

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

FRESH GRILL, LLC, a California limited liability company;
and DOES 1 through 20, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

JOSE HERAS LEON, an individual,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is: **Orange County Superior Court**
(El nombre y dirección de la corte es): **Civil Complex Center**
751 West Santa Ana Blvd.
Santa Ana, CA 92701||

CASE NUMBER:
(Número del Caso):

30-2021-01186501-CU-OE-CXC

Judge William Claster

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jace H. Kim, Esq. (SBN 282039) Carlos Andres Perez, Esq. (SBN 285645) Javier Ramirez, Esq. (SBN 249516) THE DOMINGUEZ FIRM, LLP
3250 Wilshire Boulevard, Suite 1200 Los Angeles, CA 90010 Telephone: (213) 381-4011 Facsimile: (213) 201-8212

DATE: **03/01/2021**
(Fecha)

Clerk, by
(Secretario)

DAVID H. YAMASAKI, Clerk of the Court

Admase

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

Sarah Loose

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

☐ other (specify):

4. ☐ by personal delivery on (date):

Jace H. Kim, Esq. (SBN 282039)
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Carlos Andres Perez, Esq. (SBN 285645)
Carlos.Perez@Dominguezfirm.com
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Los Angeles, California 90010
Tel: (213) 401-1088
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Attorney for Plaintiff,
JOSE HERAS LEON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER

JOSE HERAS LEON, an individual,

Plaintiff,

v.

FRESH GRILL, LLC, a California limited
liability company; and DOES 1 through 20,
inclusive,

Defendants.

Case No. **30-2021-01186501-CU-OE-CXC**
Assigned for all purposes to: **Judge William Claster**
Dept: **CX104**
COMPLAINT FOR DAMAGES FOR:

- 1. FAILURE TO PROVIDE MEAL PERIODS (CAL. LABOR CODE §§226.7, 512; IWC WAGE ORDER NO. 1-2001, § 11);**
- 2. FAILURE TO PROVIDE REST PERIODS (CAL. LABOR CODE §§226.7, 512; IWC WAGE ORDER NO. 1-2001, § 12);**
- 3. FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.; IWC WAGE ORDER NO. 1-2001, § 7);**
- 4. FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUITTING EMPLOYEES CAL. LABOR CODE §§ 201-203;**
- 5. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.); AND**

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**6. PRIVATE ATTORNEY GENERAL ACT
CAL. LABOR CODE §§ 2698, ET SEQ.
[PAGA].**

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

PLAINTIFF, JOSE HERAS LEON, brings this action on behalf of himself and on behalf of aggrieved employees pursuant to the California Private Attorneys General Act, alleges as follows:

JURISDICTION

1. This action is brought pursuant to California Code of Civil Procedure §382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

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

THE PARTIES

3. Plaintiff, JOSE HERAS LEON, is and at all times relevant hereto was a resident of the County of Orange, State of California.

4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant, FRESH GRILL, LLC (hereinafter referred to as "DEFENDANT") was and is a California limited liability company doing business at 111 E. Garry Avenue, Santa Ana, California, in the County of Orange, State of California.

5. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Employer Defendant makes and offers prepared foods wholesale.

6. The true names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore

1 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
2 insert the true names and capacities of said Defendants when the same become known to Plaintiff. Plaintiff
3 is informed and believes, and based thereupon alleges, that each of the fictitiously named Defendants is
4 responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as alleged hereinafter.

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

11 8. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
12 of them, including those defendants named as DOES 1-20 and the INDIVIDUAL DEFENDANTS, acted
13 in concert with one another to commit the wrongful acts alleged herein, and aided, abetted, incited,
14 compelled and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so,
15 including pursuant to Government Code §12940(i). Plaintiff is further informed and believes, and based
16 thereupon alleges, that Defendants, and each of them, including those defendants named as DOES 1-20
17 and the INDIVIDUAL DEFENDANTS, and each of them, formed and executed a conspiracy or common
18 plan pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged
19 herein done as part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiff
20 harm.

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

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25 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

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

1 11. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
2 purported corporate existence, Employers and DOES 1-20 are, in reality, one and the same as Defendants,
3 including, but not limited to because:

4 a. Employers are completely dominated and controlled by one another and DOES 1-
5 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
6 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or accomplish
7 some other wrongful or inequitable purpose.

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

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

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

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

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

27 13. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
28 thereon alleges that Employers and DOES 1-20 are Plaintiff's joint employers by virtue of a joint

1 enterprise, and that Plaintiff was an employee of Employers and DOES 1-20. Plaintiff performed services
2 for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants
3 shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which
4 Defendants' business was and is conducted.

5 14. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and
6 between DOES 1-20, Employers, or any of them, (1) there is an express or implied agreement of
7 assumption pursuant to which Employers and/or DOES 1-20 agreed to be liable for the debts of the other
8 Defendants, (2) the transaction between Employers and/or DOES 1-20 and the other Defendants amounts
9 to a consolidation or merger of the two corporations, (3) Employers and/or DOES 1-20 are a mere
10 continuation of the other Defendants, or (4) the transfer of assets to Employers and/or DOES 1-20 is for
11 the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employers and/or DOES
12 1-20 are the successors of one or more of the other Defendants, and are liable on that basis.

13 14 **FACTUAL BACKGROUND**

15 15. Plaintiff was covered under one or more IWC Wage Orders and/or the California Labor
16 Code provisions relating to wage-and-hour laws, and other applicable wage orders, regulations, and
17 statutes, which imposed an obligation on the part of Defendants, among other things, to provide
18 uninterrupted meal and rest periods, to pay overtime wages, to pay wages for all hours worked, and to
19 provide accurate wage statements.

20 16. On or about March 20, 2008, Employers hired Plaintiff to work as a food packer. Plaintiff
21 was a full-time, non-exempt employee, and performed all of his job duties satisfactorily. Plaintiff's
22 employment with Defendants ended on approximately April 21, 2020 after Plaintiff's employment with
23 Defendants was wrongfully terminated.

24 17. Between approximately January 2016 until December 2016, Plaintiff's hourly wage rate
25 was \$10.00. During this time period, Plaintiff worked 5 days a week, for approximately 8 hours per day.

26 18. Between approximately January 2017 until December 2017, Plaintiff's hourly wage rate
27 was \$10.50. During this time period, Plaintiff worked 5 days a week, for approximately 8 hours per day.

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1 19. Between approximately January 2018 until September 8, 2018, Plaintiff's hourly wage rate
2 was \$11.00. During this time period, Plaintiff worked 5 days a week, for approximately 8 hours per day.

3 20. Between approximately September 9, 2018 until January 2020, Plaintiff's hourly wage rate
4 was \$12.25. During this time period, Plaintiff worked 5 days a week, for approximately 8 hours per day.

5 21. Between approximately January 2020 until April 21, 2020, Plaintiff's hourly wage rate was
6 \$13.25. During this time period, Plaintiff worked 5 days a week, for approximately 8 hours per day.

7 22. Throughout Plaintiff's employment, Plaintiff was not permitted to, and not advised of
8 Plaintiff's right to take statutory 10-minute rest breaks for every four hours worked or substantial portion
9 thereof. Defendants had no policy, procedure, or practice for Plaintiff to report missed rest breaks or
10 recover lost wages, and Defendants had no policy, procedure, or practice to provide one hour of additional
11 wages for each workday that the rest break was not provided.

12 23. Throughout Plaintiff's employment, Plaintiff did not receive timely, uninterrupted
13 statutory 30-minute meal periods for days on which Plaintiff worked at least 5 hours, which was each day
14 Plaintiff worked. Defendants had no policy, procedure, or practice for Plaintiff to report missed meal
15 periods or recover lost wages, and Defendants had no policy, procedure, or practice to provide one hour
16 of additional wages for each workday that the meal breaks were not properly provided.

17 24. Throughout Plaintiff's employment, for each pay period, Plaintiff received inaccurate
18 paystubs that did not comply with Labor Code § 226, because they failed to show pay for missed meal
19 and rest periods, failed to show the amount of wages earned and owed to Plaintiff.

20 25. As a direct result and proximate result of the unlawful actions of Defendants, Plaintiff has
21 suffered, and continue to suffer, from loss of earnings in amounts as yet unascertained, but subject to proof
22 at trial, and within the jurisdiction of this Court.

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27. On or about October 29, 2020, Plaintiff gave written notice of Defendants' violations of various provisions of the California Labor Code and the applicable IWC Wage Order to (a) the LWDA by filing with the LWDA through the LWDA website and (b) to Defendants by certified mail.

29. In doing so, Plaintiff has satisfied the administrative prerequisites under PAGA to recover civil penalties against Defendants, in addition to the other remedies, for violations of California Labor Code §§ California Labor Code §§ 204, 210 (untimely payment of wages), 226 (inaccurate itemized wage statements), 226.7 (meal and rest break violations), 512 (meal breaks), and 203 (waiting time penalties), as well as IWC Wage Order No. 1-2001.

AGAINST ALL DEFENDANTS

31. Plaintiff regularly worked greater than five hours per day. Pursuant to California Labor Code § 512, an employer may not employ someone for a shift of more than five hours without providing him or her with a meal period of not less than thirty minutes.

32. Despite the requirements of the applicable IWC Wage Order and California Labor Code §§ 512 and 226.7, Defendants required, permitted or otherwise suffered Plaintiff to take less than the 30

1 minute meal period, or to work through them, and have failed to otherwise provide the required meal
2 periods to Plaintiff.

3 33. Plaintiff was required to work through or cut short his meal breaks due to Defendants'
4 failure to maintain adequate staffing levels. Defendants required Plaintiff to perform his job duties as a
5 packerr non-stop and was not allowed to enjoy a timely, uninterrupted meal breaks. Defendants failed
6 to properly staff enough employees to help make sure all employees could be relieved to take a meal
7 break without pressure to forego or delay their meal breaks.

8 a. Between approximately January 2016 until December 2016, Defendants failed or
9 refused to pay Plaintiff, the requisite wage (\$10.00 per hour), for approximately 1 hour per
10 day for each day worked that he did not receive the requisite rest break and meal break (approximately 261
11 days). Hence for this period, Defendants owe Plaintiff approximately \$2,610.00.

12 b. Between approximately January 2017 until December 2017, Defendants failed or
13 refused to pay Plaintiff, the requisite wage (\$10.50 per hour), for approximately 1 hour per
14 day for each day worked that he did not receive the requisite rest break and meal break (approximately
15 261 days). Hence for this period, Defendants owe Plaintiff approximately \$2,740.00.

16 c. Between approximately January 2018 until September 8, 2018, Defendants failed or
17 refused to pay Plaintiff, the requisite wage (\$12.25 per hour), for approximately 1 hour per
18 day for each day worked that he did not receive the requisite rest break and meal break (approximately
19 175 days). Hence for this period, Defendants owe Plaintiff approximately \$2,143.75.

20 d. Between approximately January 2020 until April 21, 2020, Defendants failed or
21 refused to pay Plaintiff, the requisite wage (\$13.25 per hour), for approximately 1 hour per
22 day for each day worked that he did not receive the requisite rest break and meal break (approximately
23 79 days). Hence for this period, Defendants owe Plaintiff approximately \$993.75.

24 34. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
25 unpaid minimum wages in the combined amount of approximately \$8,487.50.

26 35. Pursuant to California Labor Code § 226.7, Plaintiff has sustained economic damages,
27 including, but not limited to, unpaid wages and lost interest, in an amount according to proof at trial, and
28 are entitled to recover one-hour of premium pay for each day in which a lawful meal period was not

1 provided. Plaintiff is further entitled to attorneys' fees pursuant to Code of Civil Procedure § 1021.5, and
2 pursuant to Labor Code section 2699(g)(1), Plaintiff is entitled to an award of reasonable attorneys' fees
3 and costs relating to their claims for civil penalties due to Defendants' violation of the California Labor
4 Code and IWC Wage Order No. 1-2001.

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6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REST PERIODS**

8 **CAL. LABOR CODE § 226.7, 512; IWC WAGE ORDER NO. 1-2001, §12**

9 **BY PLAINTIFF AGAINST ALL DEFENDANTS**

10 36. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set
11 forth fully herein. Plaintiff alleges as follows as a representative cause of action on behalf of himself.

12 37. Pursuant to IWC Wage Order No. 1-2001, § 12 (A), "[e]very employer shall authorize
13 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
14 work period. . . . [The] authorized rest period time shall be based on the total hours worked daily at the
15 rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof. . . . Authorized
16 rest period time shall be counted as hours worked, for which there shall be no deduction from wages."
17 California Labor Code § 226.7(a) prohibits an employer from requiring any employee to work during
18 any rest period mandated by an applicable order of the IWC. Under these laws, Defendants were required
19 to authorize and permit Plaintiff and Class members to take rest periods, based upon the total hours
20 worked at a rate of ten minutes' net rest per four hours, or major fraction thereof, with no deduction from
21 wages.

22 38. Defendants provided Plaintiff with policies that did not permit first or second rest breaks
23 for shifts between six and eight hours or third rest breaks for shifts over ten hours.

24 39. Defendants violated, and continue to violate California Labor Code § 226.7 and IWC
25 Wage Order No. 1-2001, § 12 by failing to pay Plaintiff who was not provided with a rest break, in
26 accordance with the applicable wage order, one additional hour of compensation at each employees'
27 regular rate of pay for each workday that a rest period was not provided.

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1 a. Between approximately January 2016 until December 2016, Defendants failed or
2 refused to pay Plaintiff, the requisite wage (\$10.00 per hour), for approximately 1 hour per
3 day for each day worked that he did not receive the requisite rest break and meal break (approximately
4 261 days). Hence for this period, Defendants owe Plaintiff approximately \$2,610.00.

5 b. Between approximately January 2017 until December 2017, Defendants failed or
6 refused to pay Plaintiff, the requisite wage (\$10.50 per hour), for approximately 1 hour per
7 day for each day worked that he did not receive the requisite rest break and meal break (approximately
8 261 days). Hence for this period, Defendants owe Plaintiff approximately \$2,740.00.

9 c. Between approximately January 2018 until September 8, 2018, Defendants failed or
10 refused to pay Plaintiff, the requisite wage (\$12.25 per hour), for approximately 1 hour per
11 day for each day worked that he did not receive the requisite rest break and meal break (approximately
12 175 days). Hence for this period, Defendants owe Plaintiff approximately \$2,143.75.

13 d. Between approximately January 2020 until April 21, 2020, Defendants failed or
14 refused to pay Plaintiff, the requisite wage (\$13.25 per hour), for approximately 1 hour per
15 day for each day worked that he did not receive the requisite rest break and meal break (approximately
16 79 days). Hence for this period, Defendants owe Plaintiff approximately \$993.75.

17 40. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
18 unpaid minimum wages in the combined amount of approximately \$8,487.50

19 41. Pursuant to Labor Code § 226.7, Plaintiff has sustained economic damages, including, but
20 not limited to, unpaid wages and lost interest, in an amount according to proof at trial, and is entitled to
21 recover one-hour of premium pay for each day in which a lawful meal period was not provided. Plaintiff
22 is further entitled to attorneys' fees pursuant to Code of Civil Procedure § 1021.5, and pursuant to Labor
23 Code section 2699(g)(1), Plaintiff is entitled to an award of reasonable attorneys' fees and costs relating
24 to their claims for civil penalties due to Defendants' violation of the California Labor Code and IWC
25 Wage Order No. 1-2001.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

3 **CAL. LABOR CODE §§ 226 & 226.3, IWC WAGE ORDER NO. 1-2001, § 7**

4 **AGAINST ALL DEFENDANTS**

5 42. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set
6 forth fully herein. Plaintiff alleges as follows as a representative cause of action on behalf of himself.

7 43. California Labor Code § 226(a) and IWC Wage Order 10-2001, § 7(B) require employers
8 semimonthly or at the time of each payment of wages to furnish each employee with a statement itemizing,
9 among other things, all applicable hourly rates. Labor Code § 226(b) provides that if an employer
10 knowingly and intentionally fails to provide a statement itemizing, among other things, all applicable
11 hourly rates, then the employee is entitled to recover the greater of all actual damages or fifty dollars for
12 the initial violation and one hundred dollars for each subsequent violation, up to four thousand dollars.

13 44. Defendants knowingly and intentionally failed to furnish Plaintiff with timely, itemized
14 statements as required by California Labor Code § 226(a) and IWC Wage Order 10-2001, § 7(B). As a
15 result, Defendants are liable to Plaintiff and to the Class for the amounts provided by Labor Code § 226(b)
16 and for penalties, and attorneys' fees.

17 45. Plaintiff suffered, and continues to suffer, injury as a result of Defendants' failure to provide
18 timely and accurate itemized wage statements, as Plaintiff could not promptly and easily determine from
19 the wage statement alone one or more of the following: the gross wages earned, the total hours worked,
20 all deductions made, the net wages earned, the name and address of the legal entity or entities employing
21 Plaintiff, and/or all applicable hourly rates in effect during each pay period and the corresponding number
22 of hours worked at each hourly rate.

23 46. As a direct and proximate result of defendants' unlawful actions and omissions, Plaintiff
24 has been damaged in an amount according to proof at trial, and seek all wages earned and due, plus interest
25 thereon. Additionally, Plaintiff is entitled to all available statutory and civil penalties, including but not
26 limited to statutory and civil penalties pursuant to California Labor Code § 226(e) and 1174.5, and an
27 award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in
28 California Labor Code § 226(e), as well as other available remedies.

FOURTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUITTING EMPLOYEES
CAL. LABOR CODE §§ 201,202, 203
AGAINST ALL DEFENDANTS

47. Plaintiff incorporates by reference and re-alleges the paragraphs set forth above as though set forth fully herein. Plaintiff alleges as follows as a representative cause of action on behalf of himself.

48. Pursuant to California Labor Code § 201, 202, and 203, Defendants are required to pay all earned and unpaid wages to discharged and quitting employees.

49. California Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

50. Pursuant to California Labor Code § 202, Defendants are required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

51. California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to 30 workdays.

52. Defendants have willfully failed, and continue to willfully fail, to pay accrued wages and other compensation to Plaintiff in accordance with California Labor Code §§ 201 and 202.

53. As a result, Plaintiff is entitled to all available statutory penalties, including the waiting time penalties provided in California Labor Code § 203, together with interest thereon, as well as other available remedies.

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1 **FIFTH CAUSE OF ACTION**

2 **UNFAIR AND UNLAWFUL BUSINESS PRACTICES**

3 **CAL. BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***

4 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

5 54. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though
6 set forth fully herein. Plaintiff alleges as follows as a representative cause of action on behalf of himself.

7 55. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
8 be predicated on the violation of any state or federal law. Defendants' policies, activities, and actions
9 as alleged herein, are violations of California law and constitute unlawful business acts and practices
10 in violation of California Business and Professions Code §§ 17200, *et seq.* Defendants have engaged
11 and continue to engage in unfair and unlawful business practices in California by practicing,
12 employing, and utilizing the employment practices outlined above, including failing to pay reporting
13 time pay, and failing to provide meal and rest breaks in violation of the applicable IWC Wage Order
14 and California Labor Code.

15 56. Defendants' violations of California wage and hour laws constitute a business
16 practice because Defendants' aforementioned acts and omissions were done repeatedly over a
17 significant period of time, and in a systematic manner, to the detriment of Plaintiff.

18 57. Defendants have avoided payment of wages, overtime wages, meal and rest break
19 premium payments, and other benefits as required by the California Labor Code, the California Code
20 of Regulations, and the applicable IWC Wage Order. Furthermore, Defendants have failed to record,
21 report, and pay the correct sums of assessment to the state authorities under the California Labor Code
22 and other applicable regulations.

23 58. Defendants' unfair and unlawful business practices, as alleged in this Complaint,
24 have allowed Defendants to reap in unfair and illegal profits at the expense of Plaintiff, and members of
25 the public. Defendants should be made to disgorge their ill-gotten gains and restore them to
26 Plaintiff. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
27 the California Code of Civil Procedure § 1021.5.

28 ///

1 59. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff is
2 entitled to restitution of the wages withheld and retained by Defendants; an award of attorneys'
3 fees pursuant to California Labor Code § 1194; and California Code of Civil Procedure § 1021.5;
4 interest; and an award of costs.

5
6 **SIXTH CAUSE OF ACTION**
7 **PRIVATE ATTORNEY GENERAL ACT**
8 **CAL. LABOR CODE §§ 2698, *ET SEQ.* [PAGA]**
9 **BY PLAINTIFF AGAINST ALL DEFENDANTS**

10 60. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though
11 set forth fully herein. Plaintiff alleges as follows as a representative cause of action on behalf of himself.

12 61. PAGA authorizes an aggrieved employee, on behalf of himself or other current or
13 former employees, to bring a civil action to recover civil penalties against his or her employer pursuant
14 to the procedures specified in California Labor Code § 2699.3. Plaintiff is an aggrieved employee within
15 the meaning of PAGA, and pursuant to PAGA, Plaintiff is entitled to recover civil penalties on behalf
16 of himself and other similarly aggrieved persons who are, or were employed, by Defendants and
17 against whom one or more of the alleged violations were committed. If the employee prevails as
18 private attorney general, the employer may be subject to civil penalties, of which the aggrieved
19 employee is entitled to 25 percent.

20 62. Plaintiff has complied with the procedures for bringing suit under PAGA. Specifically,
21 on or about October 15, 2020, Plaintiff gave written notice of Defendants' violations — including the
22 facts and theories to support the violations — of various provisions of the California Labor Code and
23 the applicable IWC Wage Order to (a) the LWDA by filing with the LWDA through the LWDA
24 website and (b) to Defendants by certified mail.

25 ///

26 ///

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63. Pursuant to California Labor Code § 2699.3, the LWDA must give written notice by certified mail to the parties that it intends to investigate the alleged violations of the California Labor Code within 60 days of the date of the complainant's written notice and More than 65 days have passed since the notice and the LWDA did not provide the parties notice that it intended to investigate his claims.

64. During the applicable time period preceding the filing of Plaintiff's notice to the LWDA, Defendants violated California Labor Code §§ 204, 210 (untimely payment of wages), 226 (inaccurate itemized wage statements), 226.7 (meal and rest break violations), 512 (meal breaks), and 203 (waiting time penalties), as well as the applicable IWC Wage Order, as alleged in more detail above.

65. Pursuant to California Labor Code §§ 2699(a) and (f), and 2699.5, and 2699(g)(1), Plaintiff is entitled to an award of reasonable attorneys' fees and costs. To that end, Plaintiff seeks all relief entitled under PAGA for any penalties assessed against Defendants as a result of Defendants' California Labor Code violations, plus attorneys' fees and costs.

PRAYER FOR RELIEF

Wherefore, Plaintiff, individually, and on behalf of aggrieved employees, pray for an award and judgment against Defendants jointly and severally, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For civil penalties pursuant to Labor Code §98.6 in the amount of no less than \$10,000.00;
3. For civil penalties pursuant to Labor Code § 1102.5 in the amount of no less than \$10,000.00;
4. For payment of meal and rest period compensation pursuant to Labor Code §§226.7 and 512, in the amount of no less than \$16,975.00;
5. For liquidated damages pursuant to Labor Code §1194.2 in the amount of no less than \$16,975.00;
6. For statutory penalties or damages pursuant to Labor Code §558 in the amount of no less than \$1,250.00;

7. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;
 8. For statutory penalties or damages pursuant to Labor Code §226.3;
 9. For waiting time penalties pursuant to Labor Code §203, in the amount of no less than \$2,300.20;
 10. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code §§ 218.6, 1194, and 2802, California Civil Code §§ 3287 and 3288, and/or any other applicable provision providing for pre-judgment interest;
 11. For an order appointing Plaintiff as class representative and Plaintiff's counsel as class counsel;
 12. For statutory penalties pursuant to Labor Code §2699 on Plaintiff's own behalf, and similar amounts on behalf of all of Defendants' aggrieved employees, estimated to exceed \$500,000.00;
 13. For prejudgment interest on each of the foregoing at the legal rate from the date the obligation became due through the date of judgment in this matter;
 14. For restitutionary disgorgement of profits garnered as a result of Defendants' unlawful conduct, failure to pay minimum wages, failure to pay overtime wages, failure to pay meal and rest period wages and other compensation in accordance with the law;
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1 15. For punitive damages, pursuant to Civil Code §§3294 in amounts sufficient to punish
2 Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

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

5 17. For post-judgment interest; and

6 18. For any other relief that the Court deems just and proper.

7 DATED: February 28, 2021

THE DOMINGUEZ FIRM, LLP

9
10 By: 

Jace H. Kim, Esq.
Carlos Andres Perez, Esq.
Javier Ramirez, Esq.
Attorneys for Plaintiff,
JOSE HERAS LEON

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14
15 **JURY TRIAL DEMANDED**

16
17 Plaintiff, JOSE HERAS LEON demands trial of all issues by jury.

18 DATED: February 28, 2021

THE DOMINGUEZ FIRM, LLP

19
20 By: 

Jace H. Kim, Esq.
Carlos Andres Perez, Esq.
Javier Ramirez, Esq.
Attorneys for Plaintiff,
JOSE HERAS LEON

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jace H. Kim, Esq. (SBN 282039) Carlos Andres Perez, Esq. (SBN 285645) Javier Ramirez, Esq. (SBN 249516) THE DOMINGUEZ FIRM, LLP 3250 Wilshire Blvd. Ste. 1200, Los Angeles, CA 90010 TELEPHONE NO.: (213)381-4011 FAX NO.: (213)201-8212 ATTORNEY FOR (Name): Plaintiff, JOSE HERAS LEON		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 751 W. Santa Ana Blvd MAILING ADDRESS: Santa Ana, Ca 92701 CITY AND ZIP CODE: Civil Complex Center BRANCH NAME:		
CASE NAME: HERAS LEON v. FRESH GRILL, LLC		
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000)	☐ Limited (Amount demanded is \$25,000 or less)	Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: 30-2021-01186501-CU-OE-CXC JUDGE: Judge William Claster DEPT: CX104

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:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (not specified above) (43)
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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. ☐ Large number of separately represented parties | d. ☐ Large number of witnesses |
| b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. ☐ Substantial amount of documentary evidence | f. ☐ 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): SIX (6)
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: 2/28/21

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

ALTERNATIVE DISPUTE RESOLUTION (ADR)
INFORMATION PACKAGE

NOTICE TO PLAINTIFF(S) AND/OR CROSS-COMPLAINANT(S):

Rule 3.221(c) of the California Rules of Court requires you to serve a copy of the ADR Information Package along with the complaint and/or cross-complaint.

California Rules of Court – Rule 3.221
Information about Alternative Dispute Resolution (ADR)

(a) Each court shall make available to the plaintiff, at the time of filing of the complaint, an ADR Information Package that includes, at a minimum, all of the following:

- (1) General information about the potential advantages and disadvantages of ADR and descriptions of the principal ADR processes.
- (2) Information about the ADR programs available in that court, including citations to any applicable local court rules and directions for contacting any court staff responsible for providing parties with assistance regarding ADR.
- (3) Information about the availability of local dispute resolution programs funded under the Dispute Resolutions Program Act (DRPA), in counties that are participating in the DRPA. This information may take the form of a list of the applicable programs or directions for contacting the county's DRPA coordinator.
- (4) An ADR stipulation form that parties may use to stipulate to the use of an ADR process.

(b) A court may make the ADR Information Package available on its website as long as paper copies are also made available in the clerk's office.

(c) The plaintiff must serve a copy of the ADR Information Package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR Information Package on any new parties to the action along with the cross-complaint.

Less discovery. There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.

Additional costs. The neutral may charge a fee for his or her services. If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.

Effect of delays if the dispute is not resolved. Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

TYPES OF ADR IN CIVIL CASES.

The most commonly used ADR processes are arbitration, mediation, neutral evaluation and settlement conferences.

Arbitration. In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." Binding arbitration means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. Generally, there is no right to appeal an arbitrator's decision. Nonbinding arbitration means that the parties are free to request a trial if they do not accept the arbitrator's decision.

Cases for Which Arbitration May Be Appropriate. Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate. If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Mediation. In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Cases for Which Mediation May Be Appropriate. Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate. Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Neutral Evaluation. In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

ADR Information

Introduction.

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts and others offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. ADR is usually less formal, less expensive, and less time-consuming than a trial. ADR can also give people more opportunity to determine when and how their dispute will be resolved.

BENEFITS OF ADR.

Using ADR may have a variety of benefits, depending on the type of ADR process used and the circumstances of the particular case. Some potential benefits of ADR are summarized below.

Save Time. A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.

Save Money. When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, experts' fees, and other litigation expenses.

Increase Control Over the Process and the Outcome. In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.

Preserve Relationships. ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.

Increase Satisfaction. In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.

Improve Attorney-Client Relationships. Attorneys may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

DISADVANTAGES OF ADR.

ADR may not be suitable for every dispute.

Loss of protections. If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.

often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate. Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate. Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conferences. Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

ADDITIONAL INFORMATION.

In addition to mediation, arbitration, neutral evaluation, and settlement conferences, there are other types of ADR, including conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR types. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute.

To locate a dispute resolution program or neutral in your community:

- Contact the California Department of Consumer Affairs, Consumer Information Center, toll free, at 1-800-852-5210
- Contact the Orange County Bar Association at (949) 440-6700
- Look in the telephone directories under "Arbitrators" or "Mediators"

Low cost mediation services are provided under the Orange County Dispute Resolution Program Act (DRPA). For information regarding DRPA, contact:

- OC Human Relations (714) 480-6575, mediator@ochumanrelations.org
- Waymakers (949) 250-4058

For information on the Superior Court of California, County of Orange court ordered arbitration program, refer to Local Rule 360.

The Orange County Superior Court offers programs for Civil Mediation and Early Neutral Evaluation (ENE). For the Civil Mediation program, mediators on the Court's panel have agreed to accept a fee of \$300 for up to the first two hours of a mediation session. For the ENE program, members of the Court's panel have agreed to accept a fee of \$300 for up to three hours of an ENE session. Additional information on the Orange County Superior Court Civil Mediation and Early Neutral Evaluation (ENE) programs is available on the Court's website at www.occourts.org.

