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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):<br>Jace H. Kim, Esq. (SBN 282039) Carlos Andres Perez, Esq. (SBN 285645)<br>Javier Ramirez, Esq. (SBN 249516)<br>THE DOMINGUEZ FIRM, LLP<br>3250 Wilshire Blvd. Ste. 1200, Los Angeles, CA 90010<br>TELEPHONE NO.: (213)381-4011 FAX NO.: (213)201-8212<br>ATTORNEY FOR (Name): Plaintiff, ETHAN MARTINEZ |                                                                                        | FOR COURT USE ONLY                                                                                                                                                                                  |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange<br>STREET ADDRESS: 700 W. Civic Center Dr.<br>MAILING ADDRESS: 700 W. Civic Center Dr.<br>CITY AND ZIP CODE: Santa Ana, California 92701<br>BRANCH NAME: Central Justice Center                                                                                                                                                      |                                                                                        |                                                                                                                                                                                                     |
| CASE NAME:<br>MARTINEZ v. RESTAURANT DEPOT, LLC., et al.                                                                                                                                                                                                                                                                                                                            |                                                                                        |                                                                                                                                                                                                     |
| <b>CIVIL CASE COVER SHEET</b><br><input checked="" type="checkbox"/> <b>Unlimited</b><br>(Amount<br>demanded<br>exceeds \$25,000)                                                                                                                                                                                                                                                   | <input type="checkbox"/> <b>Limited</b><br>(Amount<br>demanded is<br>\$25,000 or less) | <b>Complex Case Designation</b><br><input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b><br>Filed with first appearance by defendant<br>(Cal. Rules of Court, rule 3.402) |
|                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                        | CASE NUMBER:<br>30-2021-01182625-CU-OE-CJC<br>JUDGE: Judge Walter Schwarm<br>DEPT:                                                                                                                  |

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Auto Tort</b><br><input type="checkbox"/> Auto (22)<br><input type="checkbox"/> Uninsured motorist (46)<br><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b><br><input type="checkbox"/> Asbestos (04)<br><input type="checkbox"/> Product liability (24)<br><input type="checkbox"/> Medical malpractice (45)<br><input type="checkbox"/> Other PI/PD/WD (23)<br><b>Non-PI/PD/WD (Other) Tort</b><br><input type="checkbox"/> Business tort/unfair business practice (07)<br><input type="checkbox"/> Civil rights (08)<br><input type="checkbox"/> Defamation (13)<br><input type="checkbox"/> Fraud (16)<br><input type="checkbox"/> Intellectual property (19)<br><input type="checkbox"/> Professional negligence (25)<br><input type="checkbox"/> Other non-PI/PD/WD tort (35)<br><b>Employment</b><br><input type="checkbox"/> Wrongful termination (36)<br><input checked="" type="checkbox"/> Other employment (15) | <b>Contract</b><br><input type="checkbox"/> Breach of contract/warranty (06)<br><input type="checkbox"/> Rule 3.740 collections (09)<br><input type="checkbox"/> Other collections (09)<br><input type="checkbox"/> Insurance coverage (18)<br><input type="checkbox"/> Other contract (37)<br><b>Real Property</b><br><input type="checkbox"/> Eminent domain/Inverse condemnation (14)<br><input type="checkbox"/> Wrongful eviction (33)<br><input type="checkbox"/> Other real property (26)<br><b>Unlawful Detainer</b><br><input type="checkbox"/> Commercial (31)<br><input type="checkbox"/> Residential (32)<br><input type="checkbox"/> Drugs (38)<br><b>Judicial Review</b><br><input type="checkbox"/> Asset forfeiture (05)<br><input type="checkbox"/> Petition re: arbitration award (11)<br><input type="checkbox"/> Writ of mandate (02)<br><input type="checkbox"/> Other judicial review (39) | <b>Provisionally Complex Civil Litigation</b><br>(Cal. Rules of Court, rules 3.400–3.403)<br><input type="checkbox"/> Antitrust/Trade regulation (03)<br><input type="checkbox"/> Construction defect (10)<br><input type="checkbox"/> Mass tort (40)<br><input type="checkbox"/> Securities litigation (28)<br><input type="checkbox"/> Environmental/Toxic tort (30)<br><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)<br><b>Enforcement of Judgment</b><br><input type="checkbox"/> Enforcement of judgment (20)<br><b>Miscellaneous Civil Complaint</b><br><input type="checkbox"/> RICO (27)<br><input type="checkbox"/> Other complaint (not specified above) (42)<br><b>Miscellaneous Civil Petition</b><br><input type="checkbox"/> Partnership and corporate governance (21)<br><input type="checkbox"/> Other petition (not specified above) (43) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |                                                                                                                                |                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input type="checkbox"/> Large number of separately represented parties                                                     | d. <input type="checkbox"/> Large number of witnesses                                                                                                      |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence                                                         | f. <input type="checkbox"/> Substantial postjudgment judicial supervision                                                                                  |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): FIVE (5)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 02/03/2021

Jace H. Kim, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

#### NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

**Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

**Non-PI/PD/WD (Other) Tort**

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

**Employment**

Wrongful Termination (36)  
Other Employment (15)

**Contract**

Breach of Contract/Warranty (06)  
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

**Real Property**

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

**Unlawful Detainer**

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

**Judicial Review**

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor  
Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

**Enforcement of Judgment**

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

**Miscellaneous Civil Petition**

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

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Attorneys for Plaintiff  
ETHAN MARTINEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ORANGE**

*Assigned for All Purposes*  
Judge Walter Schwarm

ETHAN MARTINEZ, an individual,  
Plaintiff,

v.

RESTAURANT DEPOT, LLC., a limited  
liability company; JETRO HOLDINGS, LLC, a  
limited liability company; and DOES 1 through  
20, inclusive,

Defendants.

Case No. 30-2021-01182625-CU-OE-CJC

**COMPLAINT FOR DAMAGES FOR:**

- 1. FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§226.7, 512);**
- 2. FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);**
- 3. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);**
- 4. PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ.); AND**
- 5. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.); AND**

**DEMAND OVER \$25,000**

**[DEMAND FOR JURY TRIAL]**

**COMES NOW PLAINTIFF, ETHAN MARTINEZ, and for causes of action against the**  
Defendants and each of them, alleges as follows:

1 **JURISDICTION**

2 1. This Court is the proper court, and this action is properly filed in Orange County, because  
3 Defendants' obligations and liability arise therein, because Defendants maintain offices and transact  
4 business within Orange County, and because the work that is the subject of this action was performed by  
5 Plaintiff in Orange County.

6  
7 **THE PARTIES**

8 2. Plaintiff, ETHAN MARTINEZ, is and at all times relevant hereto was a resident of the  
9 County of Orange, State of California.

10 3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant  
11 hereto, Defendant RESTAURANT DEPOT, LLC. (hereinafter referred to as "RD") was and is a limited  
12 liability company doing business in the County of Orange, State of California.

13 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant  
14 hereto, Defendant JETRO HOLDINGS, LLC (hereinafter referred to as "JH") was and is a limited  
15 liability company doing business in the County of Orange, State of California.

16 5. RD and JH are hereinafter referred to as "Employers" or "Defendants."

17 6. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant  
18 hereto, Employers owned and operated a construction company.

19 7. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint  
20 employers and/or special employers within the meaning of Government Code §§12926, subdivision (d),  
21 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more  
22 persons and are therefore subject to the jurisdiction of this Court.

23 8. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint  
24 employers and/or special employers within the meaning of the Labor Code and Industrial Welfare  
25 Commission Order No. 1-2001 and are each an "employer or other person acting on behalf of an  
26 employer" as such term is used in Labor Code section 558 and/or 558.1, and liable to Plaintiff on that  
27 basis.

28 ///

1           9.       The true names and capacities, whether individual, corporate, associate, or otherwise, of  
2 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore  
3 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to  
4 insert the true names and capacities of said Defendants when the same become known to Plaintiff.  
5 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named  
6 Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as  
7 alleged hereinafter.

8           10.      Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant  
9 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,  
10 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the  
11 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part  
12 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,  
13 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

14           11.      Whenever and wherever reference is made in this complaint to any act or failure to act by  
15 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts  
16 and/or failures to act by each Defendant acting individually, jointly and severally.

17  
18                   **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

19           12.      Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity  
20 of interest and ownership between Employers and DOES 1-20 that the individuality and separateness of  
21 defendants have ceased to exist.

22           13.      Plaintiff is informed and believes, and based thereon alleges, that despite the formation of  
23 purported corporate existence, Employers and DOES 1-20 are, in reality, one and the same, including,  
24 but not limited to because:

25                   a.       Employers are completely dominated and controlled by one another and DOES 1-  
26 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who  
27 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or  
28 accomplish some other wrongful or inequitable purpose.

1           b.       Employers and DOES 1-20 derive actual and significant monetary benefits by and  
2 through one another's unlawful conduct, and by using one another as the funding source for their own  
3 personal expenditures.

4           c.       Employers and DOES 1-20, while really one and the same, were segregated to  
5 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or  
6 accomplishing some other wrongful or inequitable purpose.

7           d.       Employers do not comply with all requisite corporate formalities to maintain a  
8 legal and separate corporate existence.

9           e.       The business affairs of Employers and DOES 1-20 are, and at all times relevant  
10 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in  
11 inextricable confusion. Employers are, and at all times relevant hereto were, used by one another and  
12 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and  
13 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of  
14 Defendants would not promote justice, in that it would permit Defendants to insulate themselves from  
15 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate  
16 existence of Employers and DOES 1-20 should be disregarded in equity and for the ends of justice  
17 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

18       14.       Accordingly, Employers constitute the alter ego of one another and DOES 1-20, and the  
19 fiction of their separate corporate existence must be disregarded.

20       15.       As a result of the aforementioned facts, Plaintiff is informed and believes, and based  
21 thereon alleges that Employers and DOES 1-20 are Plaintiff's joint employers by virtue of a joint  
22 enterprise, and that Plaintiff was an employee of Employers and DOES 1-20. Plaintiff performed services  
23 for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants  
24 shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which  
25 Defendants' business was and is conducted.

26       16.       Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and  
27 between DOES 1-20, Employers, or any of them, (1) there is an express or implied agreement of  
28 assumption pursuant to which Employers and/or DOES 1-20 agreed to be liable for the debts of the other

1 Defendants, (2) the transaction between Employer sand/or DOES 1-20 and the other Defendants amounts  
2 to a consolidation or merger of the two corporations, (3) Employers and/or DOES 1-20 are a mere  
3 continuation of the other Defendants, or (4) the transfer of assets to Employers and/or DOES 1-20 is for  
4 the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employers and/or DOES  
5 1-20 are the successors of one or more of the other Defendants and are liable on that basis.

6  
7 **FACTUAL ALLEGATIONS**

8 17. On or about July 5, 2008, Plaintiff began working for Defendants in their inventory  
9 department. Plaintiff was a non-exempt, full-time employee, who performed all of his duties  
10 satisfactorily, until on or about October 12, 2019.

11 18. Between January 1, 2018 and December 31, 2019, Plaintiff's hourly wage rate was \$14.38.  
12 During this time period, Plaintiff's fixed schedule was five days per week, Monday through Friday, for  
13 approximately 9 hours per day.

14 19. Between January 1, 2019 and March 3, 2019, Plaintiff's hourly wage rate was \$14.38.  
15 During this time period, Plaintiff's fixed schedule was five days per week, Monday through Friday, for  
16 approximately 9 hours per day.

17 20. Between March 4, 2019 and October 12, 2019, Plaintiff's hourly wage rate was \$14.81.  
18 During this time period, Plaintiff's fixed schedule was five days per week, Monday through Friday, for  
19 approximately 9 hours per day.

20 21. Plaintiff's fixed schedule was five days per week, Monday through Friday, for  
21 approximately 9 hours per day.

22 22. Throughout Plaintiff's employment, Plaintiff was not permitted to, and not advised of  
23 Plaintiff's right to take statutory 10-minute rest breaks for every four hours worked or substantial portion  
24 thereof.

25 23. Throughout Plaintiff's employment, Plaintiff did not receive uninterrupted statutory 30-  
26 minute meal periods for days on which Plaintiff worked at least 5 hours, which was each day Plaintiff  
27 worked.

28 ///

1           24.     Because the acts taken toward Plaintiff were carried out by officers, directors and/or  
2 managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard  
3 of Plaintiff's rights and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages  
4 be levied against Defendants and each of them, in sums in excess of the jurisdictional minimum of this  
5 Court.

6  
7                                   **FIRST CAUSE OF ACTION**  
8                                   **FOR FAILURE TO PROVIDE MEAL AND REST PERIODS**  
9                                   **(CAL. LABOR CODE §§226.7, 512)**  
10                                  **AGAINST ALL DEFENDANTS**

11           25.     Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though  
12 set forth in full herein.

13           26.     Labor Code §512 requires employers to provide every employee with an uninterrupted  
14 meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

15           27.     Labor Code §226.7 requires an employer to provide every employee with an uninterrupted  
16 rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion  
17 thereof.

18           28.     Plaintiff regularly worked in excess of five hours per day, and was thereby entitled to take  
19 uninterrupted 30-minute meal periods and two 10-minute rest periods on each day of work.

20           29.     Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed  
21 to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§226.7 and the  
22 applicable 8 Code of Regulations section, and Industrial Welfare Commission Order No. 16-2001.

23           30.     As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of the  
24 applicable 8 Code of Regulations section, and Industrial Welfare Commission Order No. 16-2001.  
25 Consequently, Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite  
26 minimum wage, whichever is greater, for each day that Plaintiff was denied such meal periods, and is  
27 owed one hour of pay at Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is  
28 greater, for each day that Plaintiff was denied such rest periods, calculated as follows:

1           31. From approximately January 1, 2018 to December 31, 2018, Plaintiff's statutory 30-  
2 minute meal periods were missed, interrupted or cut short approximately 5 days per week for 52 weeks,  
3 or on approximately 260 days. Consequently, Plaintiff is owed one hour of pay at \$14.38 for each day,  
4 or **\$3,738.80** plus interest thereon, for unpaid missed or interrupted meal periods. During this same time  
5 period, Plaintiff was deprived of one or more of Plaintiff's statutory 10-minute rest periods on  
6 approximately 260 days (5 days per week for 52 weeks). Consequently, Plaintiff is owed one hour of pay  
7 at \$14.38 for each day, or **\$3,738.80**, plus interest thereon, for unpaid rest periods. Thus, Plaintiff is owed  
8 a total of **\$7,477.60**, plus interest thereon, for unpaid meal and rest periods for this time period.

9           32. From approximately January 1, 2019 to March 3, 2019, Plaintiff's statutory 30-minute  
10 meal periods were missed, interrupted or cut short approximately 5 days per week for 9 weeks, or on  
11 approximately 45 days. Consequently, Plaintiff is owed one hour of pay at \$14.38 for each day, or  
12 **\$647.10** plus interest thereon, for unpaid missed or interrupted meal periods. During this same time  
13 period, Plaintiff was deprived of one or more of Plaintiff's statutory 10-minute rest periods on  
14 approximately 45 (5 days per week for 9 weeks). Consequently, Plaintiff is owed one hour of pay at  
15 \$15.00 for each day, or **\$647.10** plus interest thereon, for unpaid rest periods. Thus, Plaintiff is owed a  
16 total of **\$1,294.20** plus interest thereon, for unpaid meal and rest periods for this time period.

17           33. From approximately March 4, 2019 to October 12, 2019, Plaintiff's statutory 30-minute  
18 meal periods were missed, interrupted or cut short approximately 5 days per week for 32 weeks, or on  
19 approximately 160 days. Consequently, Plaintiff is owed one hour of pay at \$14.81 for each day, or  
20 **\$2,369.60** plus interest thereon, for unpaid missed or interrupted meal periods. During this same time  
21 period, Plaintiff was deprived of one or more of Plaintiff's statutory 10-minute rest periods on  
22 approximately 160 days (5 days per week for 32 weeks). Consequently, Plaintiff is owed one hour of pay  
23 at \$14.81 for each day, or **\$2,369.60** plus interest thereon, for unpaid rest periods. Thus, Plaintiff is owed  
24 a total of **\$4,739.20** plus interest thereon, for unpaid meal and rest periods for this time period.

25           34. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for meal and rest  
26 breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

27 ///

28 ///

1           35.     Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover  
2 such amounts in the combined amount of \$13,511.00, pursuant to Labor Code §226.7(b), plus interest  
3 thereon and costs of suit.

4  
5                                   **SECOND CAUSE OF ACTION**  
6                   **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**  
7                                   **(CAL. LABOR CODE §§226, ET SEQ.)**  
8                                   **AGAINST ALL DEFENDANTS**

9           36.     Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though  
10 set forth in full herein.

11           37.     Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-  
12 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,  
13 total deductions and net wages earned. An employer who violates these code sections is liable to its  
14 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the  
15 initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay  
16 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is  
17 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement  
18 at all.

19           38.     In addition thereto, pursuant to Labor Code §226.3, an employer who willfully violates  
20 Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation  
21 occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

22           39.     At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate  
23 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net  
24 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and  
25 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate  
26 by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly  
27 and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying  
28 Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not

1 one of the paystubs that Plaintiff received complied with Labor Code §226, and contained almost none  
2 of the required information, including hours actually worked.

3 40. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

4 41. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,  
5 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in  
6 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled  
7 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating  
8 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting  
9 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,  
10 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at  
11 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

12 42. Plaintiff was paid on a weekly basis, and therefore Defendants violated Labor Code §226  
13 approximately 20 times during the last year that Plaintiff worked for Defendants.

14 43. Consequently, Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties  
15 in the statutory maximum amount of \$4,000.00, whichever is greater.

16 44. In addition, thereto, for Defendant's 20 violations, Defendants are penalized \$250.00 for  
17 the first violation, and the remainder of which Defendants are penalized \$1000.00 each, for a total due in  
18 Labor Code §226.3 penalties of **\$19,250.00** (\$250.00 + \$1,000.00 x 30 subsequent pay periods).

19 45. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and  
20 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and other  
21 applicable provisions, as well as attorneys' fees and costs.

22  
23 **THIRD CAUSE OF ACTION**  
24 **FOR WAITING TIME PENALTIES LABOR CODE §§201-203**  
25 **AGAINST ALL DEFENDANTS**

26 46. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though  
27 set forth in full herein.

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1           47.     At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and  
2 other compensation due immediately upon termination or within 72 hours of resignation, as required.  
3 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, and meal and rest  
4 period compensation that Defendants should have paid, but did not pay to Plaintiff during the term of  
5 Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§201-  
6 203.

7           48.     As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-  
8 203.

9           49.     As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff  
10 is entitled to payment of Plaintiff's meal and rest periods as previously pleaded herein, and more than  
11 **\$3,554.40** in wait time penalties, calculated based on a daily average wage of \$118.41, times 30 days.

12           50.     Based on Defendants' conduct as alleged herein, Defendants are liable for **\$3,554.40** in  
13 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'  
14 fees and costs.

15  
16                               **FOURTH CAUSE OF ACTION**  
17                               **FOR PRIVATE ATTORNEY GENERAL ACT**  
18                               **(CAL. LABOR CODE §2699, ET SEQ)**  
19                               **AGAINST ALL DEFENDANTS**

20           51.     Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though  
21 set forth in full herein.

22           52.     Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against  
23 Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties  
24 for Defendants' violations of the California Labor Code.

25           53.     Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and  
26 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as  
27 previously pleaded in this Complaint.

28     ///

1           54.     On September 25, 2020, more than 65 calendar days before filing this Complaint, Plaintiff  
2 provided electronic notice to the Labor and Workforce Development Agency and notice by certified mail  
3 to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby  
4 satisfying the requirements of Labor Code §2699.3(a). These violations included the above-stated Labor  
5 Code sections, each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

6           55.     As of the filing of this Complaint, Plaintiff has not received any response from the Labor  
7 and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently,  
8 Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

9           56.     As a direct and proximate result of Defendants' California Labor Code violations as set  
10 forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per  
11 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each  
12 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly  
13 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly  
14 provide for a penalty, §§226.3, 226.7, and 512.

15           57.     These penalties recoverable for Plaintiff alone totals approximately **\$3,900.00**.

16           58.     Plaintiff may also seek these same penalties on behalf of all other aggrieved employees.

17           59.     Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered  
18 civil penalties, pursuant to Labor Code §§2699(g)(1)-(i).

19  
20                   **FIFTH CAUSE OF ACTION**  
21                   **FOR UNFAIR COMPETITION**  
22                   **(BUS. & PROF. CODE §17200 ET SEQ.)**  
23                   **AGAINST ALL DEFENDANTS**

24           60.     Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though  
25 set forth in full herein.

26           61.     Defendants' violations of the applicable 8 Code of Regulations section, Industrial Welfare  
27 Commission Order No.16-2001, the above-stated Labor Code sections, 2699, and other applicable  
28 provisions, as alleged herein, including Defendants' failure and refusal to pay minimum wages, overtime

1 wages, Defendants' failure to provide meal and rest breaks, and Defendants' failure to provide timely and  
2 accurate wage and hour statements, constitute unfair business practices in violation of Business &  
3 Professions Code §§17200, et seq.

4 62. As a result of Defendants' unfair business practices, Defendants have reaped unfair  
5 benefits and illegal profits at the expense of Plaintiff and members of the public. Defendants should be  
6 made to disgorge their ill-gotten gains and restore such monies to Plaintiff.

7 63. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent  
8 injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and restore  
9 to the Plaintiff the overtime compensation and other monies and benefits unlawfully withheld from  
10 Plaintiff.

11  
12 **PRAYER FOR RELIEF**

13 64. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512,  
14 in the amount of no less than **\$13,511.00**;

15 65. For damages pursuant to Labor Code §226 in the amount of **no less than \$4,000.00**;

16 66. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no  
17 less than **\$19,250.00**;

18 67. For statutory penalties pursuant to Labor Code §2699(f), in the amount of no less than  
19 **\$3,900.00** on Plaintiff's own behalf, and similar amounts on behalf of all of Defendants' aggrieved  
20 employees;

21 68. For prejudgment interest on each of the foregoing at the legal rate from the date the  
22 obligation became due through the date of judgment in this matter.

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69. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA, Labor Code and/or any other basis;

70. For post-judgment interest; and

71. For any other relief that is just and proper.

DATED: February 3, 2021

By:

Jace H. Kim, Esq.  
Carlos Andres Perez, Esq.  
Javier Ramirez, Esq.  
Attorney for Plaintiff,  
ETHAN MARTINEZ

**JURY TRIAL DEMANDED**

Plaintiff demands trial of all issues by jury.

DATED: February 3, 2021

By:

Jace H. Kim, Esq.  
Carlos Andres Perez, Esq.  
Javier Ramirez, Esq.  
Attorney for Plaintiff  
ETHAN MARTINEZ