

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

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

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

GRUB N' GO, a California corporation dba Habachihana; and DOES 1 through 20, inclusive,

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

FERNANDO PADILLA HERNANDEZ, an individual,

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

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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es): Los Angeles County Superior Court
Central District
111 N. Hill Street, Los Angeles, CA 90012

CASE NUMBER: (Número del Caso):

22STCV27327

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

Jace H. Kim, Esq.; The Dominguez Firm, LLP; 3250 Wilshire Boulevard, Suite 2200, Los Angeles, CA 90010; (213) 388-7788

DATE:

(Fecha) 08/23/2022

Sherri R. Carter Executive Officer / Clerk of Court

Clerk, by

(Secretario)

N. Alvarez

, 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)

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Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Mel Red Recana

Jace H. Kim, Esq. (SBN 282039)
Jace.Kim@Dominguezfirm.com
Carlos Andres Perez, Esq. (SBN 285645)
Carlos.Perez@Dominguezfirm.com
Javier Ramirez, Esq. (SBN 249516)
Javier.Ramirez@Dominguezfirm.com
THE DOMINGUEZ FIRM, LLP
3250 Wilshire Boulevard, Suite 2200
Los Angeles, CA 90010
Telephone: (213) 388-7788
Facsimile: (213) 201-8212

Attorneys for Plaintiff,
FERNANDO PADILLA HERNANDEZ

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

22STCV27327

FERNANDO PADILLA HERNANDEZ, an
individual,

Plaintiff,

v.

GRUB N' GO, a California corporation dba
Habachihana; and DOES 1 through 20,
inclusive,

Defendants.

Case No.

COMPLAINT FOR DAMAGES FOR:

- 1. FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 1194);**
- 2. FAILURE TO PAY OVERTIME AND DOUBLETIME COMPENSATION (CAL. LABOR CODE §§510, 1194);**
- 3. FAILURE TO PROVIDE MEAL PERIODS (FAILURE TO PAY WAGES FOR MISSED MEAL PERIODS) (I.W.C. WAGE ORDER NO. 5-2001, CAL. LABOR CODE §§512, 226.7);**
- 4. FAILURE TO PROVIDE REST PERIODS (FAILURE TO PAY WAGES FOR MISSED REST PERIODS) (I.W.C. WAGE ORDER NO. 5-2001, CAL. LABOR CODE §§226.7);**
- 5. FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);**
- 6. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.); AND**
- 7. PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ)**

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, FERNANDO PADILLA HERNANDEZ, and for causes of action against the Defendants and each of them, alleges as follows:

JURISDICTION

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

THE PARTIES

2. Plaintiff, FERNANDO PADILLA HERNANDEZ, is and at all times relevant hereto was a resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant GRUB N' GO (hereinafter referred to as "Employer," or "Defendant,") was and is a California corporation doing business as Habachihana at 1045 S. Hill Street, Los Angeles, in the County of Los Angeles, State of California.

4. At all times relevant herein, Defendant and DOES 1-20 were Plaintiff's employers, joint employers and/or special employers within the meaning of the Labor Code and Industrial Welfare Commission Order No. 5-2001 and are each an "employer or other person acting on behalf of an employer" as such term is used in Labor Code section 558 and/or 558.1, and liable to Plaintiff on that basis.

5. The true names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to insert the true names and capacities of said Defendants when the same become known to Plaintiff.

1 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
2 Defendants is responsible for the wrongful acts alleged herein and is therefore liable to Plaintiff as alleged
3 hereinafter.

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

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

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

22
23 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

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

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

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

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

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

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

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

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

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

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

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

13 14 **FACTUAL ALLEGATIONS**

15 14. In or around January 2020, Plaintiff began working for Defendant as a Chef. Plaintiff was
16 a non-exempt, full-time employee, until on or about November 16, 2021.

17 15. From approximately January 1, 2020, through approximately November 16, 2021,
18 Plaintiff's hourly wage rate was \$25.00. During this time period, Plaintiff's fixed schedule was and is 6
19 days per week for approximately 10 to 14 hours per day.

20 16. Plaintiff worked approximately 24 overtime hours each week but was not paid the
21 requisite overtime time rate. Additionally, Plaintiff worked approximately 11 doubletime hours each
22 week but was not paid the requisite doubletime time rate.

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

26 18. Throughout Plaintiff's employment, Plaintiff was also not permitted to, and not advised
27 of Plaintiff's right to take statutory 10-minute rest breaks for every four hours worked or substantial
28 portion thereof, which was each day Plaintiff worked.

1 19. Throughout Plaintiff's employment, for each pay period, Plaintiff received inaccurate
2 paystubs that did not comply with Labor Code §226, because the paystubs failed to show the number of
3 hours worked by Plaintiff, failed to show pay for missed meal and rest periods, failed to show Plaintiff's
4 available sick hours, as well as failed to show the true amount of wages earned and owed to Plaintiff.

5 20. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,
6 commissions, benefits and loss or diminution of earning capacity, attorneys' fees, and costs of suit, plus
7 interest.

8
9 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

10 21. At all relevant times, PAGA was applicable to Plaintiff and his employment with
11 Defendants. PAGA provides for a civil penalty to be assessed and collected by the Labor and Workforce
12 Development Agency ("LWDA").

13 22. Plaintiff and other employees of Defendants are "aggrieved employees" as defined by
14 PAGA, because they are all current or former employees of Defendants, and one or more of the alleged
15 violations were committed against them.

16 23. On or about May 11, 2021, Plaintiff gave written notice of Defendants' violations of
17 various provisions of the California Labor Code and the applicable IWC Wage Order to (a) the LWDA
18 by filing with the LWDA through the LWDA website and (b) to Defendants by certified mail.

19 24. The LWDA did not provide notice of its intention to investigate Defendants' violations
20 within 65 calendar days of the May 11, 2021, notice.

21 25. In doing so, Plaintiff has satisfied the administrative prerequisites under PAGA to recover
22 civil penalties against Defendants, in addition to the other remedies, for violations of California Labor
23 Code §§ 201-203, 226 *et seq.*, 510, 512, 558, 1102.5, 1174, 1194, and 1194.2.

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FIRST CAUSE OF ACTION
FOR FAILURE TO PAY WAGES DUE
LABOR CODE §§201, 1182.12, 1194, 1194.2
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

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

27. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and required by 8 Code of Regulations §11050, as set forth hereinabove. As alleged herein, Defendants routinely failed to pay Plaintiff for worked hours, doubletime hours and meal break premium hours.

28. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510, 8 Code of Regulations §11050, and Industrial Welfare Commission Order No. 5-2001.

29. Plaintiff has been deprived of his rightfully earned compensation as a direct and proximate result of Defendants' failure and refusal to pay said compensation. Thus, he is entitled to recover such amounts, plus interest thereon, attorneys' fees and costs.

SECOND CAUSE OF ACTION
FOR FAILURE TO PAY OVERTIME AND DOUBLETIME COMPENSATION
CAL. LABOR CODE §§510, 1194
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

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

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

1 32. At all relevant times, Defendants required Plaintiff to work more than eight hours per day
2 and/or more than 40 hours per workweek.

3 33. At all relevant times, Defendants failed and refused to pay Plaintiff all the doubletime
4 compensation required by Labor Code §510, the applicable 8 Code of Regulations section, and Industrial
5 Welfare Commission Order No. 5-2001.

6 34. At all relevant times, Plaintiff worked approximately 24 hours of overtime each week, all
7 of which should have been paid at 1.5 times Plaintiff's hourly wage rate of \$25.00. Defendants failed to
8 pay Plaintiff the requisite overtime wages in the following way:

9 35. From approximately January 1, 2020, through approximately November 16, 2021,
10 Plaintiff worked approximately 24 hours of overtime each week for which he was paid at \$25.00, the
11 overtime rate for his hourly wage rate of \$37.50. Therefore, Plaintiff is owed overtime wages of \$12.50
12 (\$37.50 - \$25.00) for each of those first 24 hours each week for 97 weeks, totaling approximately
13 \$29,100.00.

14 36. Additionally, at all relevant times, Plaintiff worked 11 hours of doubletime each month,
15 all of which should have been paid at 2 times Plaintiff's hourly wage rate of \$25.00. Defendants failed
16 to pay Plaintiff the requisite doubletime wages in the following way:

17 37. From approximately January 1, 2020, through approximately November 16, 2021,
18 Plaintiff worked approximately 11 hours of doubletime each week for which he was paid at \$25.00, the
19 overtime rate for his hourly wage rate of \$50.00. Therefore, Plaintiff is owed doubletime wages of \$25.00
20 (\$50.00 - \$25.00) for each of those first 11 hours for 97 weeks, totaling approximately \$26,675.00.

21 38. As alleged herein, Plaintiff was not exempt from the overtime and doubletime pay
22 requirements of Labor Code §510, the applicable 8 Code of Regulations section, and Industrial Welfare
23 Commission Order No. 5-2001.

24 39. Plaintiff has been deprived of Plaintiff's rightfully earned overtime and doubletime
25 compensation as a direct and proximate result of Defendants' failure and refusal to pay said
26 compensation. Plaintiff is entitled to recover \$55,775.00, plus interest thereon, attorneys' fees, and costs.

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1 **THIRD CAUSE OF ACTION**

2 **FOR FAILURE TO PROVIDE MEAL BREAKS**

3 **I.W.C. WAGE ORDER NO. 5-2001, LABOR CODE §§512, 226.7**

4 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

5 40. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
6 though set forth in full herein.

7 41. Labor Code §§512, 226.7 require employers to provide every employee with an
8 uninterrupted meal period of not less than 30 consecutive minutes, for every period of work exceeding
9 five hours.

10 42. At all relevant times, Plaintiff regularly worked in excess of five hours per day and was
11 thereby entitled to take uninterrupted 30-minute meal periods.

12 43. Defendants failed and refused to provide Plaintiff with meal periods, and failed to
13 compensate Plaintiff for missed meal periods, as required by Labor Code §512 and the applicable sections
14 of 8 Code of Regulations §11050 and Industrial Welfare Commission Order No. 5-2001, as follows:

15 44. From approximately January 1, 2020, through approximately November 16, 2021,
16 Plaintiff's statutory 30-minute meal periods were interrupted, cut short, or taken at or after the 5th hour,
17 approximately 6 times per week for 97 weeks, or on approximately 582 separate days.

18 45. As alleged herein, Plaintiff was not exempt from the meal break requirements of 8 Code
19 of Regulations §11050 and Industrial Welfare Commission Order No. 5-2001. Consequently, Plaintiff is
20 owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage, whichever
21 is greater, for each day that Plaintiff was denied such meal periods, calculates as follows:

22 46. From approximately January 1, 2020, through approximately November 16, 2021,
23 Defendants failed to provide Plaintiff with an uninterrupted statutory meal period, interrupted, cut short,
24 or required Plaintiff to take the statutory meal period at or after the 5th hour, for those days on which
25 Plaintiff worked at least five hours on approximately 582 separate days. Consequently, Plaintiff is owed
26 one hour of pay at \$25.00 for each day, or approximately \$14,550.00, plus interest thereon, for unpaid
27 interrupted statutory meal periods.

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47. Plaintiff has been deprived of his rightfully earned compensation for meal breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

48. Thus, for the entirety of the time period set forth above, Plaintiff is entitled to recover \$14,550.00, pursuant to Labor Code §512, plus interest thereon and costs of suit.

FOURTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE REST BREAKS
I.W.C. WAGE ORDER NO. 5-2001, LABOR CODE § 226.7
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

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

50. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted rest period of not less than 10 minutes, for every period of work exceeding five hours.

51. At all relevant times, Plaintiff regularly worked in excess of 4 hours per day and was thereby entitled to take timely and uninterrupted 10-minute rest periods on each day he worked. Nevertheless, Plaintiff was not permitted to, and not advised of his right to take the statutory rest periods to which he was entitled.

52. Defendants failed and refused to provide Plaintiff with rest periods, and failed to compensate Plaintiff for missed rest periods, as required by Labor Code §226.7(b) and the applicable sections of 8 Code of Regulations §11050 and Industrial Welfare Commission Order No. 5-2001, as follows:

53. From approximately January 1, 2020, through approximately November 16, 2021, Plaintiff was not permitted and not advised of his right to take one or more of his statutory 10-minute rest periods for days on which Plaintiff worked for at least four hours, which was each day Plaintiff worked, approximately 6 times per week for 97 weeks, or on approximately 582 separate days.

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1 54. As alleged herein, Plaintiff was not exempt from the rest break requirements of 8 Code of
2 Regulations §11050 and Industrial Welfare Commission Order No. 5-2001. Consequently, Plaintiff is
3 owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage, whichever
4 is greater, for each day that Plaintiff was denied such rest periods, calculated as follows:

5 55. From approximately January 1, 2020, through approximately November 16, 2021,
6 Defendants failed to provide Plaintiff with the statutory rest period for those days on which he worked at
7 least four hours on approximately 582 separate days. Consequently, Plaintiff is owed one hour of pay at
8 \$25.00 for each day, or \$14,550.00, plus interest thereon, for unpaid rest periods.

9 56. Plaintiff has been deprived of his rightfully earned compensation for rest breaks as a direct
10 and proximate result of Defendants' failure and refusal to pay said compensation.

11 57. Thus, for the entirety of the time period set forth above, Plaintiff is entitled to recover an
12 amount of \$14,550.00, pursuant to Labor Code § 226.7(b), plus interest thereon and costs of suit.

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14 **FIFTH CAUSE OF ACTION**
15 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**
16 **(CAL. LABOR CODE §§226, ET SEQ.)**
17 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

18 58. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
19 set forth in full herein.

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

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

4 61. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
5 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
6 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
7 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
8 by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly
9 and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying
10 Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not
11 one of the paystubs that Plaintiff received complied with Labor Code §226, and contained almost none
12 of the required information, including hours actually worked.

13 62. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §226.

14 63. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
15 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
16 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
17 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
18 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
19 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to
20 doubletime, meal period wages. For the time periods that Plaintiff was not provided with paystubs at all,
21 Plaintiff's aforementioned injuries are presumed as a matter of law.

22 64. Plaintiff was paid on a weekly basis, and therefore Defendants violated Labor Code §226
23 approximately 52 times during the last year that Plaintiff has worked for Defendants. Consequently,
24 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
25 amount of \$4,000.00, whichever is greater.

26 65. In addition, thereto, for Defendants' 26 violations, Defendants are penalized \$250.00 for
27 the first violation, and the remainder of which Defendants are penalized \$1,000.00 each, for a total due
28 in Labor Code §226.3 penalties of \$51,250.00 (\$250.00 + \$1,000.00 x 51 subsequent pay periods).

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

4
5 **SIXTH CAUSE OF ACTION**
6 **FOR UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.)**
7 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

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

10 68. Defendants' violations of the applicable 8 Code of Regulations section, Industrial Welfare
11 Commission Order No.5-2001,the above-stated Labor Code sections, 2699, and other applicable
12 provisions, as alleged herein, including Defendants' failure and refusal to pay wages, minimum wages,
13 overtime wages, doubletime wages, Defendants' failure to provide meal periods, Defendants' failure to
14 provide rest periods, and Defendants' failure to provide timely and accurate wage and hour statements,
15 constitute unfair business practices in violation of Business & Professions Code §§17200, et seq.

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

19 70. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent
20 injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and restore
21 to the Plaintiff the doubletime compensation and other monies and benefits unlawfully withheld from
22 Plaintiff.

23
24 **SEVENTH CAUSE OF ACTION**
25 **FOR PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ)**
26 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

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

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

4 73. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and
5 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as
6 previously pleaded in this Complaint.

7 74. On or about May 11, 2021, more than 65 calendar days before filing this Complaint,
8 Plaintiff provided electronic notice to the Labor and Workforce Development Agency and notice by
9 certified mail to Defendants of the specific provisions of the California Labor Code that Defendants
10 violated, thereby satisfying the requirements of Labor Code §2699.3(a). These violations included the
11 above-stated Labor Code sections, each of which is enumerated among the serious violations set forth in
12 Labor Code §2699.5.

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

16 76. As a direct and proximate result of Defendants' California Labor Code violations as set
17 forth in this Complaint, Plaintiff is entitled to civil penalties of \$100.00 for each aggrieved employee per
18 pay period for the initial violation, and \$200.00 for each aggrieved employee per pay period for each
19 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
20 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
21 provide for a penalty, §§226.3, 226.7, 510, 512, and 558.

22 77. These penalties recoverable for Plaintiff alone totals approximately \$25,200.00.

23 78. Plaintiff may also seek these same penalties on behalf of all other aggrieved employees,
24 totaling approximately \$1,512,000.00.

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

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PRAYER FOR RELIEF

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

2. For restitution of all monies due to Plaintiff, as well as disgorged profits from Defendants' unfair and unlawful business practices;

3. For payment of unpaid wages pursuant to 8 Code of Regulations §11050;

4. For payment of unpaid overtime and doubletime compensation pursuant to Labor Code §§201, 510, 1194, Industrial Welfare Commission Order No. 5-2001, and the applicable 8 Code of Regulations section, in the amount of no less than \$55,775.00;

5. For payment of rest period compensation pursuant to Labor Code §§226.7, 512, in the amount of no less than \$14,550.00;

6. For payment of meal period compensation pursuant to Labor Code §226.7, 512, in the amount of no less than \$14,550.00;

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

8. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no less than \$51,250.00;

9. For statutory penalties pursuant to Labor Code §2699(f), in the amount of no less than \$25,200.00 on Plaintiff's own behalf, and no less than \$1,512,000.00 on behalf of all of Defendants' aggrieved employees;

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

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

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12. For post-judgment interest; and
13. For any other relief that is just and proper.

DATED: August 23, 2022

By: 

Jace H. Kim, Esq.
Carlos Andres Perez, Esq.
Javier Ramirez, Esq.
Attorneys for Plaintiff,
FERNANDO PADILLA HERNANDEZ

JURY TRIAL DEMANDED

Plaintiff demands trial of all issues by jury.

DATED: August 23, 2022

By: 

Jace H. Kim, Esq.
Carlos Andres Perez, Esq.
Javier Ramirez, Esq.
Attorneys for Plaintiff,
FERNANDO PADILLA HERNANDEZ