscious disregard for the rights and safety of Plaintiff. Defendant and its agents/employees or supervisors, authorized, condoned and ratified the unlawful conduct of each other. Consequently, Plaintiff is entitled to an award of punitive damages against each Defendant.

63. Plaintiff also seeks attorneys' fees and costs, and a \$10,000 civil penalty pursuant to California Labor Code section 1102.5 et seq.

FIFTH CAUSE OF ACTION

[Wrongful Termination in Violation of Public Policy]

(Against Cali-Fame and DOES 1 through 10)

64. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

65. As set forth herein, Defendant, among other things, terminated Plaintiff's employment. In taking such actions, Defendant was motivated, in whole or in part, by Plaintiff's medical disability and his complaints of illegal employment practices at Cali-Fame.

66. By reason of the aforementioned acts and conduct, Defendants, violated the fundamental public policies of the State of California, as embodied in the California Labor Code, as well as sections 12940 et seq. and 12945 et seq., of the California Government Code, and other statutes and regulations. Such fundamental public policies prohibit employers from discriminating against employees, or from retaliating against employees for engaging in protected activity.

67. By the aforesaid acts and omissions of Defendants, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, substantial losses in earnings, other employment benefits, and future earning capacity, and other pecuniary losses not presently ascertained, in an amount according to proof at the time of trial.

68. As a further direct and legal result of the acts and conduct of Defendants, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, mental and physical pain,

1 discomfort and anxiety. The exact nature and extent of said injuries is presently unknown to
2 Plaintiff. Plaintiff does not know at this time the exact duration or permanence of said injuries
3 but is informed and believes and thereon alleges that some if not all of the injuries are reasonably
4 certain to be permanent in character Plaintiff has been generally damaged in an amount within the
5 jurisdictional limits of this Court.

6 69. Plaintiff is informed and believes and thereon alleges that the Defendant, by
7 engaging in the aforementioned acts and/or in authorizing and/or ratifying such acts, engaged in
8 willful, malicious, intentional, oppressive and despicable conduct, and acted with willful and
9 conscious disregard of Plaintiff's rights, welfare and safety, thereby justifying the award of
10 punitive and exemplary damages in an amount to be determined at trial.

11 **SIXTH CAUSE OF ACTION**

12 **[Failure to Pay Wages When Due]**

13 **(Against Cali-Fame and DOES 1 through 10)**

14 70. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
15 this Complaint as if the same were set forth at length herein.

16 71. As the time of his termination, Plaintiff was owed compensation by Defendants
17 which has never been paid. Said wages remain due and unpaid to Plaintiff.

18 72. Labor Code § 201 requires that if an employee is terminated, the wages earned and
19 unpaid at the time of termination are due and payable immediately.

20 73. Defendants' failure to pay the full amount of earned wages due to Plaintiff upon
21 his termination was willful and deliberate, and Plaintiff is entitled to penalties pursuant to Labor
22 Code § 203.

23 74. As a direct, foreseeable and proximate result of Defendants' actions, and each of
24 them, Plaintiff has suffered and incurred the loss of said earned wages which were due and
25 payable at the time of his termination, in an amount according to proof at trial.

26 75. As a result of Defendants' failure to pay Plaintiff his unpaid wages due at the time
27 of termination, Plaintiff is entitled to costs of suit, including reasonable attorneys' fees pursuant
28 to Labor Code § 218.5.

SEVENTH CAUSE OF ACTION

[Failure to Provide Meal Periods (Labor Code § 226.7)]

(Against Cali-Fame and DOES 1 through 10)

76. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

77. Plaintiff is entitled to one thirty (30) minute, duty-free meal period for every five (5) hours of work pursuant to 8 C.C.R. §11040(11).

78. During his employment with Defendants, Plaintiff was not provided with all of his thirty (30) minute, duty-free meal periods in violation of Labor Code § 226.7.

79. Defendants did not intend on providing Plaintiff with thirty (30) minute, duty-free meal periods.

80. As a result of Defendants' failure to provide Plaintiff with a thirty (30) minute, duty-free meal period, he is entitled to a premium wage of one (1) hour of pay for every day he did not obtain his rest period in an amount to be determined at trial.

81. Plaintiff requests that the Court award Plaintiff the reasonable attorney's fees and costs incurred by his in this action.

82. Pursuant to Labor Code § 218.6, Plaintiff requests that the Court award Plaintiff interest on all due and unpaid wages, at the legal rate specified by Civil Code § 3289(b), accruing from the date the wages were due and payable.

EIGHTH CAUSE OF ACTION

[Failure to Provide Rest Periods (Labor Code § 226.7)]

(Against Cali-Fame and DOES 1 through 10)

83. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

84. Plaintiff is entitled to one ten (10) minute, duty-free rest period for every four (4) hours of work pursuant to 8 C.C.R. §11040(12).

85. During his employment with Defendant, Plaintiff was not provided with all of his ten (10) minute, duty-free rest periods in violation of Labor Code § 226.7.

86. Defendant did not intend on providing Plaintiff with ten (10) minute, duty-free rest periods.

87. As a result of Defendant's failure to provide Plaintiff with a ten (10) minute, duty-free rest period, he is entitled to a premium wage of one (1) hour of pay for every day he did not obtain his rest period.

88. Plaintiff requests that the Court award Plaintiff the reasonable attorney's fees and costs incurred by his in this action.

89. Pursuant to Labor Code § 218.6, Plaintiff requests that the Court award Plaintiff interest on all due and unpaid wages, at the legal rate specified by Civil Code § 3289(b), accruing from the date the wages were due and payable.

NINTH CAUSE OF ACTION

[Failure to Provide Accurate/Itemized Wage Statements (Labor Code § 226)]

(Against Cali-Fame and DOES 1 through 10)

90. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

91. Labor Code § 226(a) requires every employer, at the time of each payment of wages, to furnish each non-exempt employee with an accurate itemized statement showing total hours worked by the employee, gross wages earned, all deductions taken, net wages earned, the dates of the period for which the employee is paid, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee.

92. During his employment, Defendants failed to provide Plaintiff with such accurate itemized statements.

93. As a proximate result of Defendants' knowing and intentional failure to provide such accurate itemized statements to Plaintiff, Plaintiff was injured in that he was unable to verify whether Defendant paid all of his wages due to his and/or whether he had been paid incorrectly.

94. Because Plaintiff was damaged as a proximate result of Defendants' failure to comply with Labor Code § 226(a), Plaintiff is entitled to the aggregate penalties as set forth in Labor Code § 226(e) and Labor Code § 226.3. Plaintiff is also entitled to an award of costs and

reasonable attorney's fees pursuant to Labor Code § 226(e).

TENTH CAUSE OF ACTION

[Unfair Business Practices]

(Against Cali-Fame and DOES 1 through 10)

95. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

96. Defendant and DOES 1-50, and each of them, engaged in unfair competition by committing the following acts, including but not limited to: a) failing to pay Plaintiff all wages due and owing; b) failing to provide Plaintiff all his meal periods and/or premium pay for missed meal periods; c) failing to provide Plaintiff all his rest periods and/or premium pay for missed rest periods; d) failing to provide Plaintiff accurate itemized wage statements and e) failing to give Plaintiff access to his personnel and payroll records.

97. Defendants' conduct, as alleged above, constitutes unlawful, unfair and fraudulent activity prohibited by Business and Professions Code sections 17200, et seq.

98. As a result of their improper acts, Defendant and DOES 1-50, and each of them, have reaped and continue to reap unfair benefits and illegal profits at Plaintiff's expense.

99. Defendants and DOES 1-50, and each of them, should be made to restore to Plaintiff these gains pursuant to Business and Professions Code section 17203.

Defendants and DOES 1-50, and each of them, should also be subjected to penalties pursuant to Business and Professions Code section 17202, et seq.

ELEVENTH CAUSE OF ACTION

[Failure to Produce Payroll Records (Labor Code § 1198.5 et seq.)]

(Against Defendant Cali-Fame and DOES 1 through 10)

100. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

101. On September 23, 2019, Plaintiff requested that Cali-Fame provide his with a copy of his personnel file and payroll records pursuant to Labor Code §1198.5, and other provisions of the Labor Code.

102. Defendant Cali-Fame willfully refused to comply with Plaintiff's request for his payroll records and has failed to produce a complete set of Plaintiff's payroll records to date in violation of Labor Code §1198.5.

103. Defendant Cali-Fame's failure to comply with its obligations under Labor Code §1198.5 has interfered with Plaintiff's investigation and has needlessly increased expense to Plaintiff in connection with this matter.

104. As a result of Defendant Cali-Fame's failure to produce records within the time specified under Labor Code §1198.5, Plaintiff is entitled to damages in the amount of \$750.00 and costs of suit, including reasonable attorney's fees pursuant to Labor Code §1198.5.

TWELFTH CAUSE OF ACTION

**[Individual and Representative Claim per Labor Code §§ 2699 et seq. for
Unlawful Labor Practices in Violation of Labor Code §§ 201, 202, 203, 226(a), 226.3,
226.7, 510, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1194, and 1199]**

(Against Cali-Fame, Brian Kennedy, and DOES 1 through 10)

105. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

106. Plaintiff is an aggrieved employee as defined in Labor Code §2699(a). He brings this cause on behalf of himself and other current or former employees affected by the Labor Code violations alleged in this Complaint.

107. Pursuant to California Labor Code section 2699 et seq. the foregoing violations of Labor Code sections §§ 201, 202, 203, 226(a), 226.3, 226.7, 510, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1194, and 1199 et seq. permit Plaintiff to recover civil penalties through this current action.

108. Defendants Cali-Fame and Brian Kennedy's violations of California Labor Code sections §§ 201, 202, 203, 226(a), 226.3, 226.7, 510, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1194, and 1199 et seq. enable Plaintiff to recover a civil penalty as an aggrieved employee on behalf of himself and on behalf of other current and former employees of Ground Express.

109. Plaintiff has complied with the procedural requirements specified in California

1 Labor Code section 2699 et seq.

2 110. On August 19, 2020, Plaintiff, pursuant to Labor Code section 2699 et seq.
3 through Plaintiff's attorneys, submitted his online complaint and PAGA Notice payment to the
4 Labor and Workforce Development Agency and was assigned Case Number LWDA-CM-
5 803237-20.

6 111. On August 19, 2020, Plaintiff, pursuant to Labor Code section 2699 et seq.
7 through Plaintiff's attorneys, served Plaintiff's PAGA Notice to Defendant via certified mail
8 return receipt requested to Defendants Cali-Fame and Brian Kennedy.

9 112. Through the date of the filing of this action, the Labor and Workforce
10 Development Agency has not notified Plaintiff or his attorneys that the agency intends to pursue
11 the allegations set forth and identified in Plaintiff's PAGA notice.

12 113. Accordingly, the time periods set forth in Labor Code § 2699 et seq for the Labor
13 and Workforce Development Agency to notify Plaintiff of its intent to pursue the allegations in
14 Plaintiff's notice have elapsed and Plaintiff may file the instant Complaint and include a cause of
15 action pursuant to Labor Code section 2699 et seq.

16 114. As a result of the aforementioned violations, Plaintiff hereby brings this cause of
17 action on behalf of himself and on behalf of all other current or former employees affected by the
18 Labor Code violations alleged in this Complaint.

19 115. Pursuant to California Labor Code Section 2699 et seq., Plaintiff should be
20 awarded twenty-five percent (25%) of all penalties due under California law, as well as interest,
21 attorneys' fees, and costs.

22 116. Pursuant to California Labor Code Section 2699 et seq., the court should award
23 seventy-five percent (75%) of the penalties due under California law to the State of California.

24 **PRAYER FOR JUDGMENT**

25 WHEREFORE, Plaintiff prays for judgment Against Defendant Cali-Fame, as follows:

26 1. For special damages, including loss of past and future wages, bonuses, deferred
27 compensation, and other employment benefits and all damages flowing therefrom in an amount
28 according to proof at trial.

2. For all general and special damages to compensate Plaintiffs for any past and future medical expenses, mental pain and anguish, emotional distress and related damages.

3. For punitive, treble, liquidated or other damages where available by law.

4. For unpaid regular wages in an amount to be proven at trial.

5. For premium pay for each day Plaintiff was not afforded an uninterrupted meal break in an amount to be proven at trial.

6. For premium pay for each day Plaintiff was not afforded an uninterrupted rest break in an amount to be proven at trial.

7. For wage statement penalties in an amount to be proven at trial.

8. For waiting time penalties in an amount to be proven at trial.

9. For treble, liquidated or other damages where available by law.

10. For waiting time penalties pursuant to Labor Code § 203.

11. For penalties pursuant to Labor Code §§ 226, 558, 1102.5, 1198.5 et seq. and where such penalties are available by law.

12. For attorneys' fees and costs as set forth above and where such fees and costs are available by law.

13. For Defendants to be enjoined from the unlawful activities described herein in violation of Business and Professions Code § 17200, et seq.

14. For civil penalties, attorneys' fees, costs, and injunctive relief pursuant to Labor Code section 2699 et seq. of the Private Attorneys General Act of 2004.

15. For prejudgment and post-judgment interest as available by law.

16. For costs of suit incurred herein.

17. For such other and further relief as this Court may deem just and proper.

WHEREFORE, Plaintiff prays for judgment against Defendant Brian Kennedy, as follows:

18. For special damages, including loss of past and future wages, bonuses, deferred compensation, and other employment benefits and all damages flowing therefrom in an amount according to proof at trial.

19. For all general and special damages to compensate Plaintiffs for any past and

future medical expenses, mental pain and anguish, emotional distress and related damages.

20. For civil penalties, attorneys' fees, costs, and injunctive relief pursuant to Labor Code section 2699 et seq. of the Private Attorneys General Act of 2004.

21. For attorneys' fees and costs as set forth above and where such fees and costs are available by law.

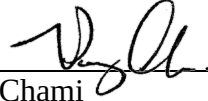
22. For prejudgment and post-judgment interest as available by law.

23. For costs of suit incurred herein.

24. For such other and further relief as this Court may deem just and proper.

CHAMI LAW, PC

DATED: February 10, 2022

By: 

Pouya B. Chami
Attorney for Plaintiff,
DONIS ESTRADA

1 **PROOF OF SERVICE**

2 I declare that: I am and was at the time of service of the papers herein, over the age of
3 eighteen (18) years and am not a party to the action. I am employed in the County of Los
4 Angeles, and my business address is 11845 W. Olympic Blvd., Suite 700, Los Angeles,
5 California 90064.

6 On **February 10, 2022**, I caused to be served the following documents:

7 • **First Amended Complaint**

8 On **SEE ATTACHED SERVICE LIST**

9 **X VIA MAIL:** By placing a copy thereof for delivery in a separate envelope addressed to
10 each addressee, respectively, as follows:

11 **X VIA EMAIL OR ELECTRONIC TRANSMISSION:** Pursuant to California Code
12 of Civil Procedure § 1010.6 requiring parties, who have appeared in this action, to
13 accept electronic service of documents, I caused the documents to be sent to the
14 person at the e-mail address listed below. Within a reasonable time after the
15 transmission, I did not receive any electronic message or other indication that the
16 transmission was unsuccessful.

17 I am readily familiar with the firm's practice of collection and processing correspondence for
18 mailing. Under that practice, it would be deposited with the United States Postal Service on that
19 same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of
20 business. I am aware that on motion of the party served, service is presumed invalid if postal
21 cancellation date or postage meter date is more than one day after the date of deposit for mailing
22 in affidavit.

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct. Executed on **February 10, 2022** at Los Angeles, California.

25 _____/s/
26 Michael Matta

27 **SERVICE LIST**

28 Diana M. Estrada
Wilson Elser Moskowitz Edelman & Dicker LLP
555 S. Flower Street - Suite 2900
Los Angeles, CA 90071-2407
diana.estrada@wilsonelser.com

Attorneys for Defendants **CALI-FAME OF LOS ANGELES, INC. and BRIAN KENNEDY**