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Attorney for Plaintiff,
JOSE VELASQUEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

JOSE VELASQUEZ, an individual,
Plaintiff,

v.

DAIKOKUYA INC., a California corporation
dba DAIKOKUYA LITTLE TOKYO; and
DOES 1 through 20, inclusive,
Defendants.

Case No. **21STCV12212**

COMPLAINT FOR DAMAGES FOR:

- 1. RETALIATION (LAB. CODE §98.6);**
- 2. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
- 3. FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 1194);**
- 4. FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 1194);**
- 5. FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§226.7, 512);**
- 6. FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);**
- 7. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203); AND**
- 8. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.);**

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

1 COMES NOW PLAINTIFF, JOSE VELASQUEZ, and for causes of action against the
2 Defendants and each of them, alleges as follows:

3
4 **JURISDICTION**

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

9
10 **THE PARTIES**

11 2. Plaintiff, Jose Velasquez, is and at all times relevant hereto was a resident of the County
12 of Los Angeles, State of California.

13 3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
14 hereto, Defendant DAIKOKUYA INC. (hereinafter referred to as "EMPLOYER" or "DEFENDANT")
15 was and is a California corporation doing business as DAIKOKUYA LITTLE TOKYO at 139 N Citrus
16 Avenue, Covina, CA 91723, in the County of Los Angeles, State of California.

17 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
18 hereto, Employers owned and operated a private business.

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

23 6. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint
24 employers and/or special employers within the meaning of the Labor Code and Industrial Welfare
25 Commission Order No. 5-2001, and are each any "employer or other person acting on behalf of an
26 employer" as such term is used in Labor Code section 558, and liable to Plaintiff on that basis.

27 7. The true names and capacities, whether individual, corporate, associate, or otherwise, of
28 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.
3 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
4 Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as
5 alleged hereinafter.

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

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

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

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

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

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

8 a. Employers are completely dominated and controlled by one another and DOES 1-
9 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
10 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
11 accomplish some other wrongful or inequitable purpose.

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

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

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

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

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

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

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

FACTUAL ALLEGATIONS

16. On or about September 2011, Employers hired Plaintiff to work as a cook. Plaintiff was a full-time, non-exempt employee, and performed all of Plaintiff's job duties satisfactorily before Plaintiff was wrongfully terminated on or about October 5, 2020.

17. At the time of Plaintiff's termination, Plaintiff was \$15.25 per hour.

18. During this time period, Plaintiff's fixed schedule was six days per week, Monday through Saturday, for approximately 8 to 9 hours per day.

19. Plaintiff worked approximately 10 hours each week, for which Plaintiff received no wages at all, not Plaintiff's hourly wage rate, or even the requisite minimum wage.

20. Plaintiff worked approximately 10 overtime hours each week, but was not paid for these hours.

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

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

7 23. Throughout Plaintiff's employment, Defendants failed to pay any wages at all, both the
8 statutory minimum wage, and Plaintiff's overtime premium rate for the majority of hours worked beyond
9 eight (8) in a day, or beyond forty (40) in a week.

10 24. In the four years last past, for each pay period, Plaintiff received inaccurate paystubs that
11 did not comply with Labor Code § 226, because they failed to show the correct amount of overtime hours
12 Plaintiff worked, failed to show pay for missed meal and rest periods, failed to show the amount of wages
13 earned and owed to Plaintiff, and failed to show Defendants' name.

14 25. On or about October 5, 2020, Plaintiff complained to Defendants about unpaid wages,
15 not being provided meal periods, and and not being provided rest breaks. He was promptly fired, along
16 with at least 8 other employees.

17 26. Defendants' conduct described herein was undertaken, authorized, and/or ratified
18 Defendants' officers, directors and/or managing agents, including those identified herein as DOES 1
19 through 20, who were authorized and empowered to make decisions that reflect and/or create policy for
20 Defendants. The aforementioned conduct of said managing agents and individuals was therefore
21 undertaken on behalf of Defendants who further had advanced knowledge of the actions and conduct of
22 said individuals whose actions and conduct were ratified, authorized, and approved by managing agents
23 whose precise identities are unknown to Plaintiff at this time and are therefore identified and designated
24 herein as DOES 1 through 20, inclusive.

25 27. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer general
26 and special damages, including severe and profound pain and emotional distress, anxiety, depression,
27 headaches, tension, and other physical ailments, as well as medical expenses, expenses for psychological
28 counseling and treatment, and past and future lost wages and benefits.

1 28. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,
2 commissions, benefits and loss or diminution of earning capacity.

3 29. Plaintiff claims general damages for emotional and mental distress and aggravation in a
4 sum in excess of the jurisdictional minimum of this Court.

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

10
11 **FIRST CAUSE OF ACTION**
12 **RETALIATION LABOR CODE §98.6**
13 **AGAINST ALL DEFENDANTS**

14 31. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
15 though set forth in full herein.

16 32. Labor Code §98.6(a) prohibits an employer from discharging or discriminating against an
17 employee for political activities; for complaining that he or she is owed unpaid wages, for
18 whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion,
19 suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's
20 premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; for
21 initiating proceedings against the employer to collect civil penalties under the "Labor Code Private
22 Attorneys General Act;" and for exercising "any rights afforded him or her" under the Labor Code. Thus,
23 Section 98.6 prohibits an employer from discharging or in any manner discriminating or retaliating
24 against an employee who, among other things, has exercised her or her rights under that Chapter,
25 including the right to take meal breaks, and/or made a written or oral complaint that he or she is owed
26 unpaid wages. An employee who has been discharged or retaliated against in violation of Labor Code
27 §98.6 is entitled to recovery of a civil penalty against the employer in an amount not exceeding ten
28 thousand dollars (\$10,000.00) for each violation of that section.

1 33. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff was
2 terminated from Plaintiff's employment with Defendants as a result of Plaintiff's complaints about not
3 being paid all wages due, not receiving meal and/or rest breaks, exercising Plaintiff's right to take meal
4 and/or rest breaks. Defendants' retaliatory animus is evidenced by, among other things, the immediate
5 termination of Plaintiff and his coworkers when bringing up their rights under the Labor Code.

6 34. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
7 Defendants, and Defendants' officers and/or managing agents, including, and those identified herein as
8 DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create policy for
9 Defendants. The aforementioned conduct of said managing agents and individuals was therefore
10 undertaken on behalf of Defendants. Defendants further had advanced knowledge of the actions and
11 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
12 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore identified
13 and designated herein as DOES 1-20, inclusive.

14 35. As a result of Defendants' actions, Plaintiffs are each entitled to a civil penalty not to
15 exceed \$10,000.00 for Defendants' violations of Labor Code §§ 98.6 and/or 1102.

16 36. Because the acts taken toward Plaintiff were carried out by managerial employees acting
17 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiffs' rights and
18 in order to injure and damage them, Plaintiffs requests that punitive damages be levied against Defendants
19 and each of them, in sums in excess of the jurisdictional minimum of this court.

20
21 **SECOND CAUSE OF ACTION**
22 **FOR WRONGFUL TERMINATION**
23 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
24 **AGAINST ALL DEFENDANTS**

25 37. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as
26 though set forth in full herein.

27 38. At all relevant times mentioned in this complaint, Labor Code §98.6 was in full force
28 and effect and was binding upon Defendants and each of them. This law prohibits retaliation against

1 employees who complain about unpaid wages and/or attempt to exercise the rights under the Labor
2 Code. Labor Code §98.6 reflects the State's broad public policy interest in protecting the rights of
3 individual employees and job applicants who could not otherwise afford to protect themselves from
4 violations of the Labor Code.

5 39. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's
6 engagement in protected activities under Labor Code §§ 98.6 and/or 1102.5 was a proximate cause in
7 Plaintiff's damages as stated below.

8 40. The foregoing conduct of Defendants individually, or by and through their officers,
9 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
10 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
11 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
12 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
13 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

14
15 **THIRD CAUSE OF ACTION**
16 **FOR FAILURE TO PAY WAGES DUE**
17 **LABOR CODE §§201, 1182.12, 1194, 1194.2**
18 **AGAINST ALL DEFENDANTS**

19 41. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
20 though set forth in full herein.

21 42. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and
22 required by 8 Code of Regulations §11040, as set forth hereinabove. As alleged herein, Defendants
23 routinely failed to pay Plaintiff for hours worked beyond eight in a day or 40 per week.

24 43. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510, 8
25 Code of Regulations §11040, and Industrial Welfare Commission Order No. 5-2001.

26 44. Plaintiff has been deprived of Plaintiff's rightfully earned compensation as a direct and
27 proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to
28 recover such amounts, plus interest thereon, attorneys' fees and costs.

1 45. Labor Code §558(a) provides that any person acting on behalf of an employer who
2 violates, or causes to be violated, overtime rules pay a civil penalty in the amount of \$50 for each
3 underpaid employee for each pay period in which the employee was underpaid in addition to an amount
4 sufficient to recover underpaid wages. Also, Labor Code §558(a) for each subsequent violation, the
5 person acting on behalf of an employer is liable in the amount of \$100 for each underpaid employee for
6 each pay period for which the employee was underpaid in addition to an amount sufficient to recover the
7 underpaid wages.

8 46. In addition to the unpaid wages, Plaintiff is entitled to civil penalties in this amount stated
9 above based upon Defendants' underpayment of minimum and overtime wages. Within the one year
10 immediately preceding the filing of this Complaint, Defendants, and each of them, violated Labor Code
11 §558 on 26 pay periods, the first of which Defendants are penalized \$50.00, and the remainder of which
12 Defendants are penalized \$100.00 each, for a total due in Labor Code §558 penalties of \$2,550.00 and
13 statutory maximum of \$4,000.00.

14
15 **FOURTH CAUSE OF ACTION**
16 **FOR FAILURE TO PAY OVERTIME COMPENSATION**
17 **LABOR CODE §§510, 1194**
18 **AGAINST ALL DEFENDANTS**

19 47. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
20 though set forth in full herein.

21 48. Labor Code §510 requires employers to pay their non-exempt employees one and one-half
22 times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40
23 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12
24 hours in a single day. It also requires employers to pay their non-exempt employees overtime
25 compensation for the first eight hours of work done on the seventh consecutive day of work done in any
26 work week, and double-time compensation for any work done beyond the first eight hours on the seventh
27 consecutive day of work.

28 ///

1 49. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime
2 compensation required by Labor Code §510, 8 Code of Regulations §11040, and Industrial Welfare
3 Commission Order No. 5-2001.

4 50. At all relevant times, Defendants required Plaintiff to work more than eight hours per day
5 and/or more than 40 hours per workweek. Despite this, Defendants failed to pay Plaintiff the requisite
6 overtime wages in each of the following ways in the four years immediately preceding the filing of this
7 complaint:

8 a. From approximately March 1, 2017 through October 5, 2020, Plaintiff worked an
9 average of 50 hours per week, at an hourly rate \$15.25 per hour less the unpaid wage portion which
10 Plaintiff has already claimed in the previous cause of action, and is therefore owed \$7.63 per hour. During
11 this time period, Plaintiff worked an average of 10 hours of overtime each week, for 187 weeks. Plaintiff
12 was not paid Plaintiff's overtime premium for 1,870 hours. Therefore, Plaintiff is owed \$7.63 for each of
13 those 1,870 hours, totaling \$14,268.10.

14 51. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
15 Code §510, 8 Code Regulations §11040, and Industrial Welfare Commission Order No. 5-2001.

16 52. Thus, for the entirety of the time periods set forth above, Plaintiff is owed overtime wages
17 of \$15,203.10.

18 53. Plaintiff has been deprived of Plaintiff's rightfully earned overtime compensation as a
19 direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is
20 entitled to recover such amounts, plus interest thereon, attorneys' fees, and costs.

21
22 **FIFTH CAUSE OF ACTION**
23 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
24 **LABOR CODE §§226.7, 512**
25 **AGAINST ALL DEFENDANTS**

26 54. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
27 though set forth in full herein.

28 ///

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

3 56. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted
4 rest period of not less than 10 minutes, for every period worked in excess of four hours.

5 57. In the four years last past, Plaintiff regularly worked in excess of five hours per day, and
6 was thereby entitled to take uninterrupted 30-minute meal periods and 10-minute rest periods on each
7 day of work.

8 58. Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed
9 to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§226.7 and the
10 applicable sections of 8 Code of Regulations §11040 and Industrial Welfare Commission Order No. 5-
11 2001, as follows:

12 59. From approximately March 1, 2017 through October 5, 2020, Plaintiff's statutory 30-
13 minute meal periods were interrupted and cut short approximately 6 times per week for 187 weeks, or on
14 approximately 1,122 days. During this same time period, Plaintiff was not permitted and not advised of
15 Plaintiff's right to take one or more of Plaintiff's statutory 10-minute rest periods for days on which
16 plaintiff worked for at least four hours, which was each day Plaintiff worked, or approximately 1,122
17 days (6 days per week for 187 weeks).

18 60. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of 8
19 Code of Regulations §11040 and Industrial Welfare Commission Order No. 5-2001. Consequently,
20 Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage,
21 whichever is greater, for each day that Plaintiff was denied such meal periods, and is owed one hour of
22 pay at Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is greater, for each day
23 that Plaintiff was denied such rest periods, calculated as follows:

24 a. From approximately March 1, 2017 through October 5, 2020, Defendants failed to
25 provide Plaintiff with an uninterrupted statutory meal period for those days on which Plaintiff worked at
26 least five hours on approximately 1,122 separate days. Consequently, Plaintiff is owed one hour of pay
27 at \$15.25 for each day, or \$17,110.50, plus interest thereon, for unpaid interrupted meal periods. During
28 this same time period, Defendants failed to provide Plaintiff with the statutory rest period for those days

1 on which Plaintiff worked at least four hours on approximately 1,122 separate days. Consequently,
2 Plaintiff is owed one hour of pay at \$15.25 for each day, or \$17,110.50, plus interest thereon, for unpaid
3 rest periods. Thus, Plaintiff is owed a total of \$34,221.00, plus interest thereon, for unpaid meal and rest
4 periods for this time period.

5
6 **SIXTH CAUSE OF ACTION**
7 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**
8 **LABOR CODE §§226 ET SEQ.**
9 **AGAINST ALL DEFENDANTS**

10 61. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
11 though set forth in full herein.

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

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

23 64. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
24 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
25 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
26 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
27 by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly
28 and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying

1 Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not
2 one of the paystubs that Plaintiff received complied with Labor Code §226, and contained almost none
3 of the required information, including hours actually worked.

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

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

13 67. Plaintiff was paid on a bi-weekly basis, and therefore Defendants violated Labor Code
14 §226 approximately 26 times during the last year that Plaintiff worked for Defendants. Consequently,
15 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
16 amount of \$4,000.00, whichever is greater.

17 68. In addition thereto, Plaintiff is entitled civil penalties pursuant to Labor Code §226.3 in
18 the amount of \$4,000.00.

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

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

27 70. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
28 though set forth in full herein.

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

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

9 73. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
10 is entitled to payment of Plaintiff's overtime, meal and rest periods as previously pleaded herein, and
11 more than \$2,096.25 in wait time penalties, calculated based on 30 days of regular weekly wages
12 including overtime.

13 74. Based on Defendants' conduct as alleged herein, Defendants are liable for \$2,096.25 in
14 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
15 fees and costs.

16
17 **EIGHTH CAUSE OF ACTION**
18 **FOR UNFAIR COMPETITION**
19 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**
20 **AGAINST ALL DEFENDANTS**

21 75. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
22 though set forth in full herein.

23 76. Defendants' violations of 8 Code of Regulations §11040, Industrial Welfare Commission
24 Order No. 5-2001, Labor Code §§201-203, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198.5,
25 2699, and other applicable provisions, as alleged herein, including Defendants' failure and refusal to pay
26 minimum wages, overtime wages, Defendants' failure to provide meal and rest breaks, Defendants'
27 failure to provide timely and accurate wage and hour statements, Defendants' failure to pay compensation
28 due in a timely manner upon termination or resignation, and Defendants' failure to maintain complete

1 and accurate payroll records for the Plaintiff, constitute unfair business practices in violation of Business
2 & Professions Code §§17200, et seq.

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

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

10
11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff seeks judgment against Defendants and each of them, in an amount
13 according to proof as follows:

14 1. For a money judgment representing compensatory damages including lost wages,
15 earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money,
16 together with interest on these amounts; for other special damages; and for general damages for mental
17 pain and anguish and emotional distress and loss of earning capacity;

18 2. For civil penalties pursuant to Labor Code §98.6 in the amount of no less than \$10,000.00;

19 3. For payment of unpaid overtime compensation pursuant to Labor Code §§201, 510, 1194,
20 Industrial Welfare Commission Order No. 5-2001, and 8 Code of Regulations §11040, in the amount of
21 no less than \$15,203.10;

22 4. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512,
23 in the amount of no less than \$34,221.00;

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

25 6. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no
26 less than \$4,000.00;

27 7. For prejudgment interest on each of the foregoing at the legal rate from the date the
28 obligation became due through the date of judgment in this matter;

1 8. 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 9. For costs of suit, attorneys' fees, and expert witness fees pursuant to the Labor Code and/or
4 any other basis;

5 10. For post-judgment interest; and

6 11. For any other relief that is just and proper.

7
8 DATED: March 31, 2021

THE DOMINGUEZ FIRM, LLP

9
10 By: 

Jace H. Kim, Esq.
Carlos Andres Perez, Esq.
Javier Ramirez, Esq.
Attorneys for Plaintiff
Jose Velasquez

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14 **JURY TRIAL DEMANDED**

15 Plaintiff Jose Velasquez demands trial of all issues by jury.

16
17 DATED: March 31, 2021

THE DOMINGUEZ FIRM, LLP

18
19 By: 

Jace H. Kim, Esq.
Carlos Andres Perez, Esq.
Javier Ramirez, Esq.
Attorneys for Plaintiff
Jose Velasquez