

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

LA FORTALEZA, INC.; and DOES 1 through 100, inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

JOSE ROSALIANO VELEZ, on behalf of himself and others similarly situated

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

ELECTRONICALLY FILED
Merced Superior Court
9/27/2021 8:00 AM
Amanda Toste
Clerk of the Superior Court
By: Nengsy Moua, Deputy

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:

(El nombre y dirección de la corte es):

Superior Court of the State of California,
County of Merced
627 W. 21st Street
Merced, CA 95340

CASE NUMBER:

(Número del Caso) 21CV-03310

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):

Anthony J. Orshansky
COUNSELONE, PC
9301 Wilshire Blvd., Suite 650
Beverly Hills, CA 90210

(310) 277-9945

DATE: 9/27/2021 8:00 AM
(Fecha)

Amanda Toste

Clerk, by
(Secretario)

Nengsy Moua, 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)).

[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):

1 ANTHONY J. ORSHANSKY (SBN 199364)
anthony@counselonegroup.com
2 JENNIFER L. CONNOR (SBN 241480)
jennifer@counselonegroup.com
3 JUSTIN KACHADOORIAN (SBN 260356)
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9301 Wilshire Boulevard, Suite 650
5 Beverly Hills, California 90210
Telephone: (310) 277-9945
6 Facsimile: (424) 277-3727

7 Attorneys for Plaintiff Jose Rosaliano Velez, on behalf
of himself and others similarly situated
8
9
10

ELECTRONICALLY FILED
Merced Superior Court
9/27/2021 8:00 AM
Amanda Toste
Clerk of the Superior Court
By: Nengsy Moua, Deputy

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF MERCED**
13

14 JOSE ROSALIANO VELEZ, on behalf of
himself and others similarly situated,

15 Plaintiffs,
16

17 v.

18 LA FORTALEZA, INC.; and DOES 1 through
19 100, inclusive,

20 Defendants.
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Case No.: 21CV-03310

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. Failure to Pay Minimum Wages
2. Failure to Pay Overtime Wages
3. Meal Period Liability under Labor Code § 226.7
4. Rest Break Liability under Labor Code § 226.7
5. Violation of Labor Code § 246
6. Failure to Provide Accurate Itemized Employee Wage Statements
7. Failure to Pay All Wages Owed Timely and Upon Separation of Employment
8. Violation of Labor Code § 1174(d)
9. Violation of Business & Professions Code §§ 17200, et seq.
10. Penalties Pursuant to Labor Code § 2699

DEMAND FOR JURY TRIAL

Plaintiff JOSE ROSALIANO VELEZ (“Plaintiff”), on behalf of himself, the State of California, and all others similarly situated, alleges and complains of defendant LA FORTALEZA, INC., and DOES 1 through 100, inclusive (collectively, “Defendants”), and each of them, as follows:

I. INTRODUCTION

1. This is a class action pursuant to California Code of Civil Procedure section 382 on behalf of Plaintiff and the following class: *All current and former non-exempt, hourly-paid employees who worked for Defendants in the State of California from February 1, 2017, and continuing to final judgment* (the “Class” or “Class Members”). The parties entered into a tolling agreement prior to the filing of this Complaint that extends the putative class period back to February 1, 2017.

2. Throughout the time period involved in this case, Defendants willfully maintained a consistent policy and/or practice of failing to pay all wages, including minimum and overtime wages, for all hours worked; failing to provide compliant duty-free meal periods; failing to authorize and permit compliant duty-free rest breaks; failing to pay sick pay; failing to maintain and provide accurate itemized wage statements; and failing to pay all wages owed timely and upon separation of employment. Defendants’ illegal conduct has also given rise to derivative claims for unfair business practices and violation of the Private Attorneys General Act of 2004 (“PAGA”).

3. Plaintiff, on behalf of himself and all other similarly situated employees, pursuant to California Business & Professions Code sections 17200 through 17208, also seeks all monies owed but withheld and retained by Defendants to which Plaintiff and Class Members are entitled. Plaintiff seeks an order by the Court awarding restitution, injunctive relief, and all other legal and equitable relief allowed, plus interest, attorneys’ fees and costs.

4. Plaintiff, on behalf of himself and all other similarly situated aggrieved employees (the “Aggrieved Employees”), also brings this representative action against Defendants to recover wages and penalties owed pursuant to Labor Code section 2699. Plaintiff was compelled to retain the services of counsel to file this action to protect his interests and those of Aggrieved Employees

1 and has thereby incurred attorneys' fees and costs, which he is entitled to recover under Labor
2 Code section 2699.

3 5. The relevant time period for the claims under the PAGA discussed herein is one
4 year prior to the date Plaintiff filed his PAGA notice online with the California Labor &
5 Workforce Development Agency ("LWDA") and sent a letter by certified mail to Defendants.

6 6. For purposes of the allegations set forth herein, Class Members, along with
7 Aggrieved Employees comprising the PAGA representative action, are collectively referred to as
8 "Employees" except as otherwise specified.

9 **II. JURISDICTION AND VENUE**

10 7. This Court has jurisdiction over this action pursuant to the California Constitution,
11 Article VI, Section 10, which grants the superior court "original jurisdiction in all other causes"
12 except those given by statute to other courts. The statutes under which this action is brought do not
13 specify any other basis for jurisdiction.

14 8. This Court has jurisdiction over Defendants because, upon information and belief,
15 Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise
16 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
17 over them by California courts consistent with traditional notions of fair play and substantial
18 justice.

19 9. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil
20 Procedure section 395.5 because, upon information and belief, the obligations giving rise to
21 liability occurred in part in the County of Merced, State of California.

22 10. This case should be classified as complex according to California Rules of Court,
23 Rule 3.400, and assigned to a complex litigation judge and department because it is a class action,
24 will involve substantial documentary evidence and a large number of witnesses, is likely to
25 involve extensive motion practice raising difficult or novel issues that will be time-consuming to
26 resolve, and would require substantial post judgment judicial supervision.

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III. PARTIES

11. Plaintiff is a resident of California. At all relevant times herein, Defendants employed Plaintiff as a non-exempt, hourly-paid employee and subjected him to the same employment policies and/or practices that affected Employees.

12. Plaintiff is informed and believes, and based thereon alleges, that Defendant La Fortaleza, Inc. is registered to do business in the State of California.

13. Plaintiff is informed and believes, and based thereon alleges, that Defendants do business in the State of California and, at all times hereinafter mentioned, were and are employers as defined in and subject to the California Labor Code and California Industrial Welfare Commission (“IWC”) Occupational Wage Orders. During the relevant period, Defendants employed Plaintiff and Employees within the State of California.

14. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known.

15. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall include DOES 1 through 100 identified herein.

16. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to other Defendants. Plaintiff is further informed and believes and based thereon alleges that Defendants are joint employers in that they employed Plaintiff and Employees, at the same time and were operating as a joint enterprise and single entity at all relevant time periods.

1 17. California courts have recognized that the definition of “employer” for purposes of
2 enforcement of the California Labor Code goes beyond the concept of traditional employment to
3 reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
4 California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who
5 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
6 person to work or exercises control over the wages, hours, or working conditions of any person
7 may be liable for violations of the California Labor Code as to that person.

8 18. California law also permits and recognizes the piercing of a corporate veil between
9 sister companies under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal.App.4th 107,
10 155; *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 512. The single enterprise rule
11 applies where “there are two or more personalities, there is but one enterprise; and that this
12 enterprise has been so handled that it should respond, as a whole, for the debts of certain
13 component elements of it.” *Hasso, supra*, 227 Cal.App.4th at p. 155; *Greenspan, supra*, 191
14 Cal.App.4th at p. 512.

15 19. At all times throughout their employment, Plaintiff and Employees were regularly
16 and consistently subject to the common policies and/or practices utilized by Defendants.

17 20. Accordingly, all Defendants engaged, suffered, and permitted Plaintiff and
18 Employees to perform services from which they benefitted. Moreover, the aforementioned entities
19 had the right to exercise control over the wages, hours, and/or working conditions over Plaintiff
20 and Employees at all relevant times herein, so as to be considered joint employers.

21 **IV. FACTUAL BACKGROUND**

22 **Defendants Systematically Violated State Wage and Hour Laws**

23 21. Plaintiff is informed and believes that there are approximately five hundred Class
24 Members employed by Defendants within the State of California during the class period.
25 Defendants are wholesale distributors of quality Mexican foods including corn tortillas, flour
26 tortillas, tortilla chips, and other traditional Mexican foods.

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22. Upon information and belief, Plaintiff and Employees are covered by IWC Wage Order Nos. 1-2001 and 5-2001.¹

23. Throughout the applicable period of time, Defendants did not pay Plaintiff and Employees at least the California minimum wage for all hours worked. Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order Nos. 1-2001 and 5-2001 also obligate employers to pay each employee minimum wages for all hours worked.

24. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

25. Labor Code section 1194.2 authorizes employees to recover wages to recover liquidated damages for violations of Labor Code section 1194. Where an employee, like Plaintiff and Employees, is not paid for all hours worked under Labor Code section 1194, the employee may recover minimum wages and liquidated damages for the time for which he or she received no compensation. *Sillah v. Command Int’l Sec. Servs.* (N.D. Cal. 2015) 154 F.Supp.3d 891 [holding that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage]; accord *Andrade v. Arby’s Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-21.

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¹ Upon information and belief, Plaintiff alleges that IWC Wage Order Nos. 1-2001 and 5-2001 are applicable. However, Plaintiff reserves the right to amend and/or allege any other applicable Wage Orders.

26. Labor Code section 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidated damages as follows: “(1) [f]or any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

27. Labor Code section 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the employee’s regular rate of pay. Further, Labor Code section 510 obligates an employer to compensate an employee at no less than twice the regular rate of pay when the employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

28. Throughout the applicable period of time, Defendants have had a policy and/or practice of failing to pay overtime wages to Plaintiff and Employees for all overtime hours they worked. The work times of Plaintiff and Employees have been, and continue to be, greater than eight (8) hours per day and/or forty (40) hours per week. Yet, because Defendants did not pay Plaintiff and Employees wages for, *inter alia*, hours that were worked off the clock, Plaintiff and Employees were deprived wages at overtime premium amounts attributable to overtime hours. Moreover, the overtime that was paid was short as Defendants incorrectly calculated the regular rate for purposes of calculating overtime; Defendants failed to include non-discretionary forms of pay in the regular rate calculations for Plaintiff and Employees.

29. By their common policy and/or practice of requiring Plaintiff and Employees to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the applicable overtime rate of pay, Defendants willfully violated the provisions of Labor Code sections 510 and 1198, as well as the relevant IWC Wage Orders.

1 30. Defendants failed to provide Plaintiff and Employees with timely duty-free meal
2 periods. Labor Code sections 226.7, 512, and IWC Wage Order Nos. 1-2001 and 5-2001 require
3 employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period
4 within the first five (5) hours of work. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th
5 1004, 1042 [“Accordingly, first meal periods must start after no more than five hours.”].
6 Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second
7 thirty (30) minute uninterrupted and duty-free meal period. *See* Labor Code § 512.

8 31. Defendants denied Plaintiff and Employees meal periods that comply with Labor
9 Code sections 226.7, 512, and IWC Wage Order Nos. 1-2001 and 5-2001. Plaintiff and Employees
10 suffered late, short, interrupted, and/or missed first and second meal periods. *See Donohue v. AMN*
11 *Services, LLC* (2021) 11 Cal.5th 58 [the California Supreme Court reversed the Fourth Appellate
12 District and set forth two clear rules: (1) employers are not permitted to round time records when
13 determining if employees are entitled to meal premium pay, and (2) it is the employer’s burden to
14 show that compliant meal periods were provided to employees if the time records show
15 otherwise]. Plaintiff and Aggrieved Employees did not receive compliant meal periods within the
16 first five (5) hours of their work, and did not receive compliant second meal periods when working
17 shifts of ten (10) hours or more.

18 32. Defendants were also obligated but failed to provide Plaintiff and Employees with
19 net ten (10) minute rest breaks for work shifts exceeding four (4) hours or a major fraction thereof
20 worked as required by Labor Code section 226.7 and IWC Wage Order Nos. 1-2001 and 5-2001.
21 The California Supreme Court held in *Augustus v. ABM Security Services Inc.*, (2016) 2 Cal. 5th
22 257, that employees must be relieved of all duties during rest breaks pursuant to Labor Code
23 section 226.7 and Subdivision 12(A) of Wage Order No. 5-2001. The Court found that the Wage
24 Orders and the Labor Code require employers to “relinquish control over how employees spend
25 their time” and “relieve employees of all duties” during employees’ 10-minute rest periods.
26 Plaintiff and Employees did not receive compliant rest breaks.

27 33. In addition to failing to authorize and permit compliant meal and rest breaks,
28 Plaintiff and Employees were not compensated with one (1) hours’ worth of pay at their regular

1 rates of pay when they were not provided with compliant meal and rest breaks in accordance with
2 Labor Code section 226.7(b). *See Ferra v. Loews Hollywood Hotel, LLC* (July 15, 2021) Case No.
3 S259172.

4 34. Moreover, Defendants did not pay Plaintiff and Employees wages for sick time
5 pursuant to Labor Code section 246.

6 35. Labor Code section 203 provides “if an employer willfully fails to pay...any wages
7 of an employee who is discharged or who quits, the wages of the employee shall continue as a
8 penalty...” for up to 30 days. Labor Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487,
9 492.

10 36. Due to Defendants’ non-compliant policies and/or practices described herein,
11 Plaintiff and Employees whose employment with Defendants concluded were not compensated
12 for, *inter alia*, all straight-time and overtime hours worked, and were not paid all meal and rest
13 break premiums owed at their regular rates of pay. Thus, Defendants have failed to pay Plaintiff
14 and Employees all wages, whose sums were certain, at the time of termination or within seventy-
15 two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter
16 in violation of Labor Code section 203.

17 37. Labor Code section 204 expressly requires that “[a]ll wages...earned by any person
18 in any employment are due and payable twice during each calendar month, on days designated in
19 advance by the employer as the regular paydays.” Pursuant to Labor Code section 204(d), these
20 requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly
21 payroll if the wages are paid not more than seven calendar days following the close of the payroll
22 period.” Due to Defendants’ failure to pay Plaintiff and Employees for, *inter alia*, all straight-time
23 and overtime hours worked, Defendants failed to timely pay Plaintiff and Employees within seven
24 (7) days of the close of the payroll period in accordance with Labor Code section 204 on a regular
25 and consistent basis.

26 38. Through Labor Code section 210 and the PAGA, and to the extent permitted by
27 law, Plaintiff and Employees are entitled to recover civil penalties for violations of Labor Code
28 section 204.

1 39. Plaintiff and Employees were not furnished with accurate itemized wage statements
2 that accurately showed their gross wages earned, net wages earned, premium payments at their
3 regular rates of pay for noncompliant meal and rest breaks, all applicable hourly rates and
4 corresponding number of hours worked at each hourly rate in effect during their pay periods, and
5 other information required by Labor Code section 226(a).

6 40. During the relevant period, Defendants have knowingly and intentionally failed to
7 provide Plaintiff and Employees with the above-described writing through actions alleged herein
8 in violation of Labor Code section 226. Plaintiff and Employees have been injured by Defendants'
9 intentional violation of Labor Code section 226(a) because they were denied both their legal right
10 to receive, and their protected interest in receiving, accurate itemized wage statements.

11 41. In addition, because Defendants failed to provide the accurate and mandated
12 information on the itemized wage statements, Plaintiff and Employees have been prevented by
13 Defendants from determining, *inter alia*, if all hours worked were paid and the extent of the
14 underpayment. Plaintiff had to file this lawsuit and perform computations in order to analyze
15 whether, and to what extent, Plaintiff and Employees suffered underpayment, thereby causing
16 Plaintiff to incur expenses and time lost. Thus, Plaintiff and Employees are owed the greater of all
17 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and
18 one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not
19 exceeding an aggregate penalty of four thousand dollars (\$4,000.00), as provided for in Labor
20 Code section 226(e).

21 42. Moreover, for the violations described above, Plaintiff and Employees may also
22 recover civil penalties pursuant to Labor Code section 226.3 and the PAGA for Defendants'
23 violations of Labor Code section 226(a).

24 43. Further, Plaintiff and Employees have been denied their legal right and protected
25 interest in having available at a central location at the plant or establishment where they are
26 employed, accurate and complete payroll records showing the hours worked daily by, and the
27 wages paid to, Plaintiff and Employees at those respective locations pursuant to Labor Code
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1 section 1174. Pursuant to Labor Code section 1174.5 and the PAGA, Plaintiff and Employees may
2 also recover civil penalties for violation of Labor Code section 1174(d).

3 44. Based on the foregoing, Defendants have also engaged in unlawful and unfair
4 business practices in violation of California's Business and Professions Code sections 17200, *et*
5 *seq.*, thereby entitling Plaintiff and Class Members to restitution, disgorgement of profits, or other
6 equitable remedies.

7 **V. CLASS ACTION ALLEGATIONS**

8 45. Plaintiff brings this action on behalf of himself and all others similarly situated, as a
9 class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a
10 proposed class comprised of and defined as follows:

11 *All current and former non-exempt, hourly-paid employees who worked for*
12 *Defendants in the State of California from February 1, 2017, and continuing to*
final judgment (again, "Class" or "Class Members").

13 46. Plaintiff reserves the right under California Rule of Court, Rule 3.765(b) to amend
14 or modify the class description identified herein with greater specificity or further division into
15 subclasses or limitation to particular issues.

16 47. This action has been brought and may properly be maintained as a class action
17 under the provisions of Code of Civil Procedure section 382 because there is a well-defined
18 community of interest in the litigation and the Class is easily ascertainable.

19 **A. Numerosity**

20 48. The potential members of the Class as defined are so numerous that joinder of all
21 the members of the Class is not practicable. Plaintiff is informed and believes that there are
22 approximately five hundred Class Members employed by Defendants within the State of
23 California during the class period.

24 49. Plaintiff alleges Defendants' employment records would provide information as to
25 the number and location of all Class Members.

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B. Commonality

50. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;

b. Whether Defendants had a corporate policy and/or practice of failing to pay Class Members for all hours worked in violation of California law;

c. Whether Defendants failed to pay at least the minimum wage to Class Members for all hours worked;

d. Whether Defendants required Class Members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Class Members;

e. Whether Defendants deprived Class Members of legally compliant meal and rest breaks;

f. Whether Defendants had a corporate policy and/or practice of failing to pay Class Members required premium payments for noncompliant (*e.g.*, short, late, interrupted, and/or missed altogether) meal periods and rest breaks in violation of California law;

g. Whether Defendants failed to pay Class Members for sick pay;

h. Whether Defendants failed to timely pay all wages due to Class Members during their employment;

i. Whether Defendants failed to pay all wages due to Class Members within the required time upon their discharge or resignation;

j. Whether Defendants complied with wage reporting as required by the California Labor Code, including, *inter alia*, section 226;

k. Whether Defendants kept complete and accurate payroll records as required by the California Labor Code, including, *inter alia*, section 1174(d);

l. Whether Defendants' conduct was willful or reckless;

1 m. Whether Defendants engaged in unfair business practices in violation of the
2 Unfair Competition Law, Business and Professions Code sections 17200, *et seq.*;

3 n. Whether Class Members are entitled to compensatory damages pursuant to
4 the California Labor Code;

5 o. The appropriate amount of damages, restitution, and/or monetary penalties
6 resulting from Defendants' violation of California law;

7 p. Whether Class Members are entitled to attorneys' fees and costs; and

8 q. Whether Class Members are entitled to interest.

9 **C. Typicality**

10 51. The claims of Plaintiff are typical of the claims of the Class. Plaintiff and Class
11 Members sustained injuries and damages arising out of and caused by Defendants' common
12 course of conduct in violation of laws and regulations that have the force and effect of law and
13 statutes, as alleged herein.

14 **D. Adequacy of Representation**

15 52. Plaintiff will fairly and adequately represent and protect the interests of the Class.
16 Counsel who represent Plaintiff and Class Members are competent and experienced in litigating
17 wage and hour class and representative actions, and have the financial resources to litigate the
18 claims at issue.

19 **E. Superiority of Class Action**

20 53. A class action is superior to other available means for the fair and efficient
21 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
22 questions of law and fact common to the Class predominate over any questions affecting only
23 individual members of the Class. Each member of the Class has been damaged and is entitled to
24 recovery by reason of Defendants' illegal policy and/or practice of failing to pay minimum and/or
25 overtime wages for all hours worked, failing to provide compliant duty-free meal periods and/or
26 pay premiums owed thereon, failing to authorize and permit compliant duty-free rest breaks and/or
27 pay premiums owed thereon, failing to pay sick pay, failing to maintain and provide accurate
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1 itemized wage statements, failing to pay all wages owed in a timely manner, failing to pay all
2 wages due upon termination and/or resignation, and engaging in unfair business practices.

3 54. Class action treatment will allow those similarly situated persons to litigate their
4 claims in a manner that is most efficient and economical for the parties and the judicial system.
5 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
6 action that would preclude its maintenance as a class action.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY MINIMUM WAGES**

9 **Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1, and the Relevant IWC Wage Orders**

10 **[On Behalf of Plaintiff and the Class against All Defendants]**

11 55. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
12 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
13 fully alleged herein.

14 56. Throughout the period of time applicable to this cause of action, Defendants did not
15 pay Plaintiff and Class Members at least the California minimum wage for all hours worked,
16 thereby violating Labor Code section 1194 and the relevant IWC Wage Orders. Plaintiff and Class
17 Members performed off-the-clock work pre- and post- shift that was not recorded by Defendants.
18 Plaintiff and Class Members were suffered to work during meal periods, which time was not
19 compensated. Defendants engaged in the practice of rounding Plaintiff's and Class Members'
20 work time such that they were not fully compensated for all hours worked.

21 57. Defendants' failure to pay Plaintiff and Class Members the minimum wage as
22 required is unlawful and violates Labor Code sections 1194, 1194.2, 1197, and 1197.1. As a result,
23 Plaintiff and Class Members are entitled to recover the unpaid balance of their minimum wage
24 compensation, as well as interest, costs, and attorney's fees, and liquidated damages in an amount
25 equal to the wages unlawfully unpaid and interest thereon.

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SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

Cal. Labor Code §§ 510 and 1198 and the Relevant IWC Wage Orders

[On Behalf of Plaintiff and the Class against All Defendants]

58. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

59. At all times relevant to this Complaint, Labor Code section 510(a) was in effect and provided: “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of forty hours in any one workweek...shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

60. Pursuant to the relevant IWC Wage Orders, an employee shall not be employed more than eight (8) hours in any workday and/or more than forty (40) hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over eight (8) hours in any workday and/or more than forty (40) hours in any workweek. Further, an employer must compensate an employee at no less than twice the employee’s regular rate of pay when the employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

61. At all times mentioned, Plaintiff and the Class regularly worked shifts that consisted of more than eight (8) hours in a workday and/or more than forty (40) hours in a workweek and were not paid proper overtime wages for all overtime hours worked as a result of, but not limited to, Defendants’ failure to pay for work performed off the clock, including pre- and post-shift, and during meal periods. Defendant’s practice of rounding Plaintiff’s and Class Members’ work time also resulted in the undercounting and ultimately underpayment of all overtime hours worked. Moreover, the overtime that was paid was short as Defendants incorrectly calculated the regular rate for purposes of calculating overtime; Defendants failed to include non-discretionary forms of pay in the regular rate calculations for Plaintiff and Class Members.

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1 62. Accordingly, by requiring Plaintiff and the Class to work in excess of eight (8)
2 hours per day and/or forty (40) hours per week without properly compensating them overtime
3 wages, as described above, Defendants willfully violated the provisions of Labor Code section
4 1194.

5 63. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been
6 deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of
7 such amounts, plus interest and penalties thereon, costs, and attorneys' fees.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PROVIDE MEAL PERIODS**

10 **Cal. Labor Code §§ 226.7, 512, and the Relevant IWC Wage Orders**

11 **[On Behalf of Plaintiff and the Class against All Defendants]**

12 64. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
13 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
14 fully alleged herein.

15 65. Labor Code section 226.7 provides "an employer shall not require an employee to
16 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
17 applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC")."
18 Similarly, Labor Code section 512 and the IWC Wage Orders require employers to provide
19 employees with thirty (30) minute uninterrupted and duty-free meal periods within the first five
20 (5) hours of work. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1042
21 ("Accordingly, first meal periods must start after no more than five hours.") Moreover, an
22 employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)
23 minute uninterrupted and duty-free meal period. *See* Labor Code § 512.

24 66. Despite these legal requirements, Defendants failed to always provide meal periods
25 that comply with Labor Code sections 512, 226.7, and IWC Wage Order Nos. 1-2001 and 5-2001.
26 Plaintiff and Class Members experienced short, untimely and interrupted meal periods, and on
27 occasion, the demands of employee job duties were such that they were prevented from taking a
28

1 meal period altogether. Having been thus subjected to late, short, interrupted, and missed meal
2 periods, Plaintiff and Class Members did not receive their statutorily mandated meal periods.

3 67. To the extent Defendants claim that Plaintiff and Class Members waived their
4 rights to second meal periods for shifts worked in excess of ten (10) hours, the waivers are not
5 applicable to those occasions when Plaintiff and Class Members worked shifts in excess of twelve
6 (12) hours a day and/or to the extent the waivers are ineffective on-duty meal period agreements
7 where the nature of the work does not prevent them from being relieved of all duties.

8 68. Under Labor Code section 226.7 and the relevant IWC Wage Orders, Plaintiff and
9 each Class Member is entitled to be paid one (1) hour of additional wages at their regular rates of
10 pay for each day he or she was not provided with all required meal periods. *See Ferra v. Loews*
11 *Hollywood Hotel, LLC* (July 15, 2021) Case No. S259172. Defendants failed to pay Plaintiff and
12 Class Members the additional wages to which they were entitled for non-compliant meal periods.

13 69. As a result, Defendants are liable to Plaintiff and each Class Member for one (1)
14 hour of additional wages at their regular rates of pay for each workday a compliant meal period
15 was not provided, in a sum to be proven at trial.

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

18 **Cal. Labor Code § 226.7 and the Relevant IWC Wage Orders**

19 **[On Behalf of Plaintiff and the Class against All Defendants]**

20 70. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
21 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
22 fully alleged herein.

23 71. Under the applicable IWC Wage Orders, an employer must authorize and permit all
24 employees to take ten (10) minute duty free rest breaks for every major fraction of four hours
25 worked. Labor Code section 226.7 provides “an employer shall not require an employee to work
26 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
27 regulation, standard, or order of the Industrial Welfare Commission.”

28 ///

1 72. Defendants are required by California law to authorize and permit breaks of ten
2 (10) uninterrupted minutes for each four hours of work or major fraction thereof (*i.e.*, more than
3 two hours). That is, the required number of rest breaks is equal to the number of work hours
4 divided by four, and if the work time is not evenly divisible by four, any remainder of two hours
5 or less is rounded down and that which exceeds two hours is rounded up. For example, if a Class
6 Member's work time is six hours and ten minutes, he or she is entitled to two rest breaks. If the
7 work time is nine hours, the employee is still entitled to only two rest breaks. (There is an
8 exception: if the shift is under three and one-half hours, no rest break is required.) Each failure to
9 authorize rest breaks as so required is itself a violation of California's rest break laws.

10 73. Despite these legal requirements, Defendants failed to authorize and permit
11 Plaintiff and Class Members to take timely, duty-free rest breaks. Plaintiff and Class Members
12 were subject to policies and/or practices that prevented them from taking legally compliant rest
13 breaks. Defendants did not relieve Plaintiff and Class Members of all duties during their rest
14 breaks and occasionally required them to be available to continue working – or, in fact, interrupted
15 them – during their rest breaks. Notwithstanding any formal written policy to the contrary,
16 Defendants' actual custom and business practice was to undermine any formal policy of
17 permitting rest breaks by pressuring Class Members to perform their duties in a way that omitted
18 breaks, including, but not limited to, scheduling a heavy workload that made taking breaks
19 extremely difficult, maintaining an informal anti-rest break policy enforced through ridicule or
20 reprimand, and exerting coercion against the taking of, creating incentives to forego, or otherwise
21 encouraging the skipping of legally protected breaks. Here, as a companywide practice and in fact,
22 Defendants did not offer Plaintiff and Class Members the opportunity to receive compliant off-
23 duty rest breaks and, thus, "the court may not conclude employees voluntarily chose to
24 skip...breaks." *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 410 ("[i]f
25 an employer fails to provide legally compliant meal or rest breaks, the court may not conclude
26 employees voluntarily chose to skip those breaks."); *accord, Brinker, supra*, 53 Cal.4th at p. 1033
27 ("No issue of waiver ever arises for a rest break that was required by law but never authorized; if a
28 break is not authorized, an employee has no opportunity to decline to take it.")

1 74. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the court
2 expressly rejected the employer’s assertion that it could provide an on-duty rest break to
3 employees who worked as security guards and further explained “that employers [must] relinquish
4 any control over how employees spend their break time, and relieve their employees of all duties.”
5 *Id.* at 273. However, Defendants did not relieve Plaintiff and Class Members of all duties and
6 relinquish control over how Plaintiff and Class Members spend their time.

7 75. Plaintiff and Class Members were not compensated with one (1) hours’ worth of
8 pay at their regular rates of pay when they were not provided with compliant rest breaks in
9 accordance with Labor Code section 226.7(b). *See Ferra v. Loews Hollywood Hotel, LLC* (July
10 15, 2021) Case No. S259172.

11 76. As a result, Defendants are liable to Plaintiff and Class Members for one (1) hour
12 of additional of pay at their regular rates of pay for each workday when a compliant rest break was
13 not provided, in a sum to be proven at trial.

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO PAY SICK PAY**

16 **Cal. Labor Code § 246**

17 **[On Behalf of Plaintiff and the Class against All Defendants]**

18 77. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
19 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
20 fully alleged herein.

21 78. Labor Code section 246(a) states: “(a) An employee who, on or after July 1, 2015,
22 works in California for the same employer for 30 or more days within a year from the
23 commencement of employment is entitled to paid sick days as specified in this section.”

24 79. California Labor Code section 246(b)(1) states: “An employee shall accrue paid
25 sick days at the rate of not less than one hour per every 30 hours worked, beginning at the
26 commencement of employment or the operative date of this article, whichever is later, subject to
27 the use and accrual limitations set forth in this section.”

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- 1 (6) the inclusive dates of the period for which the employee is paid;
- 2 (7) the name of the employee and only the last four digits of his or her social
- 3 security number or an employee identification number other than a social security number;
- 4 (8) the name and address of the legal entity that is the employer...; and
- 5 (9) all applicable hourly rates in effect during the pay period and the
- 6 corresponding number of hours worked at each hourly rate by the employee....

7 84. During the relevant time period, due to Defendants', *inter alia*, failure to provide

8 Plaintiff and Class Members with lawful meal periods and rest breaks (or pay meal and rest break

9 premiums at the regular rates of pay thereon), along with the failure to pay minimum and overtime

10 wages, the wage statements issued by Defendants, at a minimum, do not indicate the correct

11 amount of gross wages earned, the correct total hours worked, the correct net wages earned, or the

12 applicable and/or correct hourly rates in effect during the pay period and the corresponding

13 number of hours worked at each hourly rate in violation of Labor Code section 226(a)(1), (2), (5),

14 and (9).

15 85. An employee suffering injury as a result of a knowing and intentional failure by an

16 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual

17 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one

18 hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not

19 exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of

20 costs and reasonable attorneys' fees.

21 86. The absence of accurate information on their wage statements has delayed timely

22 challenge to Defendants' unlawful pay practices, requires discovery and mathematical

23 computations to determine the amount of wages owed, causes difficulty and expense in attempting

24 to reconstruct time and pay records, and led to submission of inaccurate information about wages

25 and amounts deducted from wages to state and federal governmental agencies. Plaintiff would not

26 have had to engage in these efforts and incur these costs had Defendants provided accurate wage

27 statements. This also delayed Plaintiff's ability to demand and recover the underpayment of wages

28 from Defendants.

1 87. Thus, Plaintiff and Class Members have been injured by Defendants' violation of
2 Labor Code section 226(a) because they were denied both their legal right to receive, and their
3 protected interest in receiving, accurate itemized wage statements.

4 88. Plaintiff and Class Members are thus entitled to recover from Defendants the
5 greater of their actual damages caused by Defendants' failure to comply with Labor Code section
6 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000.00) per employee
7 pursuant to Labor Code section 226(e), and any other allowable penalties including those pursuant
8 to Labor Code section 226.3.

9 **SEVENTH CAUSE OF ACTION**

10 **FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER**

11 **AND UPON SEPARATION OF EMPLOYMENT**

12 **Cal. Labor Code §§ 201, 202, 203, 204, and 210**

13 **[On Behalf of Plaintiff and the Class against All Defendants]**

14 89. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
15 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
16 fully alleged herein.

17 90. Labor Code sections 201 and 202 provide that if an employer discharges an
18 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
19 and that if an employee voluntarily leaves his or her employment, his or her wages shall become
20 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
21 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee
22 is entitled to his or her wages at the time of quitting.

23 91. Labor Code section 203 provides that if an employer willfully fails to pay
24 compensation promptly upon discharge or resignation, as required by sections 201 and 202, then
25 the employer is liable for penalties in the form of continued compensation up to thirty (30) days.

26 92. As alleged herein and above, Defendants' failure to pay wages was willful in that
27 Defendants knew wages (*e.g.*, for off-the-clock work, unpaid premiums) were owed to Plaintiff
28 and Class Members, but failed to pay said wages, at the time of termination, or within 72 hours of

1 resignation, thus entitling Plaintiff and Class Members to penalties under Labor Code section 203,
2 which provides that an employee's wages shall continue as a penalty until paid for a period of up
3 to thirty (30) days from the time they were due.

4 93. Labor Code section 204 requires that all wages earned by any person in any
5 employment between the 1st and 15th day, inclusive, of any calendar month, other than those
6 wages due upon termination of an employee, are due and payable between the 16th and the 26th
7 day of the month during which the labor was performed, and that all wages earned by any person
8 in any employment between the 16th and the last day, inclusive, of any calendar month, other than
9 those wages due upon termination of an employee, are due and payable between the 1st and 10th
10 day of the following month. Section 204 also requires that all wages earned for labor in excess of
11 the normal work period shall be paid no later than the payday for the next regular payroll period.

12 94. The requirements of Labor Code section 204 shall be deemed satisfied by the
13 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
14 than seven calendar days following the close of the payroll period when the wages were earned.

15 95. During the relevant time period, Defendants failed to pay Plaintiff and Class
16 Members all wages due to them within any time period specified by Labor Code section 204
17 including, but not limited to, unpaid minimum and overtime wages, along with unpaid meal and
18 rest break premiums.

19 96. Labor Code section 210 imposes upon Defendants a penalty of \$100.00 for each
20 violation of failing to pay the wages of each employee. Furthermore, Labor Code section 210
21 imposes upon Defendants for each subsequent violation, or any willful or intentional violation, of
22 failure to pay the wages of each employee a penalty of \$200.00, plus 25 percent of the amount
23 unlawfully withheld.

24 97. Pursuant to Labor Code sections 218.5 and 218.6, along with California Civil Code
25 sections 3287(b) and 3289, Plaintiff requests that the Court award reasonable attorneys' fees and
26 the costs incurred by him in this action, along with pre-judgment interest on all amounts recovered
27 herein, as well as any statutory penalties Defendants may owe under the California Labor Code
28 and/or any other statute.

EIGHTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 1174(d)

[On Behalf of Plaintiff and the Class against All Defendants]

98. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

99. Pursuant to Labor Code section 1174(d), an employer shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years.

100. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily by and the wages paid to Plaintiff and Class Members.

101. As a result of Defendants' violation of Labor Code section 1174(d), Plaintiff and Class Members have suffered injury and damage to their statutorily protected rights.

102. More specifically, Plaintiff and Class Members have been injured by Defendants' intentional and willful violation of Labor Code section 1174(d) because they were denied both their legal right and protected interest in having available, accurate, and complete payroll records pursuant to Labor Code section 1174(d).

NINTH CAUSE OF ACTION

UNFAIR COMPETITION LAW VIOLATIONS

Cal. Business & Professions Code §§ 17200, *et seq.*

[On Behalf of Plaintiff and the Class against All Defendants]

103. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

1 104. The Unfair Competition Law (“UCL”), California Business & Professions Code
2 sections 17200, *et seq.*, prohibits any unlawful, unfair, or fraudulent business practices. Business
3 & Professions Code section 17204 allows “any person who has suffered injury in fact and has lost
4 money or property” to prosecute a civil action for violation of the UCL. Such a person may bring
5 such an action on behalf of himself or herself and others similarly situated who are affected by the
6 unlawful, unfair, or fraudulent business practice.

7 105. The statute of limitations for a claim under the UCL is four years. Accordingly, the
8 actionable period for this cause of action is four years (plus tolling, if applicable) prior to the filing
9 of this Complaint through the present, and on-going until the violations are corrected and/or the
10 Class is certified.

11 106. Labor Code section 90.5(a) states that it is the public policy of California to
12 vigorously enforce minimum labor standards in order to ensure employees are not required to
13 work under substandard and unlawful conditions, and to protect employers who comply with the
14 law from those who attempt to gain competitive advantage at the expense of their workers by
15 failing to comply with minimum labor standards.

16 107. A violation of Business and Professions Code sections 17200, *et seq.* may be
17 predicated upon the violation of any state or federal law. Defendants’ policies and/or practices
18 have violated state law in at least the following respects:

19 (a) Requiring Plaintiff and Class Members to work without paying them the
20 minimum wage for all hours worked in violation of Labor Code sections 1194, 1194.2, 1197, and
21 the applicable IWC Wage Orders;

22 (b) Requiring Plaintiff and Class Members to work overtime without paying
23 them the proper compensation in violation of Labor Code sections 510, 1198, and the applicable
24 IWC Wage Orders;

25 (c) Failing to provide compliant duty-free meal periods to Plaintiff and Class
26 Members and failing to authorize and permit compliant duty-free rest breaks to Plaintiff and Class
27 Members in violation of Labor Code sections 226.7, 512, and the applicable IWC Wage Orders;

1 (d) Failing to pay Plaintiff and Class Members for sick pay in violation of
2 Labor Code section 246;

3 (e) Failing to timely pay all wages to Plaintiff and Class Members during their
4 employment and upon separation of employment, in violation of Labor Code sections 201, 202,
5 203, 204, and 210; and

6 (f) Failing to maintain and provide Plaintiff and Class Members with accurate
7 itemized wage statements, in violation of Labor Code section 226.

8 Thus, Defendants engaged in unlawful competition in violation of sections 17200, *et seq.*
9 of the California Business & Professions Code by violating, *inter alia*, sections 201, 202, 203,
10 204, 210, 226, 226.7, 246, 510, 512, 1194, 1194.2, and 1197 of the Labor Code and the applicable
11 IWC Wage Orders.

12 108. As a direct and proximate result of Defendants' unlawful business practices,
13 Plaintiff and Class Members have suffered economic injuries because Defendants' conduct has
14 damaged Plaintiff and Class Members by wrongfully denying them all wages, including minimum
15 and overtime wages, and failing to pay all meal and rest breaks premiums at the regular rate of
16 pay, along with the corresponding interest, in a timely manner and upon separation, and while
17 supplying them inaccurate and misleading wage statements. Such conduct is substantially
18 injurious to Plaintiff and Class Members.

19 109. Additionally, Defendants intentionally avoided paying Plaintiff and Class Members
20 wages and monies, thereby creating for Defendants an artificially lower cost of doing business in
21 order to undercut their competitors and establish a greater foothold in the marketplace. Through
22 their actions alleged herein, Defendants have engaged in unfair competition within the meaning of
23 section 17200 of the California Business & Professions Code.

24 110. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and
25 practices. Plaintiff and Class Members are entitled to monetary relief pursuant to the California
26 Business & Professions Code sections 17203 and 17208 from at least four years (plus tolling, if
27 applicable) prior to the filing of this Complaint through the date of such restitution, at rates
28 specified by law. Defendants should be required to disgorge all the profits and gains they have

1 reaped and restore such profits and gains to Plaintiff and Class Members, from whom they were
2 unlawfully taken.

3 111. Defendants' course of conduct, acts, and practices in violation of the California
4 laws mentioned above constitute independent violations of sections 17200, *et seq.* of the
5 California Business & Professions Code.

6 112. Plaintiff and Class Members are entitled to enforce all applicable penalty
7 provisions of the California Labor Code pursuant to California Business & Professions Code
8 section 17202.

9 113. Plaintiff has assumed the responsibility of enforcement of the laws and public
10 policies specified herein by suing on behalf of himself and Class Members previously or presently
11 employed by Defendants in California. Plaintiff's success in this action will enforce important
12 rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in
13 the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate
14 pursuant to Code of Civil Procedure section 1021.5.

15 **TENTH CAUSE OF ACTION**

16 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

17 **Cal. Labor Code §§ 2698, *et seq.***

18 **[On Behalf of Plaintiff and Aggrieved Employees against All Defendants]**

19 114. Plaintiff, on behalf of himself and Aggrieved Employees, re-alleges and
20 incorporates by reference all of the allegations contained in the previous paragraphs of this
21 Complaint as though fully set forth herein.

22 115. Plaintiff, on behalf of himself and Aggrieved Employees, bring this
23 representative action against Defendants to recover wages and penalties pursuant to the Private
24 Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*

25 116. Based on the above allegations incorporated by reference, Defendants have
26 violated Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 1174,
27 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198, as well as the applicable IWC Wage Orders.

28 ///

1 117. Under Labor Code sections 2699(f)(2) and 2699.5, Plaintiff and Aggrieved
2 Employees are entitled to penalties in an amount to be shown at the time of trial subject to the
3 following formula:

4 \$100 for the initial violation per employee per pay period; and

5 \$200 for each subsequent violation per employee per pay period.

6 These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five
7 percent (25%) to the affected employees.

8 118. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate
9 itemized wage statements in compliance with Labor Code section 226(a). Plaintiff seeks separate
10 PAGA penalties for Defendants' violations of Labor Code section 226(a) and (e). *Lopez v. Friant*
11 *& Assocs., LLC* (2017) 15 Cal.App.5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11,
12 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after *Friant*
13 that "[t]o the extent the Court's Order [granting summary judgment to *Home Depot*] was
14 ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs' derivative
15 claim for [PAGA] penalties under section 226(e)...the Court's Order should not be read to grant
16 summary judgment on Plaintiffs' claim for PAGA penalties based on violation of section
17 226(a)."]]. For violations of Labor Code section 226(a), Plaintiff seeks the default penalty
18 provided by Labor Code section 226.3. Labor Code section 226.3 provides that "[a]ny employer
19 who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two
20 hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
21 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer
22 fails to provide the employee a wage deduction statement or fails to keep the required records in
23 subdivision (a) of Section 226." Accordingly, through PAGA and to the extent permitted by law
24 Plaintiff and Aggrieved Employees are entitled to recover penalties for violations of Labor Code
25 section 226.3 and seek default PAGA penalties for each of Defendants' numerous violations of
26 Labor Code section 226(a).

27 119. Labor Code section 210 provides that "[i]n addition to, an entirely independent and
28 apart from, any other penalty provided in this article, every person who fails to pay the wages of

1 each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1)
2 [f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2)
3 [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
4 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” As a
5 result of the faulty compensation policies and/or practices, Plaintiff and Aggrieved Employees are
6 also entitled to recover penalties under Labor Code section 210 through PAGA.

7 120. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
8 liquidated damages, in the amount of: “(1) [f]or any initial violation that is intentionally
9 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for
10 which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific
11 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for
12 which the employee is underpaid regardless of whether the initial violation is intentionally
13 committed.” Accordingly, through PAGA and to the extent permitted by law, Plaintiff and
14 Aggrieved Employees are entitled to recover pursuant to Labor Code section 1197.1.

15 121. Plaintiff has fully and completely exhausted his administrative remedies under
16 PAGA prior to proceeding with the PAGA claim. On January 5, 2021, Plaintiff filed his PAGA
17 Notice online with the LWDA and sent a letter by certified mail to Defendant La Fortaleza, Inc.
18 setting forth the facts and theories of the violations alleged against Defendants, as prescribed by
19 Labor Code sections 2698, *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee
20 with the LWDA. Pursuant to Labor Code section 2699.3(a)(2)(A), no notice was received by
21 Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar
22 days of the postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and
23 proceed with a civil action pursuant to Labor Code section 2699.

24 122. Plaintiff, as a personal representative of the general public, on behalf of Aggrieved
25 Employees and the State of California, will and does seek to recover any and all penalties for each
26 and every violation shown to exist or to have occurred during the PAGA period, in an amount
27 according to proof, as to those penalties that are otherwise only available to public agency
28

1 enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75%
2 of the penalties recovered being reimbursed to the State of California and the LWDA.

3 123. Plaintiff was compelled to retain the services of counsel to file this action to protect
4 his interests and those of Aggrieved Employees, and to assess and collect the wages and penalties
5 owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled
6 to recover under Labor Code section 2699(g)(1).

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff prays for the following relief:

- 9 1. For an order certifying this action as a class action;
- 10 2. For compensatory damages in the amount of the unpaid minimum wage and overtime
11 compensation for work performed by Plaintiff and Class Members, as may be proven;
- 12 3. For liquidated damages in the amount equal to the unpaid minimum wage and interest
13 thereon, as may be proven;
- 14 4. For compensatory damages in the amount of the regular rate of pay made by Plaintiff
15 and Class Members for each noncompliant meal period for which premium pay was deficient, as
16 may be proven;
- 17 5. For compensatory damages in the amount of the regular rate of pay made by Plaintiff
18 and Class Members for each day of noncompliant rest breaks for which premium pay was deficient,
19 as may be proven;
- 20 6. For compensatory damages in the amount of unpaid sick pay, as may be proven;
- 21 7. For penalties pursuant to Labor Code section 203 for Plaintiff and Class Members
22 who quit or were fired in an amount equal to their daily wage multiplied by thirty (30) days, as may
23 be proven;
- 24 8. For actual damages and/or penalties pursuant to Labor Code section 226(e) for
25 Plaintiff and Class Members, as may be proven;
- 26 9. For restitution for unfair competition pursuant to the California Business &
27 Professions Code sections 17200, *et seq.*, including disgorgement of profits, as may be proven;

28 ///

22 Dated: September 26, 2021

COUNSELONE, PC

By

Anthony J. Orshansky
Jennifer L. Connor
Justin Kachadoorian
Attorneys for Plaintiff, putative Class
Members, and Aggrieved Employees

DEMAND FOR JURY TRIAL

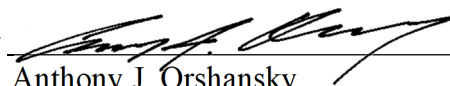
Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

Respectfully submitted,

Dated: September 26, 2021

COUNSELONE, PC

By



Anthony J. Orshansky

Jennifer L. Connor

Justin Kachadoorian

Attorneys for Plaintiff, putative Class
Members, and Aggrieved Employees

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Anthony J. Orshansky (SBN 199364) COUNSELONE, PC 9301 Wilshire Blvd., Suite 650, Beverly Hills, CA 90210 TELEPHONE NO.: (310) 277-9945 FAX NO. (Optional): (424) 277-3727 E-MAIL ADDRESS: anthony@counselonegroup.com ATTORNEY FOR (Name): Jose Rosaliano Velez, on behalf of himself and others similarly situated		FOR COURT USE ONLY ELECTRONICALLY FILED Merced Superior Court 9/27/2021 8:00 AM Amanda Toste Clerk of the Superior Court By: Nengsy Moua, Deputy	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED STREET ADDRESS: 627 W 21st Street MAILING ADDRESS: CITY AND ZIP CODE: Merced 95340 BRANCH NAME: Old Merced Courthouse (21st Street Building)		CASE NUMBER: 21CV-03310	
CASE NAME: Rosaliano Velez v. La Fortaleza, Inc., et al.			
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000)		Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
JUDGE:		DEPT.:	

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

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

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 (<i>not specified above</i>) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (<i>not specified above</i>) (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
b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. ☒ Substantial amount of documentary evidence | d. ☒ Large number of witnesses
e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
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*): Ten (10)
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: September 26, 2021

Anthony J. Orshansky

(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

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

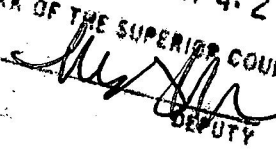
Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

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 MERCED 627 W. 21st Street Merced CA 95340 209-725-4100	Reserved for Clerk's File Stamp FILED MERCED COUNTY 2021 OCT -7 PM 4:27 CLERK OF THE SUPERIOR COURT BY  DEPUTY
Jose Rosaliano Velez vs La Fortaleza, Inc.	
NOTICE OF CASE MANAGEMENT CONFERENCE NOTICE OF INCLUSION IN DELAY REDUCTION PROGRAM	Case No. 21CV-03310

To All Parties and their Attorneys of Record:

Please take notice that the above-entitled action has been included in this Court's Delay Reduction Program. Local Rule 4 will hereafter apply to this action. You are required to comply with the guidelines for program cases as set forth in the above referenced Local Rule and the applicable California Rules of Court (CRC), including Rules 3.714(b)(1), 3.720-3.735.

Please note: Local Rules and ADR Packet may be reviewed on-line at www.merced.courts.ca.gov.

You are further advised that a Case Management Conference (CMC) in the above action has been scheduled, per Local Rule 4(B)(1)(a), for:

May 23, 2022 at 10:00 AM in Courtroom 8

Located at 627 West 21st Street Merced, CA 95340

Honorable Judge Brian McCabe, presiding.

Plaintiff must serve this Notice on all Parties to this action at the same time the Complaint is served. Failure to do so may cause unnecessary delay to this action.

Parties desiring to appear telephonically at the CMC shall comply with CRC, Rule 3.670 and Local Rule 4, and are responsible for making timely arrangements with CourtCall, LLC. CourtCall, LLC may be reached at (888) 882-6878. Notices of Telephonic Appearance may be placed on the CMC Statement or may be filed independently with the Court NOT LESS THAN THREE (3) COURT DAYS prior to the CMC. A Notice of Telephonic Appearance is deemed valid on any subsequent, continued CMCs.

PURSUANT TO CRC, RULE 3.724, THE PARTIES MUST MEET AND CONFER NO LATER THAN 30 DAYS PRIOR TO THE CMC.

A **CMC Statement** shall be filed with the Court no later than **15 days** prior to the date set for the **CMC**. Parties shall use **Judicial Council form CM-110** (CRC 3.725). This form is available at the Court Clerks Office or on-line at www.courtinfo.ca.gov.

If you have any further questions regarding this Notice, please contact the undersigned at the number indicated above.

Anthony J Orshansky
 9301 Wilshire Blvd Suite 650
 Beverly Hills CA 90210

Date: 10/7/2021

Amanda Toste, Court Executive Officer

Nengsy Moua
 Printed Name

By: 
 Deputy Clerk