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RAUL NUNEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

RAUL NUNEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

TK SERVICES, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No.: BC682512

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

- (1) FAILURE TO PAY ALL
OVERTIME WAGES OWED
(LABOR CODE §§ 204, 510, 558,
1194, 1198)**
- (2) FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§
1194, 1194.2, 1197);**
- (3) FAILURE TO PAY ALL WAGES AT
THE AGREED-UPON RATE
(LABOR CODE §§ 221-223);**

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- (4) **FAILURE TO PROVIDE MEAL PERIODS (LABOR CODE §§ 226.7, 512);**
- (5) **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS (LABOR CODE §§ 226.7, 516, 558);**
- (6) **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS (LABOR CODE § 226 *et seq.*);**
- (7) **WAITING TIME PENALTIES (LABOR CODE §§ 201-203);**
- (8) **UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*); and**
- (9) **CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACTION OF 2004 (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Raul Nunez (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“FAC”) against
3 TK SERVICES, INC., a California corporation, and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 FAC for recovery of unpaid wages and penalties under California Business & Professions Code
8 § 17200 *et seq.*, Labor Code §§ 201-203, 204, 218 *et seq.*, 221-223, 226 *et seq.*, 226.7, 510, 512,
9 516, 558, 1192, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and Industrial Welfare
10 Commission Wage Order 1 (“Wage Order 1”), in addition to seeking declaratory relief and
11 restitution. This Complaint is brought pursuant to California Code of Civil Procedure § 382. This
12 Court has jurisdiction over Defendants’ violations of the California Labor Code because the
13 amount in controversy exceeds this Court's jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
16 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
17 County of Los Angeles. Defendants own, maintain offices, transact business, have agent(s)
18 within the County of Los Angeles, and/or otherwise are found within the County of Los Angeles,
19 and Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the Complaint in this action and within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-203, 204, 218 *et seq.*, 221-223, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1192, 1194, 1194.2,
28 1197, 1197.1, 1198, 2698 *et seq.*, ; California Business & Professions Code § 17200 *et seq.*

1 (“Unfair Competition Law”); and Wage Order 1, which sets employment standards for the
2 manufacturing industry, which includes the industry in which Plaintiff worked for Defendants.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing of the FAC and continuing to the present, Defendants did (and continue
5 to do) business by manufacturing what it represents are the most dependable and durable
6 refrigeration and heating units (temperature control units) for truckers, trailers, rail cars and
7 ocean-going containers around the globe. Defendants further provide maintenance and other
8 services related to their temperature control units they manufacture. Defendants employed
9 Plaintiff and other, similarly-situated non-exempt employees within, among other counties, Los
10 Angeles County and the state of California and, therefore, were (and are) doing business in Los
11 Angeles County and the State of California.

12 5. Plaintiff does not know the true names or capacities, whether individual, partner,
13 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
14 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
15 amend this FAC when such true names and capacities are discovered. Plaintiff is informed, and
16 believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
17 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
18 and proximately caused Plaintiff and the Classes (as defined in Paragraph 19) to be subject to the
19 unlawful employment practices, wrongs, injuries and damages complained of herein.

20 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
21 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

22 7. At all times herein mentioned, each of said Defendants participated in the doing
23 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
24 Defendants, and each of them, were the agents, servants, and employees of each and every one of
25 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
26 were acting within the course and scope of said agency and employment. Defendants, and each
27 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
28 omissions complained of herein.

1 8. At all times mentioned herein, Defendants, and each of them, were members of
2 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
3 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
4 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
5 members of the Classes.

6 **GENERAL FACTUAL ALLEGATIONS**

7 9. Defendants maintain shops/branches/locations at which they manufacture, sell and
8 service their temperature control units in California in Los Angeles, San Diego, Fontana,
9 Stockton, Redding, San Leandro and Sacramento. Plaintiff was employed by Defendants as a
10 non-exempt employee in various positions, the last of which was Shop Foreman, from
11 approximately 1987 through approximately February 26, 2016. Plaintiff performed various duties
12 during his employment with Defendants, including, without limitation, installing and servicing
13 temperature control units.

14 10. During his employment with Defendants, Plaintiff was typically scheduled to work
15 commencing at approximately 7:30 a.m. until approximately 4:00 p.m. However, Plaintiff would
16 often arrive at work and commence working prior to his scheduled start time. Despite clocking
17 in and commencing work prior to the scheduled start of his shift, Defendants would only pay
18 Plaintiff from the scheduled start of his shift, rather than from the time that he clocked in and
19 actually began performing work for Defendants. At all relevant times, Defendants knew and/or
20 reasonably should have known that Plaintiff was working and providing services to Defendants
21 at their direction and control.

22 11. Throughout Plaintiff's employment with Defendants, Defendants would keep
23 track of Plaintiff's time worked and would unlawfully shave Plaintiff's work time and/or round
24 Plaintiff's work time such that Plaintiff would not be fully paid for all time worked. This time-
25 shaving/rounding practice utilized by Defendants was not even-handed over time and would
26 almost exclusively round and shave in Defendants' favor such that Plaintiff was routinely
27 underpaid for his time worked. For example, on February 19, 2016, Plaintiff's time records
28 indicate he worked a portion of the day from 7:00 a.m. until 12:00 p.m., yet was only allotted 4.5

1 hours of work time instead of the actual 5 hours worked. There are many instances within
2 Plaintiff's records indicating his time was rounded and/or shaved by Defendants and in their
3 favor, resulting in Plaintiff being routinely underpaid his wages. Further, had Plaintiff been
4 properly allotted all the time he actually worked, including the time unlawfully shaved/rounded
5 and the time he worked before and after his scheduled shift, he would have often worked in excess
6 of 8 hours in a day and/or 40 hours in a week resulting in overtime which was either not paid, or
7 underpaid.

8 12. During Plaintiff's employment with Defendants, Plaintiff was not required to and
9 did not keep track of and/or clock out and in for his meal periods. Rather, Defendants would
10 instead auto-deduct thirty (30) minutes of time from Plaintiff's daily work time to account for
11 meal periods regardless of whether the meal periods were actually taken, and also regardless of
12 whether the meal periods lasted less than thirty (30) minutes. This practice by Defendants resulted
13 in Defendants not properly tracking the time worked by Plaintiff, and also resulted in Defendants
14 paying Plaintiff less than he was owed for the work he performed. Further, because Defendants
15 were unlawfully auto-deducting from Plaintiff's work time thirty (30) minutes per day regardless
16 of whether Plaintiff actually took a meal period and/or regardless of whether Plaintiff took a meal
17 period of less than thirty (30) minutes, Defendants failed to pay Plaintiff for that unlawfully
18 deducted time, resulting in unpaid minimum, straight-time and overtime wages.

19 13. Throughout Plaintiff's employment with Defendants, Plaintiff and other non-
20 exempt employees would receive annual non-discretionary bonuses, and other forms of non-
21 discretionary pay (hereinafter the aforementioned forms of pay are collectively referred to as
22 "Incentive Pay"). As a result of Plaintiff receiving Incentive Pay, Defendants did not properly
23 calculate Plaintiff's regular rate of pay for overtime purposes, thereby causing Plaintiff to be
24 underpaid all of his required overtime wages.

25 14. Throughout Plaintiff's employment with Defendants, Plaintiff was not provided
26 all required meal periods due to Defendants' meal period policies/practices which fail to provide
27 uninterrupted, duty-free 30-minute meal periods. Specifically, Defendants had a policy/practice
28 of not always providing an uninterrupted, duty-free 30-minute meal period to non-exempt

employees who worked shifts in excess of five hours. Specifically, the nature of Plaintiff's duties often required him to skip his meal period and/or take a meal period of less than thirty (30) minutes in duration. When this occurred, it was the result of Defendants' directions and not because of Plaintiff's own choosing. Further, Plaintiff was often required to commence his meal period later than the end of his fifth hour of work. Indeed, Defendants would prepare schedules which included time for taking a lunch, and the schedules would often schedule a lunch to commence well-after the end of the fifth hour of work. Again, this was at the direction of Defendants and not because of Plaintiff's own choosing, and resulted in Plaintiff's meal period being scheduled later than the law requires. Although Plaintiff was not provided with all legally-compliant meal periods to which he was entitled, Defendants failed to compensate Plaintiff with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to their non-exempt employees.

15. In addition, throughout Plaintiff's employment with Defendants, Plaintiff was not authorized and permitted to take legally required rest periods due to Defendants' unlawful rest period policies and practices. Specifically, Defendants' required Plaintiff and other non-exempt employees to remain on the work premises during their rest periods, resulting in Defendants failing to relinquish control over how employees spend their time during rest periods in violation of California law.

16. On those occasions when Plaintiff was not authorized and permitted to take all legally-compliant rest periods to which he was entitled, Defendants failed to compensate Plaintiff with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief, during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for paying rest period premiums when Defendants failed to provide a legally compliant rest period.

17. As a result of Defendants' failure to pay all minimum, overtime and agreed-upon

wages, as well as meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff.

18. As a further result of Defendants' failure to pay all minimum, overtime and agreed-upon wages, and meal and rest period premium wages, Defendants failed to pay all wages owed to Plaintiff upon his separation of employment from Defendants.

CLASS ACTION ALLEGATIONS

19. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked in excess of 8 hours in a work day and/or in excess of 40 hours in a work week, and: (i) were subject to Defendants' timekeeping system; (ii) received Incentive Pay; and/or (iii) had automatic deductions taken for purported meal periods, during the four years preceding the filing of the lawsuit through the present.
- b. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who: (i) were subject to Defendants' timekeeping system; and/or (ii) had automatic deductions taken for purported meal periods, during the four years preceding the filing of the lawsuit through the present.
- c. The Agreed-Upon Rate Class consists of all of Defendants' current and former non-exempt employees in California who: (i) were subject to Defendants' timekeeping system; and/or (ii) had automatic deductions taken for purported meal periods, during the four years preceding the filing of the lawsuit through the present.
- d. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who: worked at least one shift in excess of 5.0 hours during the four years immediately preceding the filing of the lawsuit through the present.

e. The Rest Period Class consists of all of Defendants' current and former non-exempt employees who worked at least one shift in excess of 3.5 hours during the four years immediately preceding the filing of the lawsuit through the present.

f. The Wage Statement Class consists of all members of the: (i) Minimum Wage Class; (ii) Overtime Class; (iii) Agreed-Upon Rate Class; (iv) Meal Period Class; and/or (v) Rest Period Class, during the one year immediately preceding the filing of the lawsuit through the present.

g. The Waiting Time Penalty Class consists of all members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Agreed-Upon Rate Class; (iv) Meal Period Class; and/or (v) Rest Period Class, who separated their employment with Defendants during the three years immediately preceding the filing of the lawsuit through the present.

h. The UCL Class consists of all members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Agreed-Upon Rate Class; (iv) Meal Period Class; (v) Rest Period Class; (vi) Wage Statement Class; and (vii) Waiting Time Penalty Class, during the four years immediately preceding the filing of the lawsuit through the present.

20. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

21. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

22. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

- i. Whether Defendants properly paid all minimum wages, agreed-upon wages and/or overtime wages at the regular rate to members of the Minimum Wage Class, Agreed-Upon Rate Class and Overtime Class pursuant to Labor Code §§ 204, 221, 510, 558, 1192, 1194, 1194.2, 1197, 1197.1 and 1198;
- ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- iv. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;
- v. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of their separation of employment were lawful; and
- vi. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendants owe the classes restitution.

23. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform minimum wage, agreed-upon wage, overtime wage payment, and meal and rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

24. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was not provided all legally required minimum

wages, agreed-upon wages, and overtime wages, was not provided with all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages when he was not provided compliant meal and periods, was not provided with accurate, itemized wage statements, and was not paid all wages upon termination of his employment.

25. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

26. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would

1 establish potentially incompatible standards of conduct for Defendants; and/or legal
2 determinations with respect to individual class members which would, as a practical matter, be
3 dispositive of the interest of the other class members not parties to adjudications or which would
4 substantially impair or impede the ability of the class members to protect their interests. Further,
5 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
6 individual prosecution considering all of the concomitant costs and expenses attending thereto.
7 As such, the Classes identified in Paragraph 19 are maintainable as a Class under § 382 of the
8 Code of Civil Procedure.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY ALL OVERTIME WAGES**

11 **(AGAINST ALL DEFENDANTS)**

12 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 28. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and
14 1198 which provide that all non-exempt employees are entitled to all overtime wages for all
15 overtime worked (hours in excess of 8 in one day and/or 40 in one week), and provide a private
16 right of action for the failure to pay all overtime compensation for overtime work performed.

17 29. At all times relevant herein, Defendants were required to properly compensate
18 Plaintiff and the members of the Overtime Class for all overtime hours worked pursuant to
19 California Labor Code §§ 510 and 1194, and Wage Order 1. Labor Code § 510 and Wage Order
20 1, Section 3 require an employer to pay an employee “one and one-half (1½) times the regular
21 rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours per workweek.
22 Labor Code § 510 and Wage Order 1, Section 3 also require an employer to pay an employee
23 double the employee’s regular rate for work in excess of 12 hours each workday and/or in excess
24 of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff
25 and the members of the Overtime Class to work in excess of 8 hours in a workday and/or 40 hours
26 in a workweek but did not properly compensate Plaintiff and the members of the Overtime Class
27 at one and one-half their regular rate of pay for such hours. Defendants also caused Plaintiff and
28 the members of the Overtime Class to work in excess of 12 hours in a workday but did not

properly compensate Plaintiff and the members of the Overtime Class at double their regular rate of pay for such hours.

30. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime premium owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 510, 558, 1194 and 1198, Wage Order 1, California Code of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL MINIMUM WAGES OWED

(AGAINST ALL DEFENDANTS)

31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

32. This cause of action is brought pursuant to Labor Code §§ 204, 558, 1194 and 1198 which provide that all non-exempt employees are entitled to all minimum wages for all hours worked, and provide a private right of action for the failure to pay all minimum wage compensation for all work performed.

33. At all times relevant herein, Defendants were required to properly compensate Plaintiff and the members of the Minimum Wage Class for all hours worked pursuant to California Labor Code §§ 1194, 1197 and 1198, and Wage Order 1. Wage Order 1, Section 4 requires an employer to pay to every employee on the established payday for the period involved not less than the applicable minimum wage for all hours worked in the payroll period. Defendants caused Plaintiff and the members of the Minimum Wage Class to work hours in a workweek but did not properly compensate Plaintiff and the members of the Minimum Wage Class at least minimum wages for such hours.

34. At all times relevant herein, Defendants lacked good faith and had no reasonable grounds for believing that their practices in failing to pay all minimum wages owed at the applicable rate was not a violation of any provision of the Labor Code relating to minimum wage, or an order of the Industrial Welfare Commission. Defendants therefore, in addition to owing

1 minimum wages to Plaintiff and the members of the Minimum Wage Class, also owe liquidated
2 damages in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to
3 Labor Code § 1194.2.

4 35. The foregoing practices and policies are unlawful and create entitlement to
5 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
6 amount of minimum wages owing, including interest thereon, as well as statutory penalties,
7 liquidated damages, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code
8 §§ 204, 218.5, 218.6, 558, 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 1, California Code
9 of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code §§
10 3287(b) and 3289.

11 **THIRD CAUSE OF ACTION**

12 **FAILURE TO PAY ALL AGREED-UPON WAGES**

13 **(AGAINST ALL DEFENDANTS)**

14 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 37. This cause of action is brought pursuant to Labor Code §§ 204 and 221-223 which
16 provide that all non-exempt employees are entitled to be paid all wages owed at the rate agreed
17 upon with their employer, and provide a private right of action for the failure to pay all wages
18 owed at the agreed-upon rate for all work performed.

19 38. At all times relevant herein, Defendants were required to properly compensate
20 Plaintiff and the members of the Agreed-Upon Rate Class for all hours worked at the rate agreed
21 to with Defendants, pursuant to California Labor Code §§ 221-223. At all relevant times herein,
22 Defendants required Plaintiff and the members of the Agreed-Upon Rate Class to remain under
23 Defendants' control and perform work without paying them therefor, which resulted in Plaintiff
24 and the members of the Agreed-Upon Rate Class to earn less than the agreed rate for their work.
25 This pattern and practice by Defendants of failing to pay the agreed-upon rate for all work
26 performed violates the Labor Code and constitutes unjust enrichment.

27 39. The foregoing practices and policies are unlawful and create entitlement to
28 recovery by Plaintiff and the members of the Agreed-Upon Rate Class in a civil action for the

unpaid amount of agreed-upon wages owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 221, and 558 California Code of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(AGAINST ALL DEFENDANTS)

40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

41. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 1, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 226.7, and 512.

42. As a result, Defendants are responsible for paying premium compensation for meal period violations including interest thereon, as well as statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 1, California Code of Civil Procedure § 1021.5 and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

(AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

44. Wage Order 1, § 12 and California Labor Code §§ 226.7, 516 and 558 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or *major fraction thereof*.

45. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all required rest periods. Specifically, Defendants maintained a

1 policy or practice of requiring its non-exempt employees remain on the work premises during rest
2 periods in violation of California law.

3 46. The foregoing violations create an entitlement to recovery by Plaintiff and
4 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
5 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
6 according to California Labor Code §§ 226.7, 516, 558, Wage Order 1, California Code of Civil
7 Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

8 **SIXTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**

10 **(AGAINST ALL DEFENDANTS)**

11 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
12 fully set forth herein.

13 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
15 and the Wage Statement Class Members with accurate, itemized wage statements that included
16 among other requirements, accurate total gross wages earned, meal and rest period premiums, and
17 total net wages earned in violation of Labor Code § 226 *et seq.*

18 49. Defendants' failure to furnish Plaintiff and the members of the Wage Statement
19 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
20 failures led to, among other things, accurate total gross wages earned, meal and rest period
21 premiums, and total net wages earned in violation of Labor Code § 226 *et seq.*

22 50. Defendants' failures created an entitlement to Plaintiff and members of the Wage
23 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
24 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to suit
25 pursuant to Labor Code § 226 *et seq.*

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1 **SEVENTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

4 51. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 52. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
6 an employer to pay all wages immediately at the time of termination of employment in the event
7 the employer discharges the employee or the employee provides at least 72 hours of notice of
8 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
9 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
10 employee's last date of employment.

11 53. Defendants failed to timely pay Plaintiff all of his final wages at the time of
12 termination, which include, among other things, underpaid minimum, regular and overtime wages
13 and meal period premium wages. Further, Plaintiff is informed and believes, and based thereon
14 alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay
15 members of the Waiting Time Penalty Class all earned wages at the end of employment in a
16 timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to
17 pay all final wages was willful within the meaning of Labor Code § 203.

18 54. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
19 Time Penalty Class their earned wages upon separation from employment results in a continued
20 payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff
21 and members of the Waiting Time Penalty Class are entitled to compensation pursuant to Labor
22 Code § 203, plus reasonable attorneys' fees and costs of suit.

23 **EIGHTH CAUSE OF ACTION**

24 **UNFAIR COMPETITION**

25 **(AGAINST ALL DEFENDANTS)**

26 55. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27 56. Defendants have engaged and continue to engage in unfair and/or unlawful
28 business practices in California in violation of California Business and Professions Code § 17200

1 *et seq.*, by failing to pay all overtime, minimum and/or agreed-upon wages owed, failing to
2 provide all required meal periods, and failing to pay meal period premium wage payments.

3 57. Defendants' utilization of these unfair and/or unlawful business practices deprived
4 Plaintiff and continues to deprive members of the Classes of compensation to which they are
5 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
6 over Defendants' competitors who have been and/or are currently employing workers and
7 attempting to do so in honest compliance with applicable wage and hour laws.

8 58. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
9 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
10 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
11 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

12 59. The acts complained of herein occurred within the last four years immediately
13 preceding the filing of the Complaint in this action.

14 60. Plaintiff was compelled to retain the services of counsel to file this court action to
15 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
16 of Defendants' current non-exempt employees, and to enforce important rights affecting the
17 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
18 which he is entitled to recover under Code of Civil Procedure § 1021.5.

19 **NINTH CAUSE OF ACTION**

20 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

21 **(AGAINST ALL DEFENDANTS)**

22 61. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23 62. Defendants have committed several Labor Code violations against Plaintiff and
24 other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code
25 § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this
26 representative action against Defendants to recover the civil penalties due to Plaintiff, the other
27 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
28 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for

each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Plaintiff and other aggrieved employees all overtime compensation earned;
- b) Defendants violated Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked;
- c) Defendants violated Labor Code §§ 221-223 by failing to pay Plaintiff and other aggrieved employees their agreed-upon rate for their hours worked;
- d) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees;
- e) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees;
- f) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements;
- g) Defendants violated Labor Code § 204 by failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month;
- h) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees; and

1 i) Defendants violated Labor Code § 203 by failing to pay Plaintiff and other
2 aggrieved employees for all wages owed at the time of their termination of
3 employment.

4 63. On October 28, 2020, Plaintiff notified Defendants via certified mail, and the
5 California Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’
6 violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties
7 under California Labor Code § 2698 et seq. with respect to violations of the California Labor
8 Code identified in Paragraph 62 (a)-(i). Now that sixty-five days have passed from Plaintiff
9 notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements
10 for bringing a claim under the Labor Code Private Attorneys General Act with respect to these
11 violations.

12 64. Plaintiff was compelled to retain the services of counsel to file this court action to
13 protect his interests and the interests of other aggrieved employees, and to assess and collect the
14 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs,
15 which they are entitled to receive under California Labor Code § 2699.

16 **PRAYER**

17 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
18 this suit is brought against Defendants, as follows:

- 19 1. For an order certifying the proposed Classes;
- 20 2. For an order appointing Plaintiff as representative of the Classes;
- 21 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 22 4. Upon the First Cause of Action, for compensatory, consequential, general and
23 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198.
- 24 5. Upon the Second Cause of Action, for compensatory, consequential, general and
25 special damages according to proof pursuant to Labor Code §§ 204, 558, 1194, 1197, 1197.1 and
26 1198;
- 27 6. Upon the Third Cause of Action, for compensatory, consequential, general and
28 special damages according to proof pursuant to Labor Code §§ 204, and 221-223;

1 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

3 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
4 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

5 9. Upon the Sixth Cause of Action, for statutory wage statement penalties pursuant
6 to Labor Code § 226 *et seq.*;

7 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant
8 to Labor Code §§ 201-203;

9 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
10 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
11 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
12 *seq.*;

13 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
14 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
15 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
16 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
17 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
18 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for
19 each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3)
20 \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor
21 Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00
22 for each subsequent violation per employee per pay period for those violations of the Labor Code
23 for which no civil penalty is specifically provided, based on the Labor Code violations cited in
24 Paragraph 62 (a)-(i) above.

25 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor
26 Code § 218.6 and Civil Code §§ 3287 and 3289;

27 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
28 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

1 15. For such other and further relief the Court may deem just and proper.

2
3 Dated: June 15, 2021

Respectfully submitted,
LIDMAN LAW, APC

4
5 By: _____


Scott M. Lidman
Attorneys for Plaintiff
RAUL NUNEZ

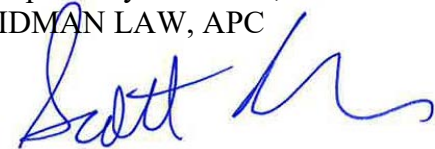
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7
8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

10
11 Dated: June 15, 2021

Respectfully submitted,
LIDMAN LAW, APC

12
13 By: _____


Scott M. Lidman
Attorneys for Plaintiff
RAUL NUNEZ

PROOF OF SERVICE

Raul Nunez v. TK Services, Inc.

Los Angeles County Superior Court Case No. BC682512

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2155 Campus Drive, Suite 150, El Segundo, California 90245.

On June 15, 2021, I served the document(s) described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested party(ies) in this action as follows:

Elaine Alston, Esq. (elaine@copenbargerlaw.com)
Paul Copenbarger, Esq. (paul@copenbargerlaw.com)
Lauren Martin, Esq. (lauren@copenbargerlaw.com)

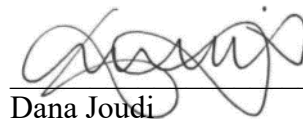
COPENBARGER & ASSOCIATES

27201 Puerta Real, Suite 300
Mission Viejo, California 92691
Tel: (949) 420-4575
Attorneys for Defendant TK Services, Inc.

(BY ELECTRONIC SERVICE) I caused a true and correct copy of the document(s) described above to be electronically served via Case Anywhere on counsel of record at the electronic service addresses listed above.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 15, 2021, at El Segundo, California.



Dana Joudi